

CITY OF BLOOMINGTON  
2215 WEST OLD SHAKOPEE ROAD  
HENNEPIN COUNTY, MINNESOTA 55431

CITY COUNCIL MEETING

Approved Minutes  
Regular Meeting  
Meeting #18

7:00 p.m.  
July 1, 2002  
Council Chamber

Call to Order and  
Presentation of Colors

Mayor Gene Winstead called the meeting to order and Girl Scout Troop #2467 presented the colors and led the Council and audience in the pledge of allegiance to the flag. The girl scouts introduced themselves and indicated what school they attended.

Roll Call

Present: Mayor Winstead, Councilmembers D. Abrams, S. Elkins, M. Fossum, H. Harden, S. Peterson, and V. Wilcox.

Swearing In of Five  
New Police Officers

Acting Police Chief Ron Whitehead introduced the following five new police officers that bring the total number of authorized police officers in Bloomington to 114: Todd Severson, Badge #260 (Metro State University); Jeffrey Bailey, #261 (Anoka-Hennepin Community College); Cullan McHarg, #262 (Inver Hills Community College); Joseph Brunette, #263 (Metro State University); and Nicholas Melser, #264 (Mankato State University).

City Clerk Evelyn Woulfe proceeded to swear in the new officers.

Presentation of the 2002  
Health Promotion Award  
and Certificates of  
Recognition

Sharon Pressler, Past President of the Advisory Board of Health and past recipient of the Health Promotion Award, introduced the recipients of the 2002 Health Promotion Award and the Certificates of Recognition. She explained that this year's recipients are being recognized for their contributions to the health, wellness, and safety of Bloomington residents.

Mayor Winstead presented certificates to Mary Andrews for her work in the area of children's mental health and to Karen Nordstrom for her work in the promotion of tobacco-free lifestyles and smoke-free public spaces. Nordstrom, commenting on Eden Prairie's recent movement toward smoke-free restaurants, requested that the City Council consider doing the same in Bloomington. Mayor then presented the Health Promotion Award to Bloomington Athletic Association (BAA) President Dan Wallerus and Bette Lokken for its nearly 50-year effort in presenting opportunities for kids to participate in organized sports, regardless of their skill level. Wallerus accepted the award on behalf of the entire BAA organization and the youth in Bloomington and introduced other BAA directors who were present in the audience.

Approved Changes to the  
Bloomington Family  
Services Community  
Council's Rules of  
Procedure  
Item 6.3

Motion was made by Fossum, seconded by Elkins, and all voting aye, to approve the changes to Bloomington Family Services Community Council's Rules of Procedure to reflect the new structure of FamiLink and its relationship with the Community Council as approved by the Hennepin South Services Collaborative in 2001.

Council had no questions for Bloomington Family Services Community Council members present and moved approval of the proposed changes.

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.

Approved an Agreement  
with Facility Systems,  
Inc. for Workstation and  
Office Furniture Design  
Services for New  
Police/City Hall/Arts  
Center Facility  
Item 6.1

Motion was made by Harden, seconded by Elkins, and all voting aye, to approve an agreement with Facility Systems, Inc., a Herman Miller vendor, for workstation and office furniture design services as recommended by the Furniture, Fixtures and Equipment (FF&E) Committee. The agreement calls for 350 hours @ \$55/hour of design work for furniture drawings/specifications and 24 hours @ \$55/hour for interior design colors and finishes for a total expenditure of \$20,570.00. This will fund the design process with the recommended vendor. Later in the year, the Council will be asked to authorize the purchase of furniture based on these designs.

Adopted a Resolution Approving an Administrative Variance for a Front Porch Addition at 8836 Emerson Avenue South for Barbara Johnson Case 10593A-02 Item 6.2 R-2002-84

Motion was made by Harden, seconded by Elkins, and all voting aye, to adopt a resolution approving an administrative variance to reduce the prevailing front yard setback from 37 feet to 32 feet for a front porch addition at 8836 Emerson Avenue South, Case 10593A-02, for Barbara Johnson, subject to the following 2 conditions as set forth by the Hearing Examiner:

1. The variance is only applicable to the addition as shown on the plans in Case 10593A-02 and;
2. The existing drainage pattern shall not be altered to cast additional drainage onto abutting properties.

Approved the 2002 Community Health Services Agreement with the City of Richfield Item 6.6

Motion was made by Harden, seconded by Elkins, and all voting aye, to approve the 2002 Community Health Services (CHS) Agreement with the City of Richfield, in which Bloomington will receive \$179,595 in quarterly payments of \$44,898.75 for community health services rendered by the Public Health Division. In addition to the contractual CHS agreement, the City receives revenues from other fees and grants for providing public health services to the City of Richfield. In 2002, this is projected to be approximately \$210,000.

No budget adjustment is required for this agreement.

Approved the Purchase of a 2002 Holder C-9700 with Attachments for Use by the Park Maintenance Division Item 6.7

Motion was made by Harden, seconded by Elkins, and all voting aye, to approve the purchase of a 2002 Holder C-9700 with V-Plow, Snow Blower, Broom, and Mower attachments for use by the Park Maintenance Division for sidewalk snow removal, sweeping, and grass mowing and accept the trade-in offer for the 1991 equipment from Environmental Equipment and Services, Inc. for a total expenditure of \$77,050.60 plus Minnesota State sales tax under State of Minnesota Contract #428851.

Funds for this expenditure are available in the 2002 Equipment Replacement Budget, Activity 617-0618-499.70-42.

Approved the Purchase of a Sterling Acterra M8500 Single-Axle Cab/Chassis for Use by the Equipment Division Item 6.8

Motion was made by Harden, seconded by Elkins, and all voting aye, to approve the purchase of a Sterling Acterra M8500 single-axle cab/chassis for use by the Equipment Division from Lakeland Truck Center in the amount of \$49,277.00 plus applicable Minnesota State sales tax under State of Minnesota Contract #428260.

Funds for this expenditure are available in the 2002 Equipment Replacement Fund, Activity 617-0618-499.70-42.

Rejected Bids for Auditorium Seating for New Police/City Hall/Arts Center Project Item 6.10

Motion was made by Harden, seconded by Elkins, and all voting aye, to reject bids received on June 11, 2002, for auditorium seating for the new Police/City Hall/Arts Center Project, as all bids received exceeded the funding available in the Facilities Replacement and Maintenance Fund for this portion of the project by a substantial amount.

Approved the Purchase of StorageWorks Network System and the Syncsort Backup Express Software License Item 6.11

Motion was made by Harden, seconded by Elkins, and all voting aye, to approve the purchase a StorageWorks Network System for \$21,812 and the Syncsort Backup Express software license from En Pointe Technologies for \$38,150 under the State of Minnesota Contract #425553.

Funds are available in the Information Systems 2002 Budget, Activities 615-8603-418.70-44 and 615-8603-418.62-09.

<p>Approved an Agreement Between the City and the Metropolitan Airports Commission for the Provision of Airport Security Services Item 6.12</p>	<p>Motion was made by Harden, seconded by Elkins, and all voting aye, to approve an agreement between the City and the Metropolitan Airports Commission (MAC) for the provision of airport security services. The League of Minnesota Insurance Trust reviewed the Agreement and believes it adequately protects the City and its officers from potential liability.</p>
<p>Approved an Extension of the Contract with Chief's Towing, Inc. Item 6.13</p>	<p>Motion was made by Harden, seconded by Elkins, and all voting aye, to approve an extension of the contract with Chief's Towing, Inc. for towing, impounding, and storage of motor vehicles through August 31, 2002, with an 11.1% cost of living increase of the contract's unit pricing.</p>
<p>Continued to July 15 the Purchase of Microsoft Licenses Item 6.4</p>	<p>Motion was made by Peterson, seconded by Elkins, and all voting aye, to continue to the July 15, 2002, Regular Council meeting, the request that Council approve the purchase of Microsoft licenses in the Upgrade Advantage and Software Assurance programs in the amount of \$117,957.00.</p> <p>Peterson commented that he read that Microsoft has been offering substantial concessions as an end of the quarter incentive and inquired if staff had experienced any such concessions, in terms of support, in its negotiation of this contract.</p> <p>City Manager Mark Bernhardson commented that he understood the situation to be that if the City didn't participate in Microsoft's software programs by July 31, 2002, the City would have to re-license at current prices. He suggested that Council could postpone action on this item in order to allow staff time to research Peterson's inquiry.</p> <p>Elkins stated that he understands this program to be a controversial one by Microsoft and that Microsoft is doing it as an incentive for their customers to upgrade to the newest versions of their software.</p>
<p>Accepted and Thanked Donors for Summer Fete Donations and Prize Donations for the Arts in the Parks Programs Item 6.5</p>	<p>Motion was made by Harden, seconded by Abrams, and all voting aye, to accept the donations received for Summer Fete (corporate donations totaled \$4,330.00) and (individual donations totaled \$4,761.00) for a total of \$9,091.24 and accepted the prize donations (valued at \$825.50) for the Arts in the Parks programs that will be used in prize packages at Sandcastles and the Talent Show.</p>
<p>Approved a Supplemental Agreement with TKDA, Inc. for the 2002-203 Street Improvement Project Item 6.9</p>	<p>Motion was made by Elkins, seconded by Harden, and all voting aye, to approve a Supplemental Agreement for Professional Engineering Services for design work as described for Bloomington's 2002-203 Street Improvement Project (American Boulevard from Penn Avenue to Knox Avenue) with TKDA, Inc. in the amount of \$19,406.00 with the total amount of the contract not to exceed \$80,971.00.</p> <p>Elkins inquired if the new design was going to include a bikeway.</p> <p>Street Engineer Wayne Force confirmed that both sides of the corridor would include 8-foot bikeways, one way in each direction.</p>
<p>Approved an Amendment to Section 20 of the Resolution Authorizing Issuance of Bonds for the Highland Apartments Project Item 4.11</p>	<p>Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve an amendment to Section 20, as presented in the materials, of the resolution authorizing the issuance of Multifamily Housing Revenue Refunding Bonds for the Highland Apartments Project.</p>

