

**Regular Meeting #20
Monday, July 24, 2006, 7:00 p.m.
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027**

**Call to Order and
Pledge to Flag
Roll Call**

Mayor Gene Winstead called the meeting to order at 7:00 p.m.

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

**PROCLAMATION –
National Night Out**

Mayor Winstead read and presented a proclamation declaring August 1, 2006, as National Night Out in Bloomington to Police Chief John Laux, Niki Pierson and Sgt. Jeff Schwiesow of the Police Department, and Jim Algeo, Bloomington Crime Prevention Association (BCPA).

Chief Laux displayed a map indicating where National Night Out parties were scheduled to occur in Bloomington this year. This year's events are expected to top last year's 336 block parties. The Fire Department and Allina Ambulance will also be participating by visiting as many neighborhood parties as possible. He stated that the Book Em event was again a huge success, which helps fund National Night Out events.

Algeo commented on BCPA's 25th anniversary celebration during which they raised over \$60,000 from this year's Book Em event. He recognized a few of the volunteers who put many hours into the planning and operation of the event.

Pierson stated that National Night Out is a spectacular community event and thanked the Council and residents of Bloomington for participating.

**Approved Amendment
to Medica Public
Health Participation
Agreement
ITEM 3.1**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve an amendment, which extends the term through August 31, 2008, and replaces Appendix A – Public Health Agency Payment for Health Services, to the Medica Public Health Participation Agreement for reimbursement of services provided to Medica enrollees living in Bloomington, Edina, and Richfield.

No adjustment to the Public Health Budget was necessary.

**Approved Amendment
to Public Health
Preparedness &
Response to
Bioterrorism
Agreement
ITEM 3.2**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve an amendment to the Public Health Preparedness and Response to Bioterrorism Agreement with the City of Edina in which Edina will purchase additional Cities Readiness Initiative services and Pandemic Flu Activities from Bloomington in the amount of \$12,758.

Approval of the amendment required the following adjustment to Public Health's 2006 Budget:

Revenue:	223-6226-345.47-23	\$ 12,758
Expense:	223-6226-441.62-21	\$ 3,676
	223-6226-441.67-08	9,082

**Approved Change
Order for Pipe Repair
to Veit & Company
ITEM 3.3**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve a change order to Veit & Company to repair an additional 418-foot section of sanitary sewer line using cured-in-place thermosetting resin sewer pipe. The change order in the amount of \$11,406.00 was based on the contract unit pricing for 10' VCP pipe.

Funds to come from the Utilities Budget, Activity 520-8231-433.70-31.

**Approved Lease Agreements with BFAC Groups & Bloomington Historical Society
ITEM 3.4**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve the Lease Agreements between the City of Bloomington and the Angelica Cantanti Singers, Bloomington Art Center, Bloomington Chorale, Bloomington Civic Theatre, Bloomington Fine Arts Council, Bloomington Historical Society, Bloomington Symphony Orchestra, Continental Ballet Company, Medalist Concert Band and the NOTE-able Singers for the period June 1, 2006 – May 31, 2007, whereby the City of Bloomington agrees to provide office space and additional shared usage of the Bloomington Center for the Arts.

The Lease Agreements include provisions on utilizing office spaces as well as scheduling usage of the facility such as the Schneider Theater, Rehearsal Hall and other spaces within the Bloomington Center for the Arts. Rental payments to the City consist of a \$1.00 per ticket fee for any tickets sold for events held in the Schneider Theater, Block Box Theater, Gallery or Main Lobby with minimum total revenue of \$35,000 in 2006 and \$40,000 in 2007 from the BFAC groups. In addition, the lease agreement establishes that the lessees will adhere to City policies and guidelines set forth for the facility.

**Approved Encroachment Agreement at 10531 Russell Avenue South
ITEM 3.5**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve an encroachment agreement that will allow Kenneth M. & Rhonda K. Rein to add a deck to their home at 10531 Russell Avenue South, which will encroach into a floodage easement and a drainage and utility easement.

**Adopted Resolution Declaring City's Intent to Reimburse Original Expenditures
ITEM 3.6
R-2006-80**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to adopt a resolution declaring the official intent of the City to reimburse certain original expenditures for governmental purposes from the proceeds of tax-exempt bonds to be issued by the City after the payment of such original expenditures.

**Awarded a Contract to Pipe Services Corporation
ITEM 3.7**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to award a contract for 2006 closed circuit TV inspection of 25,500 lineal feet of sanitary and 35,000 lineal feet of storm sewer pipes and visual inspection of 225 manholes to Pipe Services Corporation in the amount of \$35,370 with the inspection of additional lengths not to exceed 20%.

**Approved Purchase From North American Salt Company
ITEM 3.8**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve the purchase of regular road salt from North American Salt Company under State of Minnesota Contract #436242 at the contract price of \$43.69 per ton plus 6.5% MN State sales tax and the purchase of treated road salt from Cargill, Inc. Deicing Technology under State of Minnesota Contract #436254 at the contract price of \$60.49 per ton plus 6.5% MN State sales tax.

Funds for the purchase of these products to come from the 2006 Street Maintenance Budget, Activity 101-7625-431.67-08.

**Awarded a Contract to Hoisington Koegler Group, Inc.
ITEM 3.9**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to award a contract for Park Master Plan Update consulting services to Hoisington Koegler Group, Inc. for the not-to-exceed amount of \$74,295.00 and authorized the Mayor and City Manager to enter into an agreement with Hoisington Koegler Group, Inc. for the project.

Council approved \$80,000 in Strategic Priority funds for undertaking the Park Master Plan Update on March 6, 2006. The \$5,705 balance to be used to cover other miscellaneous project expenses and will serve as a project contingency.

**Approved Contract with U S Filter Control Systems
ITEM 3.10**

Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve a professional services contract with U S Filter Control Systems for the not-to-exceed amount of \$543,238.00 to update the hardware and associated control programming of the original 1990 SCADA system at the Water Treatment Plant as well as all 43 remote wastewater and water sites. This upgrade will complete the SCADA system's move from the current proprietary system to an open architecture system.

- ITEM 3.10 continued** The Utilities Division budgeted for this project under professional services in Activities 510-8101, 510-8110, 510-8111, and 510-8131 for a total of \$278,238.00 and in Activities 520-8201 and 520-8231 for a total of \$265,000.00.
- Approved Minutes
ITEM 3.11** Motion was made by Nordstrom, seconded by Wilcox, and all voting aye, to approve the minutes of the April 3, 2006, Regular Council meeting as presented.
- OPENED PUBLIC
COMMENT PERIOD** The Mayor declared the public comment period open for those wishing to address the Council on matters other than items included on the agenda. No one came forward to speak, so the Council returned to its regular agenda.
- City Council Policy &
Issue Update
ITEM 6.1** The monthly update was provided to Council on July 10.
- Council was reminded to attend the Governance workshop being held at the HealthPartners building on July 26 from 3-9 p.m. Council was invited to meet at 2:30 p.m. for a tour of the Reflections project ahead of the workshop.
- Additional Council Issues
- Grady stated she received a call from a resident regarding a tree that needed to be taken down and stated how much higher the City's bid was compared to what they received from the private contractor.
- Mark Bernhardson, City Manager explained that the City is required to identify diseased trees and as a convenience has gone out and gotten bids to provide the service of removing trees. He stated there are only a few contractors that will bid on tree removal and that the City does provide a list of available private contractors from which the public can choose. He stated sometimes the City's bid price is lower than what a homeowner can get from a private contractor and sometimes it's higher. He stated that the City could post a more detailed explanation of the process on the City's Website.
- Peterson relayed an incident he experienced with diseased trees on his own property. He stated homeowners need to do their due diligence in comparing the City's contractor price with that of private contractors in order to make the most economical decision. He stated one benefit of the City's contractor price is that it sets a cap on the maximum price a homeowner has to pay when having a tree removed when in reality, the actual cost could be much higher.
- Adopted Resolution
Approving a
Conditional Use
Permit for McDonald's
Corporation at 9516
Garfield Avenue South
& 9529 Lyndale Ave.
Case 5735A-06
ITEM 5.2A1
R-2006-81** Motion was made by Peterson, seconded by Wilcox, to adopt a resolution approving a Conditional Use Permit for a restaurant at 9516 Garfield Avenue and 9529 Lyndale Avenue, Case 5735A-06 for McDonald's Corporation. Motion passed 6-0-1 (AG abstaining).
- Grady stated her abstention from this item is due to a client relationship.
- Bob Sharlin, Senior Planner provided the staff report relating to the applications for a new McDonald's restaurant. He stated the Planning Commission and the Traffic & Transportation Advisory Commission (TTAC) recommended approval subject to conditions. He indicated a right-of-way of 60 feet that is to be dedicated as part of the Plat conditions.
- Elkins inquired about the design of the new McDonald's restaurant.
- Sharlin replied that the new look is somewhat retro.
- Speaker #1: Ficky Stadther, McDonald's Representative
She showed a rendering of what the new building will look like.
- Nordstrom questioned the type of trim material to be used.
- Stoddard replied that the building will be all brick.
- Sharlin explained that City Code will only allow 15% of the building to be in trim. However, it is going to be all brick so there will be no Effuse involved.