Item 4.11 continued

Joe Huss, Acting Chief Financial Officer, explained that the resolution is to authorize bonds to be issued for the refund of a 1999 bond issue for the Highland Apartments Project and that an amendment to that resolution includes a second condition that was added to Section 20 that requests the partners' submission of a plan that would address the measures that the Project Partnership will undertake to upgrade the Project's landscaping and appearance, to repair deferred maintenance items, and to improve routine maintenance of the Project. He explained that the second addition was added at the request of the Council. He added that John Utley, City's bond counsel, was present if Council had any questions.

Mayor remarked that he had gotten some calls regarding the maintenance, upkeep, and overall condition of the property and therefore supported the additional condition as part of the resolution.

Adopted a Resolution Authorizing Issuance of Multifamily Housing Revenue Refunding Bonds for the Highland Apartments Project Item 4.11 R-2002-79

Motion was made by Wilcox, seconded by Elkins, and all voting aye, to adopt a resolution, as amended, authorizing the issuance of its variable rate demand Multifamily Housing Revenue Refunding Bonds (Norlan Partners Project), Series 2002A-1 in the aggregate principal amount not to exceed \$5,115,000.00, its taxable variable rate demand Multifamily Housing Revenue Refunding Bonds, Series 2002A-2 in the aggregate principal amount not to exceed \$125,000.00 and its variable rate demand Multifamily Housing Revenue Refunding Bonds, Series 2002B in the aggregate principal amount not to exceed \$2,350,000.00 for the Highland Apartments Project.

John Utley, City's bond counsel from Kennedy & Graven, reviewed the necessary documents and the resolution.

Postponed to July 15 a Grant Application to the Metropolitan Council for Livable Communities Demonstration Account Item 4.12

Motion was made by Wilcox, seconded by Abrams, and all voting aye, to postpone to the July 15, 2002, Regular Council meeting, a grant application to the Metropolitan Council for Livable Communities Demonstration Account (LCDA).

Community Development Director Larry Lee recommended that Council postpone this item to July 15 in order for staff to work with the applicant on several items on the application including the development of design standards. He stated that the item would need to be acted upon on July 15 in order to meet the submission deadline.

Accepted the Preliminary Report/Feasibility Report and Petition of Waiver of Hearing and Adopted a Resolution Ordering Street Modification at 170 West 79<sup>th</sup> Street for Sam's Club Development Item 4.13 R-2002-83

Motion was made by Peterson, seconded by Elkins, and all voting aye, to accept the Preliminary Report/Feasibility Report and the Petition of Waiver of Hearing, and to adopt a resolution ordering the 2002-801 Street Modification Improvements for West 79<sup>th</sup> Street in front of Sam's Club Development located at 170 West 79<sup>th</sup> Street to be completed by 2003. The improvement consists of street widening and channelizing medians in order to provide better ingress/egress and turning movements at this development.

Elkins inquired if this section of American Boulevard included a bikeway provision.

Again, Street Engineer Wayne Force nodded from the audience in the affirmative.

No public testimony was received.

Approved a Taxicab Driver's License for Gary L. Strand with a Required Review of His Driving Record in Six Months Item 4.1

Motion was made by Wilcox, seconded by Harden, to approve a taxicab driver's license for Gary L. Strand that included a stern warning to keep his driving record clean as staff would be reviewing it within six months of this approval. Motion passed 6-1-0 (Fossum opposing).

City Attorney Dave Ornstein explained that if a taxicab driver has had his or her driver's license suspended, revoked, or canceled within a year of the application, the application must be denied and forwarded to the City Council. He stated that in this case, the license was suspended as a result of a failure to pay a judgment and that the applicant was convicted of driving after withdrawal. He stated that the applicant ultimately satisfied the judgment and paid the fine and the license was reinstated on May 3, 2002.

Item 4.1 continued

Speaker #1: Gary L. Strand, Applicant

Responding to Winstead's inquiry regarding if the violation that resulted in a failure to appear and pay fines occurred while driving in his cab or in his personal vehicle, Strand stated that it was while in his personal vehicle and that the judgment was due to an accident that occurred in 1996. He stated that he has been paying on the judgment and that approximately \$1,000 remains to be paid. He stated that he was licensed to drive cab in Minneapolis from 1992-1995 but that he is currently not licensed to drive a cab in any community.

Winstead that he is uncomfortable with the layering of infractions and the applicant's failure to pay fines.

Harden commented that there have been moving violations and an accident six years ago, however, since then the applicant's problems appear to be more of a financial nature.

Closed Public  
Comment Period

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

Postponed to August 5  
the Hearing for the 2002  
Assessment Roll No. 3  
for the 2000-301 Street  
and Utility Project  
Item 4.2

Motion was made by Peterson, seconded by Wilcox, to postpone to the August 5, 2002, Regular Council meeting, the hearing for the 2002 Assessment Roll No. 3 for the 2000-301 Street and Utility Project, which involved construction of sewer, storm sewer, water main, curb and gutter and/or permanent surfacing on East 105<sup>th</sup> Street Circle from the west line of Dakota Bluffs 3<sup>rd</sup> Avenue and construction of an access road on 3<sup>rd</sup> Avenue in order to allow staff time to discuss the proposed assessments with those property owners wishing to do so. Motion passed 6-0-1 (Harden temporarily absent).

Peterson stated that he received a call from homeowner Richard Elasky regarding his assessment and was reminded of the discussion that Council had previously when the project was ordered.

Bernhardson stated that the hearing was advertised for this evening but anyone wishing to express a disagreement with the proposed assessment should do so tonight. He stated the item would then be continued in order to allow staff time to address those concerns individually.

Speaker #1: Richard Elasky, 171 East 105<sup>th</sup> Street

He stated he would appreciate the opportunity to meet with staff to discuss this matter before the Council makes a decision on the Assessment Roll. He did inquire if his intent to file a letter of objection preserving his right to appeal in District Court would still be valid in two weeks if this item is continued tonight.

Ornstein explained that Mr. Elasky's rights would still be preserved even if the item were to be tabled for two weeks. In order to allow staff adequate time to meet with the property owners, it was suggested that the item be tabled for one month.

Approved Renewal of a  
Three-Year Temporary  
Conditional Use Permit  
for Outside Storage at  
8100 Pillsbury Avenue  
South for Joel Pietig  
Case 10378A-02  
Item 4.3

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve the renewal of a three-year temporary conditional use permit for the outdoor storage of construction equipment at 8100 Pillsbury Avenue South, Case 10378A-02, for Joel Pietig subject to the following 4 conditions as set forth by the Planning Division Staff and the Planning Commission:

1. No on-street parking allowed;
2. No exterior storage of construction materials and debris allowed;
3. No parking allowed in the 20 foot yard along Pillsbury Avenue and the 8-foot yard along West 81<sup>st</sup> Street; and
4. The six-foot privacy fence long West 81<sup>st</sup> Street and 10-foot privacy fence along Pillsbury Avenue be maintained.

Item 4.3 continued

Planner Sheila O'Bryan explained that this public hearing is being held as a resident at 8127 Pillsbury Avenue is objects to the applicant's temporary conditional use permit for outdoor storage. She explained that for four of the twelve years, the applicant has had a temporary conditional use permit in order to allow outdoor storage as the primary use of the property. She explained that the applicant has maintained the fencing along Pillsbury Avenue and along 81<sup>st</sup> Street as was required as a condition for screening in 1998. She stated that no formal complaints had been filed until the one brought up at the June 6 Planning Commission meeting relating to commercial traffic, condition of the area, and the number of storage locations in the area. She stated that staff believes the property has been properly maintained and that the applicant has followed the conditions previously set forth.

Abrams inquired if this was the neighborhood that was recently rezoned by Council. Upon learning that it is not, he suggested that because this is an issue the City has wrestled with over the years, different uses on top of each other, it would be better in the long-term if the problem could be corrected by zoning it either more residential or less residential.

Wilcox explained that there was a plan to try and fix this problem but that a lack of funding and effort to tackle the issue resulted in Council's recent decision to relax the zoning in the residential area, therefore, allowing improvements to be made to properties in that area. Based on history and knowing that the applicant has tried to clean up the area, he stated that he would support the three-year temporary conditional use permit and requested that the applicant continue to try and be a good neighbor to the residential properties across the street.

No public testimony was received.

Adopted an Ordinance  
Vacating the City's  
Certain Easement Rights  
for Street and Roadway  
Purposes for TCF,  
Target, and City Parcels  
Item 4.4A  
O-2002-25

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to adopt an ordinance vacating any easement rights the City may hold for public street and roadway purposes over the TCF, Target, and City parcels as described in certain documents cited in the vacation ordinance (the vacation is specific to the rights contained in the cited documents, so it does not affect any other existing easement rights of the City or any public or private utilities).

No public testimony was received.

Approved an Easement  
Termination Agreement  
with TCF and Target  
Item 4.4B

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve an Easement Termination Agreement with TCF and Target (pursuant to this agreement, all three parties mutually agree to terminate any rights each party may have over the other's lands under the old driveway/street/roadway easement agreement).

No public testimony was received.

Adopted an Ordinance  
Imposing an Additional  
1% Lodging Tax  
Effective August 1, 2002  
Item 4.5A  
O-2002-26

Motion was made by Harden, seconded by Peterson, and all voting aye, to adopt an ordinance authorizing an additional lodging tax in the amount of 1%, effective August 1, 2002, pursuant to law of Minnesota 2002, Chapter 377, Article 3, Section 20, Subdivision 1.

Ornstein explained that this ordinance is a result of the legislation that was recently passed authorizing an additional lodging tax up to one percent tax in Bloomington for the purpose of providing those proceeds to the Bloomington Convention & Visitors Bureau (BCVB) for the sole purpose of promoting the city as a tourist and convention center. He stated that the ordinance must be adopted in order to put the legislation into effect and that the Council can authorize any amount up to one percent and that it is currently receiving a one percent lodging tax that is used for the same purpose. He explained that the law also provides that if the BCVB ceases to perform the promotional activities, the tax automatically terminates. In addition, he stated that the Council must determine the date upon which the additional tax would become effective. Regarding the agreement, Ornstein stated that he believes the BCVB Board's primary concern was related to the termination of the agreement. He explained the current conditions under which the agreement can be terminated. Because the term of the agreement is for five years, staff has recommended that the City have the option to terminate the agreement unilaterally, for any reason, upon a specific time period. Another option that could be considered is that either party could terminate the agreement upon 180 days notice.

Ornstein explained that the Bureau would prefer not to have a termination on either 120 or 180-days notice, but rather, would prefer that on or before July 1 of each year, the Council could terminate the agreement with the adoption of a resolution stating its reasons, with notice to the Bureau, if it was dissatisfied with the Bureau's performance of its responsibilities under the agreement. The Bureau would then have up to six months to resolve the City Council's concerns, and that at the end of six months, the Council could terminate the agreement upon thirty (30) days notice if it still was not satisfied with the Bureau's performance. He stated that he believes the Bureau would prefer this in lieu of the City Council having the ability to terminate the agreement upon 120 or 180 days notice.

Winstead stated that the hospitality industry had previously expressed its support of the full additional one percent increase in lodging tax for the purposes stated. He added that the BCVB Board indicated that it was in everyone's best interest that if the Council becomes dissatisfied with the Board's performance, that they be given the opportunity to address Council's specific concerns rather than the agreement automatically terminating at a certain point.

Peterson stated that he supported making the additional lodging tax effective on August 1, 2002, and inquired if Council could add a sunset date, possibly July 31, 2004, to the ordinance that would trigger the process in which Council could determine whether or not the additional tax has been effective in achieving the goals set for it.

Ornstein replied that Council could add language to the ordinance to address a sunset date. He added that even though State law authorized the City to increase the lodging tax, it doesn't prevent the Council from repealing the ordinance or reconsidering and reducing the amount of the tax.

Bernhardson stated that the agreement tries to address the issue with the language proposed in Section 2.7. However, if Council approves the insertion of a sunset date into the ordinance, it should also be included in the agreement specifically dealing with this additional one percent.

Harden stated that she is a BCVB Board Member and that she would be supporting the full one percent additional lodging tax and that it be effective immediately, as Council had previously discussed approving this action and without delaying its effective date. She added that the hospitality industry has indicated their support for the 1% additional tax and desires to see it implemented as soon as possible. She stated that she would not support language that states, "terminate for any reason." She stated that adding a sunset date was not necessary, as staff has built performance measures into the agreement.

Motion was made by Harden, seconded by Peterson, to authorize the full one-percent of additional lodging tax be granted, effective upon date of publication, which would be July 10, 2002. No vote was taken.

Wilcox stated that a personal poll he conducted with the hoteliers confirmed their support of the full one-percent. He stated that there are good measurable goals in place to determine if the objectives of the additional lodging tax have been met.

Winstead stated that according to the City's accounting staff, it would be easier to make the effective date of the lodging tax on the first or end of the month, rather than mid-month.

A motion was made by Peterson, seconded by Abrams, to modify the effective date in the main motion from July 10 to August 1, 2002.

Speaker #1: Bonnie Carlson, BCVB President and CEO

She stated that the hospitality industry is in the midst of a downturn and that it has been the intention of the industry all along that the additional tax would be effective on July 1, 2002. She introduced the following members of the hospitality industry that were present and prepared to speak if needed: Kevin Sawatsky, BCVB Chairman; Don Peterson, General Manager of the Comfort Inn; David Brott, General Manager of the new Hilton Garden Inn; Barb Ernst, Director of Sales for the Hilton Garden Inn; Bob Dorn, General Manager of the Courtyard Marriott; and Laurie Vanderby, AmeriSuites Hotel. She added that she had a letter of support for the full 1%, effective on July 10, 2002, from Mike Roddy, General Manager of the Radisson South Hotel. She stated that although the industry had anticipated a July 1 effective date, a compromise date of July 15 would be acceptable given the Independence Day holiday.

Winstead requested a show of hands from the hoteliers in the audience as to which effective date, July 10 or August 1, they would support. All of those present, by a show of hands, supported an effective date of July 10 rather than waiting until August 1.

Joe Huss, speaking for the Accounting Department, stated that staff could implement the one-time additional 1% tax on whichever date the Council desires.

Elkins stated that he is familiar with the property management systems for hotels and that it would probably only take a couple of keystrokes to change the rate of tax in a field in a database rather than require a programming change.

Mayor Winstead called the motion to amend the effective date of the tax collection from July 10 to August 1. Motion passed 4-3-0 (Harden, Elkins, and Winstead opposing).

Motion was made by Peterson, seconded by Abrams, to amend the motion to include the following language to be added after the words, "on and after August 1, 2002," that states, "and on or before July 31, 2004" thereby putting into effect a sunset date and a process leading up to that to look at the results of the tax at which time the Council could affirmatively vote to continue the one percent increase after that.

Bonnie Carlson stated that the BCVB would not support the addition of the sunset date as they have a good track record in working with the City for the past 17 years. She believes there is a sufficient termination mechanism built into the agreement itself. She reiterated that the Council would see measurable goals by the BCVB per the plan. In addition, she added that the City has three seats on the Board of the Council's choice, which gives the City a strong voice in that body. As has been past practice, the Board will continue to present to the City Council in the beginning of the year but will also provide the Council with its marketing plan in its early stages that will give the Council an opportunity to ask questions and make comments.

Speaker #2: Kevin Sawatsky, President of Arrowhead Hospitality Group (Thunderbird & Ramada Inn)

He reported that according to the June 2002 numbers, their business is down to pre-Mall of America figures. He explained all of the factors that have affected the downturn in their business which resulted in their reducing staff by 40% during the last 18 months. He stated that he and the Board are in total support of the full one percent increase in lodging tax in order to take advantage of the marketing dollars and that it become effective on July 10. He stated that pushing the effective date of the tax from July 10 to July 31 would result in a loss of \$100,000 in marketing dollars. He stated that due to deadlines for advertising and the need to plan ahead in marketing Bloomington, he would not support a sunset date, as the five-year length of the contract is needed in order to buy advertising into the future for which results would not be immediate. He stated it would take some time to evaluate the success of the marketing program so the contract should be allowed to run the full five years. He agreed with Carlson that there are enough parameters built into the contract as it is that gives the Council the ability to tell the BCVB Board what needs to be fixed and provides a timeline in which to get it done.

Speaker #3: Don Peterson, General Manager of the Comfort Inn

In regard to the sunset clause, Peterson stated that his future is tied to the hotel and he needs to know that there will be a marketing fund with ongoing marketing. He stated that if the Council determines the BCVB Board is not producing adequate results, then the Council needs to have the courage to tell the Board that so that it can work on getting it corrected.

Winstead stated that he would not be supporting the amendment to add the sunset element as he believes that should be covered as part of the agreement.

Peterson commented that his intention of adding the sunset date would balance the industry's need for additional marketing revenue and the City's need to represent the taxpayers to make sure that a good value is being received for the tax that is being collected.

Harden opposed the sunset amendment because she would prefer the use of the performance standards that are contained in the agreement and that a deadline should not be used, as it would be too soon to know the results in order to make a decision. She believes the agreement maintains the integrity of Peterson's intentions.

Abrams stated his support for the additional full one-percent tax but would like the BCVB Board to come back to Council in two years to express their desire for the tax to continue. He believes Peterson's suggestion does create a measure of accountability that would allow the BCVB Board and the hospitality industry to provide input in determining if the additional tax should continue.

Elkins believes that if the hospitality industry determines down the road that it's not getting good use out of the additional tax, that they would request that the City not collect it any more.

Mayor Winstead called Peterson's motion to add the sunset date. Motion failed 3-4-0 (Winstead, Wilcox, Harden, and Elkins opposing).

Mayor Winstead called the original motion, including the effective date of August 1, 2002. Motion passed unanimously.

Approved an Agreement Between the City and the Bloomington Convention & Visitors Bureau for Convention and Tourism Promotion  
Item 4.5B

Motion was made by Harden, seconded by Abrams, and all voting aye, to approve an agreement between the City of Bloomington and the Bloomington Convention & Visitors Bureau (BCVB) for convention and tourism services of the BCVB, including the following language for Section 7.2 of the agreement: "On or before July 1 each year of this agreement, the City Council may adopt a resolution expressing dissatisfaction with the Bureau's performance of its obligations under this Agreement. The resolution shall state the reasons for the City Council's determination. The City shall send a copy of this resolution to the Bureau. The Bureau shall have up to six (6) months to satisfy the City Council's concerns. If the City Council determine at the end of the "time to cure" that the Bureau has not satisfactorily resolved the deficiencies in its performance, the City Council may terminate this Agreement upon thirty (30) days written notice to the Bureau."

Wilcox stated his concern that there appears to be more language in the agreement related to termination than performance and that it doesn't contain any real measurable performance standards. He inquired as to what's going to be measured and who will be doing the measuring. He also stated his concern that all of the voices of the hospitality industry be considered.

Harden recommended that the BCVB be permitted to develop the model of performance measurements.

Peterson stated that he supported the language in 7.2 as proposed by the BCVB as it contains a process leading up to a decision to terminate the agreement but would still like to see what the measurement criteria should be including some comparable historic data.

Elkins suggested that a good way of measuring performance would be to do a cross-section analysis comparing Bloomington's performance from this point forward with other convention and visitors bureaus in the area that are not receiving the additional marketing tax.

Item 4.5B continued

Carlson stated that it is the BVCB Board of Directors that governs the Bureau and believes they should set the goals for the Bureau staff. She explained the process that will allow the Council ample opportunity for input during the development of the Bureau's 2003 marketing plan. She requested the Council approve the agreement as it's been presented. She added that she would be happy to participate in a study session with the Council in the fall to present the BVCB's marketing plan, goals, and numbers and take input from the Council.

Peterson requested that the Council discuss the possibility of doing a Request for Quotations (RFQ) to find a marketing or economics consultant to develop a study that would analyze the effects in the change in tax. He stated that it might be determined that the information is not measurable but that the time is right to start collecting valuable data now as the change becomes effective.

Carlson requested that the Council give the BVCB the opportunity to develop the performance measurements before proceeding with the RFQ for a consultant.

Elkins suggested that the Bureau set their baseline goal now before the study is conducted.

<Council took a 10-minute recess.>

Adopted an Ordinance to Rezone Property at 4300 and 4400 West 78<sup>th</sup> Street for DelAmerican Inc./LeCesse Development Corp. Case 3974ABC-02 Item 4.6B O-2002-27

Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt an ordinance rezoning the property at 4300 West 78<sup>th</sup> Street and a portion of 4400 West 78<sup>th</sup> Street from Commercial Service (Planned Development) CS-1(PD) to Residential Office (Planned Development) RO-50(PD) for DelAmerican Inc./LeCesse Development Corporation, Case 3974B-02.

Planner Bob Sharlin provided the staff report describing the applicant's proposal to rezone 4300 and 4400 West 78<sup>th</sup> Street from Commercial Service (Planned Development) CS-1(PD) to Residential Office (Planned Development) RO-50(PD), revise the existing preliminary development plan, (approved in 1998 for three office buildings and a very large parking structure of which the first building has been built), and request for final development plan approval of a 295-unit multi-family residential building. He explained that this revision of the plan involves approximately 6.5 acres of the 16-acre site, south of the NSP transmission line that transects the property in an east/west direction. He described the building as having a lobby, an office, a pool, amenity space, restaurant space, and above the lobby would be 32 floors of multiple-family residential units (293), and above the 33<sup>rd</sup> floor would be a mechanical penthouse. He stated that the Wells Fargo Tower is 24 stories and approximately 300 feet in height compared to this building that is proposed to be approximately 435 feet tall. He summarized the modifications to the preliminary development plan as removal of the office building for the residential building, some interior circulation changes that would provide a second access to Johnson Avenue, and the relocation of a north/south service drive and access drive that integrates both parcels of the development. He added that this item was postponed several times due to the street modification agreement that was worked out by the applicant and the City. He stated that the building would be a landmark building visible in the south metro area. He stated that staff recommends approval of the applications.

Speaker #1: Dave Sellergren, Representing DelAmerican, Inc. He stated that the Planning Commission unanimously agreed with the staff recommendations. He announced that the project architect was available if Council had any questions. He stated that his client has agreed to all of the conditions proposed by staff and that the issue regarding the additional turn lane into the facility has also been agreed upon.

Bernhardson made note of revised Item 4.6D that was presented to Council this evening that incorporates Condition #15 regarding the turn lane and that there was a handout for Item 4.6E also.

No public testimony was received.

Approved Revised Preliminary and Final Development Plans for a Multi-Family Residential Building at 4300 and 4400 West 78<sup>th</sup> Street for DelAmerican Inc./LeCesse Development Corp. Case 3974ABC-02 Item 4.6A&C

Motion was made by Peterson, seconded by Elkins, and all voting aye, to approve the revised preliminary development plan and final development plan for a multi-family residential building at 4300 and 4400 West 78<sup>th</sup> Street, Case 3974AC-02, for DelAmerican Inc./LeCesse Development Corporation subject to the following 12 conditions of approval and 13 Code requirements as set forth by the Planning Division Staff and the Planning Commission:

1. A 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 following review by the appropriate watershed district;
4. Access, circulation and parking plans be approved by the City Engineer;
5. Common driveway/access/parking agreement be provided as approved by the Traffic Engineer, and proof of filing be provided to the Manager of Building and Inspection;

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

6. Connection charges, as determined, be satisfied;
7. A SAC questionnaire be completed and submitted to the Department of Public Works;
8. Standby fuel provisions be approved by the Fire Marshal;

and subject to the following additional conditions:

9. Alterations to utilities be at the developer's expense;
10. Sidewalk be installed along West 78<sup>th</sup> Street at the developer's expense;
11. All pickup and drop-off occur on site and off of public streets;
12. All loading and unloading occur on site and off of public streets;

and subject to the following Code requirements:

1. Three-foot high solid screening be provided along West 78<sup>th</sup> Street as approved by the Planning Manager (Sec. 19.52);
2. Landscape plan be approved by the Planning Manager and landscape bond be filed (Sec 19.52);
3. Erosion control measures be in place and bond be filed;
4. All rooftop equipment be fully screened (Sec. 19.52.01);
5. Poured-in-place concrete curbs be provided on the perimeter of parking lots and traffic islands (Sec 19.64);
6. All trash and recyclable materials be stored and screened inside the principal building. (Sec. 19.51);
7. Property be platted in accordance with the requirements of Chapter 16 of the City Code (Sec. 16.03);
8. Building be provided with an automatic fire sprinkler system as approved by the Fire Marshal (Mn Bldg. Code Sec. 904.1, Mn.Rules Chapter 1306; Uniform Fire Code Sec. 1003);
9. Fire lanes be posted as approved by the Fire Marshal (Uniform Fire Code Sec. 901.4);
10. Utility plan showing location of existing and proposed water main and fire hydrant locations be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, Uniform Fire Code Sec. 903);
11. Food service plans be approved by the Environmental Services Division (City Code Sec. 14.360);
12. Parking lot and site security lighting shall satisfy the requirements of Section 19.54 of the City Code; and
13. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code.

Adopted a Resolution Granting Final Plat and Subdivision Agreement Approval for Marketpoint 2<sup>nd</sup> Addition at 4300 and 4400 West 78<sup>th</sup> Street Case 3974D Item 4.6D&E R-2002-85

and

Approved Agreement and Petition for Inclusion in Assessment District and Waiver of Hearing Case 3974E Item 4.6D&E

Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt a resolution granting preliminary and final plat approval and approval of the subdivision agreement, subject to a review of the title and other documents by the City Attorney and receipt of the necessary documents, deposits, and cash payments for Marketpoint 2<sup>nd</sup> Addition located at 4300 and 4400 West 78<sup>th</sup> Street, Case 3974D-02, for DeIAmerican, Inc./LeCesse Development Corporation, subject to the following 17 conditions of approval and 3 Code requirements as set forth by the Planning Division Staff, including revised Condition #15, and to approve the Agreement and Petition for Inclusion in Assessment District and Waiver of Hearing.

1. Drainage and utility easements to be dedicated as shown on plat dated May 10, 2002, as approved by the City Engineer.
2. Maintain existing 10-foot sidewalk/bikeway easement along street frontage and dedicate additional sidewalk/bikeway easement as needed to encompass public sidewalk shown on the preliminary plat along West 78<sup>th</sup> Street.
3. A common driveway/access/parking/circulation agreement/easement be provided as approved by the City Traffic Engineer.
4. Traffic circulation shall be reviewed and approved by the City Traffic Engineer and the City Fire Marshal.
5. A minimum Class 5 temporary road shall be provided to allow access from Johnson Avenue South.
6. Furnish a common utility easement and maintenance agreement.
7. Execute an access control easement that restricts the easterly drive to right in/right out only, as approved by the City Traffic Engineer.
8. Connection charges be satisfied.
9. Sewer Availability Charge (SAC) be satisfied.
10. Alterations to utilities shall be at the developer's expense.
11. Temporary street signs, lighting, and addresses shall be provided during construction.
12. Approved and installed erosion control barriers shall be maintained throughout the construction period and not removed until authorized by the City Engineer.
13. Grading, drainage, utility and erosion control plans shall be submitted to, reviewed and approved by the City Engineer and the appropriate Watershed District.
14. Sidewalk to be constructed in new sidewalk/bikeway easement at developer's/owner's expense.
15. A street modification agreement be executed with the City by the developer/applicant/owner.
16. Erosion control surety shall be provided to the Building and Inspections Manager.
17. Future development of Outlot A will require review and approval by the Planning Commission and the City Council.

and subject to the following Code requirements:

18. Park Dedication for Lot 1, Block 1 shall be in cash in the amount of \$377,985 to be paid at the time of platting. Park Dedication fees for Outlot A shall be determined at such time as the outlot is platted.
19. Unused water services shall be properly abandoned (Sec. 11.15).
20. The approved Final Plat shall be filed with Hennepin County, a certified copy provided to the Engineering Department.

Adopted a Resolution Approving a Variance and Approved Final Site and Building Plans for an Existing Multiple-Family Development at 2021 West Old Shakopee Road for Premier Properties, LLP Case 4765AB02 Item 5.1 R-2002-81

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to adopt a resolution approving a variance to reduce the number of garage parking spaces from 46 to 26 spaces and final site and building plans for new detached garages and parking lot modifications at 2021 West Old Shakopee Road, Case 4765AB-02, for Premier Properties, LLP, subject to the following 6 conditions of approval and 7 Code requirements as set forth the by the Planning Division Staff and the Planning Commission:

1. Exterior building materials be approved by the Planning Manager;
2. Grading, drainage, utility and erosion control plans be approved by the City Engineer;
3. Access, circulation and parking plans be approved by the City Engineer;
4. Alterations to utilities be at the developer's expense;
5. All loading and unloading occur on site and off of public streets;
6. The variance is only applicable to the existing development on the property. Any redevelopment, other than reconstruction of the existing structure, shall meet the applicable parking requirement at the time of the development.

and subject to the following Code requirements:

1. Three-foot high solid screening be provided along West Old Shakopee Road as approved by the Planning Manager (Sec. 19.52);
2. Landscape plan be approved by the Planning Manager and landscape bond be filed (Sec 19.52);
3. Poured-in-place concrete curbs be provided on the perimeter of parking lots and traffic islands (Sec 19.64);
4. All trash and recyclable materials be stored inside the building as shown in case file 4765AB-02 ( Sec. 19.51);
5. Fire lanes be posted as approved by the Fire Marshal ( Uniform Fire Code Sec. 901.4);
6. Property be platted in accordance with the requirements of Chapter 16 of the City Code (Sec. 16.03); and
7. Parking lot and site security lighting shall satisfy the requirements of Section 19.54 of the City Code.

No public testimony was received.

Adopted a Resolution Approving a Variance for a Detached Garage at 7401 Izaak Walton Road for Stephen Dale Case 10591A-02 Item 5.2 R-2002-82

Motion was made by Fossum, seconded by Peterson, and all voting aye, to adopt a resolution approving a variance to reduce the front yard setback from 30 feet to 20 feet from the planned right-of-way for a detached garage at 7401 Izaak Walton Road, Case 10591A-02, for Stephen Dale, subject to the following conditions being satisfied prior to the issuance of any grading or building permits:

1. Variance only apply to the garage and access as shown in case file 10591A-02;
2. A hammerhead for vehicle turnaround be provided and approved by the Planning Manager;
3. Grading, drainage, utility and erosion control plans be approved by the City Engineer;
4. Exterior building materials be approved by the Planning Manager;
5. Easements be acquired for the planned future development of Izaak Walton Road; and
6. Existing structure to be removed upon completion of new garage.

No public testimony was received.

Continued to July 15 the Variances and Final Site Plan and Building Plans for Transfiguration Lutheran Church at 11000 France Avenue Case 5786ABC-02 Item 5.3

Motion was made by Peterson, seconded by Elkins, and all voting aye, to continue to the July 15, 2002, Regular Council meeting, the variances and revised final site plan and building plans for Transfiguration Lutheran Church, 11000 France Avenue South, Case 5786ABC-02, to allow the Church to meet with staff to discuss the issues and concerns expressed by the neighborhood.

Planner Galen Doyle explained the applicant's proposal to increase the allowed site coverage by building from 15 percent to 16.2 percent for an addition to an existing church, to reduce the required side yard setback from 60 feet to 40 feet for an addition to an existing church, and the request to approve the revised final site plans and building plans for an addition to an existing church. The proposal includes the removal of the southerly 21 feet of a one-story building, and adding a 54-foot deep one-story above grade with a full basement addition. He stated that no increase is proposed for seating in the sanctuary and that no additional parking is being proposed. He explained that the primary entrance to the building will be relocated to the west side that will include a pick-up/drop-off lane along side the existing circulation lane that runs north/south along the west side of the building. He stated that the Planning Commission recommended approval of the two variances and the final site and building plans with conditions.

Winstead inquired about an alternative plan the Church considered that met all of the Code requirements but generated several concerns from the neighborhood.

Doyle stated that the applicant did have an alternative that dealt with a complying setback but with a full two-story addition. He explained that the applicant convinced staff that probably the encroachment into the setback would have less long-term impact on neighboring properties due to the location of the windows that would be used in the two-story, thereby lessening the privacy of the rear yards. He described the windows in the proposed addition as being at grade and that there would be unopenable windows at the top acting as skylights that would have curtains on them to prevent light from projecting out at night.

Speaker #1: Kevin Bush, Project Architect

He showed the site plan indicating the proposed addition and stated that in the pre-planning stages, the Church investigated the types of spaces they needed for their facility. The needed space would provide a multi-use area for the Church to hold dinners and light recreation. He explained that an expansion was considered to the east or west but that it would require the removal of parking that would need to be relocated on the south side. He stated landscaping is planned for the south side and showed photographs of what the views currently look like from various points of the existing building. He stated that the Church completed its funding drive for the addition in early June. He spoke about the neighborhood meeting that took place last fall and issues the neighbors brought forth. Noise (daycare playground was moved to the north side with a defined play area, mechanical units will be enclosed on the north side of the addition, occasional honking of bus or car horns), children throwing rocks onto neighboring properties, lighting, drainage (water from the new addition would be directed to a swale on the south side and out onto France Avenue). He stated that the creation of the swale might actually improve drainage for some of the neighbors. Regarding the elm trees, he stated that the Church would take control of trimming those trees. Stated there would be additional landscaping of seven new coniferous trees on the south side and that the size of the new trees could be increased to approximately 8-12 feet.

Regarding the drainage issue, Peterson inquired if there was the potential for conflict between snow storage from the parking lot and the swale.

Bush replied that there is 20 feet between the edge of the parking lot and the property line and that it should be adequate to store snow. In addition, if the swale was a foot or so below the present grade, it should be able to contain the water.

Wilcox expressed concern with the drainage issue and that 20 feet may not be adequate to handle the amount of snow storage from the parking lot. His concern is that the creation of a swale at a lower grade might flood neighboring properties.

Scott Anderson, Engineering replied to the drainage issue on the southeast portion of the site stating that after talking with the architect and the project engineer, the entire addition would drain to a swale along the south line and drain out to France Avenue upon a regrading of the area. However, if the natural drainage resulted in a negative impact to the neighboring properties, the Church would be required to invest in additional infrastructure to get it to drain properly before the building was actually constructed.

Speaker #2: Don Jacobson, Chairman of the Building Committee

His comments related more to the programming aspects of the proposal. He stated that the Church proposed three options for the addition: a one-story, a two-story, and a one-story with a lower level. He stated that the Church invited the 20 related neighbors to meet with them last fall when the issue was considered. He stated that 9 people attended representing 5 of the 20 families. At the meeting, the architect covered the issues of noise from the air conditioning, etc. He stated that after meeting with the program managers from the Church regarding the neighbors' concerns, he hand delivered a follow-up report to the 20 neighboring families on Memorial Day and personally visited with 10 of the families. He stated that 9 of the 10 families supported the Church's proposal. He added that the funding, through a mortgaging effort, was approved in June 2002.

Speaker #3: Bruce Jensen, 11032 Goodrich Circle

Stated he has had problems with the Church in the past. He requested that before Council makes a decision on this proposal that they personally visit the site to get a better visual. He expressed concern regarding noise that might be generated from basketball activity and music coming from within the new addition. He believes the plan is for too much building in too small of a space.

Speaker #4: Phyll Frantzen, 11025 Goodrich Circle

She stated her property is directly behind the south side of the Church. Stated she's lived on the same block for 34 years and is retired and would like to enjoy her quiet neighborhood. She stated the following two reasons for requesting that Council not grant the variances:

1. Believes the addition will adversely affect the marketability and value of her home. She presented a market analysis that was prepared by Edina Realty at her request. She read from the realtor's analysis that compared Frantzen's property to a townhome property in Plymouth that is similarly located adjacent to a church property and reported on the number of days the property was on the market and the number of times the sales price had to be lowered.
2. Frantzen stated her other issue is that in 1987, the City Council directed the Church to move the daycare playground from the south side of the Church due to unbearable noise. However, two years later, she stated that she and other neighbors had to hire an attorney and requested the City Council make the Church follow the Council's previous directive. She stated that she has had a broken window and rocks in her yard from the daycare children.

With the proposed addition only 40 feet from her property, Frantzen foresees many future problems. She inquired as to how much noise will be generated by the activity room and if it's going to be more like a gymnasium. She requested the Council deny the variances as it would put the Church too close to her home, creating a lack of privacy for her and her property would be devalued. She added that she is also concerned with the drainage issue.

Winstead commented that the article Frantzen read from should be considered as an opinion and that the Church has existed in that location longer than the subdivision. He suggested that it might be possible for the Council to add a condition that the area to the south of the Church be restricted to be used as a landscaped area only and not for any Church function, i.e. daycare or play area for youth.

Speaker #5: Lynn Dvorak, 11024 Goodrich Circle

If the variances are not approved, she inquired if the neighbors would have the ability to object if the Church decided to the build two-story addition. She also inquired as to what recourse would the neighbors have if the variances get approved and there are drainage problems related to the proposed swale. She stated that she was not contacted by the Church over the Memorial Day weekend regarding upcoming meetings with the neighbors and the Church. She added that she would not be supportive of a parking lot on the south side or a two-story building addition.

Winstead replied that if the Church builds within property setbacks and doesn't request a variance for greater site coverage on the lot, that they could build it that way. He added that the Engineering staff would require the installation of piping or a catchbasin if the swale didn't take care of the drainage adequately.

To answer Winstead’s inquiry as to whether or not the Church could, if this plan gets approved as presented, put an additional story on top of this addition in the future, Lee explained that another variance would be required.

Speaker #6: Jim Sorum, 1020 West 107<sup>th</sup> Street, Church Member  
Stated that he has been a member of Transfiguration Lutheran Church for over 20 years and that the Church has been there for 40 years. He stated that this proposal represents an expansion of the Church’s program opportunities. He stated that a model built to scale has been available for six months and that the neighbors were invited to view it and ask questions. He added that all of the redevelopment of existing properties in Bloomington represents the vitality and optimism for Bloomington’s future. He stated his support for the project and requested Council approve the variances. He stated that he was not aware of any specific deliberate and malicious acts regarding the throwing of rocks into the neighbor’s yards by children attending church services or the daycare.

Wilcox stated that he was bothered by the neighbors who testified that the Church has been slow to respond to the neighborhood’s concerns and that they had to hire an attorney to deal with the daycare issues. He stated that the Church needs to be a better neighbor and work harder to find a better solution that works for the surrounding neighbors.

Jacobson stated that the matter tonight is regarding the current Church staff and its desire to expand programs to provide better quality weekday programs for its members. He added that the Church invited the neighbors to come and look at the models that illustrated the three alternatives available to the Church (one-story, two-story, and one-story with a basement) to see how each of them would impact the neighborhood.

To answer Peterson’s inquiry as to whether or not the Council could attach as a condition to the variance approval that the Church not be allowed to use the southerly 20 feet of its property for future parking, staff suggested that this item could be continued for two weeks to allow them time to work with the Church to possibly gain some voluntary compliance by the Church to address the concerns of landscaping, parking, building height, noise, drainage, security lighting, etc. that were expressed by the neighbors. In addition, it was suggested that the wording of Condition #12 could be changed to ensure that whichever plan emerges, that the noise impacts are minimized and that the south yard area is deemed to be more scenic than functional.

<Council took a 5-minute recess.>

Requested a Resolution of Denial for the July 15 Meeting for Walser Automotive Group’s Proposed Comprehensive Land Use Plan Amendment  
Item 4.7

Motion was made by Elkins, seconded by Harden, to direct staff to prepare a resolution of denial of the proposed Comprehensive Land Use Plan amendment from Community Commercial to Regional Commercial for the property at 4301 West 80<sup>th</sup> Street for Walser Automotive Group for Council consideration on July 15, 2002. Motion passed 4-2-1 (Winstead and Wilcox opposing and Peterson abstaining).

Peterson stated his abstention from discussion of this item is due to its proximity to his parent’s home.

Glen Markegard, Planning provided an overview of the proposed amendment to the Comprehensive Plan by the applicant, Walser Automotive Group. He indicated the site location on the map and explained the land uses of the surrounding parcels (east-restaurant, south-single-family residential, west-multi-family residential and office, north-freeway and mixed commercial/industrial). He explained that the proposal is to remove the former Grandma’s restaurant building and redevelop the parcel for surface parking to support the uses on 4301 West 80<sup>th</sup> Street and would also include an expansion to the service area of an addition onto the existing building to the south. In order to accomplish this, he explained the various applications submitted by Walser Automotive Group: an amendment to the Comprehensive Plan for 4301 West 80<sup>th</sup> Street, a rezoning of the property as a Planned Development, a preliminary and final development plan for the two parcels, a conditional use permit, a variance to allow a sign that is taller than what is allowed by Code, a variance to allow a sign that is larger in square footage than what is allowed by Code, and a variance to allow more total site signage and square footage than what is allowed by Code. In addition, a preliminary and final plat to combine the two lots.

Markegard explained that tonight's focus is on the Comprehensive Plan Amendment and that the other applications are dependent upon that and will be brought forward if necessary as separate items. He stated that the Council studied the issue of automobile dealerships as a land use at its April study meeting. The current land use designation for 4301 West 80<sup>th</sup> Street is Community Commercial, which does not include automobile sale uses. Walser's request to change the Comp Plan designation to Regional Commercial would allow all Community Commercial uses plus regionally-oriented uses, i.e. automobile sales and big box retail. Using a colored-coded map, he indicated what the Guide Plan designations are for the area between France Avenue and Normandale Boulevard and between 84<sup>th</sup> Street and 494. He explained what factors are considered in determining land use designations: desire to foster a land use balance within the community, desire to encourage provision of needed goods and services located nearby citizens' residences and employment, a desire to encourage land uses compatible with other land uses, and a desire to encourage land uses compatible with the roadway system and level of access. There is also a desire not to create non-conformities. He stated that the Comprehensive Plan can be amended on a site-by-site basis as development occurs and typically occur when there is significant change in surrounding conditions that might warrant the change or there is an unanticipated development opportunity. He stated that in considering Walser's application for a Comp Plan amendment, the applicant has not identified and staff is not aware of a significant change in the surrounding conditions that would warrant the change in the City's land use vision for 4301 West 80<sup>th</sup> Street and that staff considered the following criteria in determining that the proposal does not present an unanticipated development opportunity that would best serve the public: land use balance, service to residents and businesses, safety concerns, impacts on residential uses, land use synergy, aesthetics, and setting precedence. After weighing all of the factors, he stated that staff does not believe a change in the City's land use vision for this area is warranted at this time and recommends denial of the Comp Plan amendment. He stated that the Planning Commission also recommended denial of amendment. He referenced the letters staff received from neighborhood residents regarding these applications.

Planner Galen Doyle responded to Elkins request for history concerning the berm behind Walser's existing development by stating that the berm has not been restored to its original height as required under conditions of approval when the plans were approved by the Council for the Buick dealership. He stated that the easterly 150 feet of the berm was inadvertently cut down approximately 4-5 feet by the contractor and that the applicant has promised to plant material at that location. He explained that drainage issues relating to the area caused the delay in restoring the berm and that bonds are still being held for its completion.

Speaker #1: Paul Walser, Applicant

He identified the members of his team that would be presenting or would be available if Council had questions. He clarified that his proposal is not to add a new dealership but to try and solve the space problems at the existing one. He explained the difficulties that are involved with moving auto dealerships, territorial franchise rights that need to be considered, land use designations, and zoning issues. He provided background on the events that led to his acquiring and relocating dealerships in Bloomington stating that many factors were involved that didn't afford him the time to properly plan the relocation of these businesses. He added that in order for a dealership to be successful, the cars must be located on site. He explained that currently the Buick, Pontiac, and GMC Truck dealership is trying to survive on a four-acre site that is too small. Of the 12 dealership sites he owns in the Twin Cities, 10 of those operations have sites that are fully contained. However, the Buick dealership and the BMW store don't have that capability. He stated that his proposal would solve the problems at Buick and would greatly help the BMW problem. He stated that his goal is not to have the most dealerships but to have the best ones and that having adequate space to do it properly is key. He stated that he has a substantial amount of money invested in this property and that these applications are necessary in order for him to properly operate his business. In response to some of the issues previously expressed by the neighborhood, he clarified that his stores have prescribed demonstration routes.

Speaker #2: Don Schilling, Facilities Director for Walser Automotive Group

He explained when the existing site was initially developed, a berm cut was made to allow for the installation of a pipe for runoff from the Grandma's property and a pond was constructed. He stated that it is still their intention to develop an engineering solution that will restore the berm to pre-existing elevations and will plan it to the satisfaction of the City. He reassured the Council that it would be done regardless of the decision on this property in question. He stated that acquiring the Grandma's property was to relieve the parking congestion for customers, employees, and inventory. He stated that the site plan would allow for the safer unloading and circulation of the semis that deliver their inventory. Another goal for the new site was to improve the display area for their used cars so that they could be merchandized better. The inclusion of the pond allows for better treatment of the water and regulation of the flow from the entire site into Wanda Miller Pond.

Speaker #3: Dave Phillips, Architect for Walser

Regarding the service bays being added to the Buick operation referenced by Schilling, Phillips explained that he is currently designing a Toyota store at the old BMW and the work for Buick is being done in the former BMW Store at 35W & 494 so that when Toyota goes there, it will be self-contained on the Buick site with this proposal, alleviating the cars and the trips that go back and forth now. Therefore, it is not an expansion of use onto the Buick site, it's a current use that is off-site at a current store.

Speaker #4: Linda Fisher, Larkin Hoffman, Representing Walser Automotive Group

She focused on the Comprehensive Plan amendment and the land use guiding and the zoning for the site, comparing land use impacts under the existing and proposed guidelines, and concluded with suggestions as to how the Council might want to look at the overall proposal and its relationship to the Comprehensive Plan amendment. She stated that Walser's proposal was consistent with the Comprehensive Plan up until April 2001, as it was designated as Mixed Use with commercial focus and automobile sales was an allowed use. She described all of the uses that would be allowed under the Community Commercial guiding. Regarding the zoning, she stated that the Commercial Service zoning designation is the official control under State law and is consistent with the current Comprehensive Plan so that expansion of non-conforming uses is allowed. She explained how Walser's current proposal would minimize impacts to surrounding residential properties in the following ways:

1. Traffic: (automobile sales are low traffic generators compared to other uses, i.e. a quality restaurant).
2. Odors and Air Emissions: (automobile sales without body shops generate no odors and no unusual air emissions compared to food odors from restaurants).
3. Noise: (will be reduced by a lessening of trips generated to and from off-site inventory storage lots, a silent paging system, and no outside loudspeaker).
4. Views: (will be minimized with the berm and attenuates freeway noise).
5. Lighting: (will meet strict Code restrictions).

Fisher summarized by stating that there is no set criteria or findings in the City's zoning ordinance or Comprehensive Plan that must be met before the Comp Plan can be amended. She stated that there have been unique facts and circumstances that have occurred since the original Pontiac/GMC approvals were granted in 1999-2000 and since the April 2001 Comp Plan was amended that relate to the history of the dealership relocation, consolidation, and to the availability of the Grandma's site that occurred after the Comprehensive Plan Amendment was approved.

She stated that the Walser application was submitted due to the demonstrated need by Walser based on their hard data and that their application will fix problems that will remain whether or not this proposal is approved. She described the improvements that will be made to the existing operations resulting in substantial public benefit as follows:

1. Additional parking will be sufficient to accommodate the store needs with safer and wider interior circulation drives, larger turning radii to accommodate transport and loading that will avoid any loading or unloading on public streets.

2. Eliminates Grandma's driveway on West 80<sup>th</sup> Street that could not occur without combining the two lots into one parcel, thereby increasing public safety and providing easement and right-of-way dedication.
3. On-site water quality treatment pond will be an improvement from existing conditions at Grandma's in which untreated stormwater discharges directly into Wanda Miller Pond and there will be no net increase in hard surface coverage.
4. If the Comp Plan amendment is approved, conditions to the PUD could control site operations.
5. Land use balance would not be changed because there is an existing auto dealership that would be contained onto one site that would correct existing problems.
6. Auto dealership would provide a valuable service to Bloomington residents.

Speaker #5: John Peterson, 8207 Johnson Circle

Stated he was glad to hear the berm was going to be rebuilt. Concerned with more transports unloading closer to the residential area. He believes there should be better development options for the Grandma's site than what has been proposed. He stated a restaurant would have less impact on the neighbors.

Speaker #6: Linda Anderson, 8215 Johnson Circle

She stated that she never received a notice to attend either of the two neighborhood meetings that Walser conducted to explain their proposal to the neighbors. She too was glad to hear that the berm would be replaced. She has a concern that what Walser says and does are two different things.

Speaker #7: Bob Bruder, 8211 Johnson Circle

He stated his concern that approval of this Comp Plan Amendment could set a precedent that would allow for more auto dealerships along West 80<sup>th</sup> Street and that other properties like Joe Sensor's, the Olive Garden, and the Southgate Office building could end up being potential sites for future dealerships if they too were made offers that made it favorable for them to sell.

Speaker #8: Geraldine Krueger, 4575 West 80<sup>th</sup> Street Circle

She stated that although she can appreciate the other comments that have been made, she recalls that while not being supportive of the Peterson Pontiac proposal, she has since had no regrets. Based on personal experience, she does not think that a dealership is a bad neighbor because she can't smell them like a restaurant. She stated that there are regulations that the City should be able to enforce if the dealerships don't comply with the conditions that are set forth when their applications are approved.

Speaker #9: Linda Fisher, Larkin Hoffman

To reply to the comment about not being notified about the Walser meetings, Fisher explained that they did use the City's notification list and apologized if anyone was missed on their meeting notices. For clarification, she stated that there are 110 Walser employees on site and that the lighting should be comparable to other commercial buildings required by City Code and that Walser is willing to work with staff and the residents to ensure the best possible situation.

Fossum stated that in a personal meeting with Paul Walser approximately two months ago, he was told that most of the neighbors were supportive of the expansion. However, further investigation revealed that at least 36 area residents have expressed their opposition to the expansion proposal. He stated the many reasons the neighbors are against the proposal adding that he believes they are reasonable and compelling fears, which are directly tied to public health, safety, and general public welfare. Based on the comments received, testimony presented, the Planning Commission's written documentation, personal contact with area residents and Paul Walser, and a personal visit to the site, he stated there is reason to believe that the expansion will have a negative impact on the health, safety, and general public welfare. In addition, he stated that staff has concluded that there is an overabundance of auto dealerships in the city of Bloomington thereby impacting the land use balance. He added that with the vast majority of the 16 auto dealerships in Bloomington being located in close proximity to I-35W and 494 provides an economic impact which could affect Bloomington's tax base in the event of an economic downturn. Regarding safety, he stated that it has been demonstrated that car dealerships generate a great deal of traffic and that adding more traffic in the area would not be in the neighborhood's best interests, based on previous observations. He believes the Comp Plan Amendment should be denied in the interest of the health, safety, and general public welfare.

Winstead stated that he could support the Comp Plan amendment, as there are positives that could help rectify some of the existing problems and because there are other types of developments that could have a negative impact on the adjoining properties in this location.

Elkins stated that auto dealerships are one of the lowest potential traffic generating land uses and that traffic in this area has been a concern. He believes it's important to foster mixed uses in the area for transportation reasons. Because auto dealerships, big box retail, and other sorts of regional commercial uses are the least supportive of transit ridership, he indicated his opposition to this Comp Plan amendment.

Abrams stated that although he appreciates what Walser brings to the community, he agrees with staff and the Planning Commission that there are already too many auto dealerships in the area and that allowing another parcel for this use would move the City away from its direction of having a broad balance of different kinds of uses and different kinds of industries which would be better for Bloomington. He doesn't believe the applicant has made the case that it's better for the City and for Bloomington to go away from the way the land is currently guided.

Wilcox stated that approving this application might be the best way to solve the current problems and that denying it may compound the problems. Therefore, he stated he would support it.

Elkins offered a solution that Walser consider expanding upwards on its current site so that the Grandma's site could be used for something else.

Adopted an Interim Ordinance Imposing a Moratorium on Land Uses and Development Within State Airport Safety Zones  
Item 4.9  
O-2002-24

Motion was made by Abrams, seconded by Peterson, to adopt an interim ordinance imposing a moratorium on the establishment or expansion of land uses or development located within State Airport Safety Zones currently proposed by the Metropolitan Airports Commission as presented in the handout to Council. Motion passed 6-1-0 (Wilcox opposing).

Ornstein provided background stating that in 1996, the Legislature authorized the construction of Runway 17-35 (north/south runway) at the Minneapolis/St. Paul International Airport. In September of 2001, the Joint Airport Zoning Board was reconvened to evaluate whether there should be certain limitations on land uses and densities and heights within properties located within State Airport Safety Zones and what those boundaries should be. It is expected that the Board will ultimately adopt a zoning ordinance that would then be referred to the Commissioner of the Minnesota Department of Transportation (MnDOT) for approval. He explained that the City has received a couple of proposals for properties that are located within the proposed State Safety Zone boundaries; Spruce Shadows Farm (combined office and 931 multi-family residential unit development on the 60-acre Kelly Farm) and the other one is from Interstate Companies (380-room hotel on property presently occupied by Interstate Diesel). He stated that there is a likelihood that these two developments would be incompatible with the operation of the runway, which is scheduled to open in 2004. He stated that the City would like to wait for the decision of the Airport Zoning Board and the Commissioner of MnDOT on the airport zoning and the boundaries before acting and potentially approving these applications. When the City adopted the 2000 Comprehensive Plan in 2001, it endorsed the benefits of the existing airport for its proximity to so many businesses in Bloomington, the airport employees who live in Bloomington, and its enhancement to the overall tax base in Bloomington. However, negative impacts from the airport include the noise, which the City has tried to minimize by working with the Metropolitan Airports Commission to acquire (29 single-family homes and 132 multi-family residential units in the vicinity of 86<sup>th</sup> Street and East Old Shakopee Road) and provide sound insulation for others. He stated that a strong reason for recommending that this moratorium be adopted is because if the Council is faced with approving the Spruce Shadows residential component and the hotel component and they would be incompatible with the future of the runway, it could jeopardize MAC's prior decision to purchase the Bloomington residential dwelling units. He stated that it is important for the City to cooperate with the MAC because they will have influence on the ultimate product from the Joint Zoning Board and the draft ordinance would preserve a significant amount of development potential of Bloomington properties located within the State Safety Zones. He believes that if the moratorium was adopted as proposed, it would be upheld by Minnesota Court if it were challenged on the grounds of a temporary taking. He stated that State law would allow the Council to extend the moratorium an additional 18 months if necessary. He stated the moratorium would prohibit any approval of any development-related applications during the term of the moratorium. He stated that staff met with the affected property owners regarding the proposed ordinance and explained that there are a number of exceptions including the additional one in the handout that allows variances to be adopted under State law.

Item 4.9 continued

Speaker #1: Gary Gandrud, Attorney Representing the Metropolitan Airports Commission  
He stated that MAC Commissioner Houle had to leave the meeting prior to this item and explained that she is also MAC's representative on the Joint Airport Zoning Board. He referenced a letter from Nigel Finney, Deputy Director of Planning and Environment, requesting the Council's favorable consideration of the moratorium and stated a letter from MAC's Legal Counsel and Deputy Commissioner Tom Anderson stating that MAC stands by the Council's decision and would intervene in any challenge to it. He stated that MAC fully supports the moratorium as it preserves the status quo and the process and protects the City regarding the applications before it.

Ornstein confirmed for Wilcox that he did receive a letter from MAC's General Counsel Tom Anderson indicating that he would recommend to the Commission that if there is a challenge, that they would intervene. He explained that a provision in the City Charter would make this ordinance effective immediately upon its adoption.

Speaker #2: Lee Henderson, Representing Interstate Companies, 2501 & 2601 East 80<sup>th</sup> Street  
He wanted to state for the record his objection to the moratorium because he believes there are land use issues pending that the City needs to act upon and that the moratorium will inhibit that process. He does not believe the rationale expressed in the draft moratorium is sufficient to support the moratorium. He added that the moratorium appears to be implemented to deal with two projects and not because of a broadly based general land use planning process. He stated that there is a chance that the moratorium may actually cover less area than what the State statute would require.

Speaker #3: Gerald Duffy, Representing the Kelly Farm  
He stated his opposition to the proposed ordinance and believes it is both factually and legally unjustified. He believes the moratorium is aimed at his client and stated that they have only requested approval of Phase I, which would not require anything different than what is currently being considered by the Joint Airport Zoning Board. He does not believe there is any legal basis for the ordinance and for including the Kelly property.

Speaker #4: Bill Griffith, Representing the Decathlon  
For the record, he stated the Decathlon's owners' objections to the moratorium, as they are trying to remarket the property after fire and 911.

Adopted a Resolution of Denial of an Application for a Hotel at 2501 and 2601 East 80<sup>th</sup> Street by Interstate Companies, Inc.  
Case 6015A-02  
Item 4.10AB  
R-2002-80

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to adopt a resolution of denial of an application by Interstate Companies, Inc. for a conditional use permit to build a 380-room hotel at 2501 and 2601 East 80<sup>th</sup> Street, Case 6015A-02, based on the City Council's adoption of Ordinance No. 2002-24, which places a moratorium on the establishment or expansion of land uses or development within certain identified parcels lying within proposed State Airport Safety Zones A and B, including the applicant's property.

Ornstein recommended that the Council move to adopt the resolution of denial based on the moratorium and that once the moratorium expires, consideration could be given to this application depending on the existing Comprehensive Plan designation. He explained that the Comp Plan could change as a result of the Joint Board's actions that could specifically allow this use.

Adopted an Ordinance Regulating Sale and Application of Phosphorous Fertilizer  
Item 4.8  
O-2002-28

Motion was made by Peterson, seconded by Elkins, to adopt an ordinance (Alternative A) regulating the sale and application of fertilizer containing phosphorous and thereby amending Chapter 10 of the City Code. Violation of the ordinance will constitute a petty misdemeanor, punishable by a maximum fine of \$300.00. Motion passed 6-1-0 (Fossum opposing).

For the record, Abrams wanted to state that the minutes of the June 3, 2002, Council meeting incorrectly indicated that he was not in support of this ordinance when it was discussed by Council at that meeting. He is and has been supportive of this ordinance to regulate the sale and application of fertilizer containing phosphorous.

Put Names into Nomination for the Planning Commission and Postponed Appointment to the July 15 Meeting Item 3.1	Motion was made by Peterson, seconded by Harden, and all voting aye, to put into nomination the following names for consideration to the Planning Commission and postponed the appointment to the July 15, 2002, Regular Council meeting: Douglas Bruce, Whitney "Chip" Groth, Glen Hofer, Susan Tellers, Cary Weatherby, and Grant Petersen.
Commissions/Boards Communications Item 7.1	No boards/commissions communications reported.
Status of Action Items Item 7.2	<p>Status of Actions items were provided to Council and Bernhardson stated that he had dates for Wilcox and Peterson to consider for the meeting regarding advisory task forces.</p> <p>Winstead stated that he and Larry Lee attended a meeting with Nigel Finney and Jeff Hamiel of the Metropolitan Airports Commission regarding Airport South and the McGough development in order to gain some assurances that if the Council goes in a direction different than what has been historically, that things would still be in place for MAC to proceed with the acquisitions as previously indicated.</p> <p>Lee added that they highlighted an additional consistency concern relating to a housing development that has been proposed in Mendota Heights that MAC staff (Jeff Hamiel) has testified there. He stated that he and Winstead agreed with Finney and Hamiel that McGough should hire HMMH, a noise consulting firm, to devise criteria for multi-family housing in the area of their development and that the criteria should be provided to both the City and to MAC. At that point, the City and MAC can reach an opinion of whether housing should and could be incorporated outside the 70 db contour. He stated that on July 15, 2002, the City will proceed with an application to the Metropolitan Council for grant monies for affordable housing for the McGough development with an option to pull it back if necessary.</p> <p>Winstead also reported that there was modest discussion with Finney and Hamiel regarding the isolated neighborhood issue (area east of Cedar Avenue and west of 24<sup>th</sup> Avenue) that Council had previously discussed. He stated that Finney and Hamiel agreed that although it may be a long shot, they acknowledged the reality behind it.</p>
Approval of Minutes	Motion was made by Peterson, seconded by Elkins, and all voting aye, to approve the minutes of the June 3, 2002, Regular Council meeting, as amended by Abrams.
Adjourn Meeting	Mayor Winstead adjourned the meeting at 1:55 a.m.

Barbara Clawson  
Council Secretary