**Approved Revised
Final Site & Building
Plans for McDonald's
9529 Lyndale Ave. S.
Case 5735B-06
ITEM 5.2A2**

Motion was made by Peterson, seconded by Wilcox, to approve the Revised Final Site Plans and Building Plans to remove and rebuild an existing restaurant and related site improvements at 9529 Lyndale Avenue and 9516 Garfield Avenue, Case 5735B-06, for McDonald's Corporation subject to the following 12 conditions of approval and 10 Code requirements as set forth by the Planning Division Staff and the Planning Commission. Motion passed 6-0-1 (AG abstaining).

1. Exterior building materials be approved by the Planning Manager;
2. Grading, drainage, utility and erosion control plans be approved by the City Engineer following review by the Nine Mile Creek Watershed District;
3. The site circulation, access and parking plan shall be approved by the City Engineer and shall include:
 - a. One-way, counter-clockwise traffic flow
 - b. Northern access on Garfield Avenue to be ingress only
 - c. Southern access on Garfield Avenue to be egress only
4. A Stormwater Management Plan shall be provided which shall include:
 - a. Stormwater Volume Control
 - b. Water Quality Treatment which meets the requirements of the Bloomington Comprehensive Surface Water Management Plan (CSWMP)
 - c. Maintenance Schedule/Plan for Stormwater BMP signed by property owner and to be filed on record with Hennepin County. Proof of filing shall be submitted to Engineering.
5. 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;
6. Connection charges be determined and satisfied;
7. Sewer Availability Charge (SAC) be determined and satisfied;
8. Erosion control surety be provided;

and subject to the following additional conditions:

9. Alterations to utilities be at the developer's expense;
10. All loading and unloading occur on site and off of public streets;
11. All construction parking, storage and staging occur on-site and off of adjacent public streets, except as approved by the Director of Public Works; and
12. Approved erosion control measures be in place before start of construction;

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. All rooftop equipment be fully screened (Sec. 19.52.01);
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 principal building (Sec. 19.51);
5. 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);
6. Fire lanes be posted as approved by the Fire Marshal (Uniform Fire Code Sec. 901.4);
7. 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);
8. Food service plans be approved by the Environmental Services Division (City Code Sec. 14.360);
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 public testimony was received.

Approved Preliminary & Adopted Resolution Granting Final Plat Approval for MC DONALDS BLOOMINGTON 4TH ADDITION at 9516 Garfield Avenue & 9529 Lyndale Ave. Case 5735CD-06 ITEM 5.2A3,4 R-2006-82

Motion was made by Peterson, seconded by Wilcox, to approve the Preliminary Plat of McDonald’s Bloomington 4th Addition subject to the six conditions as set forth by the Planning Division Staff and the Planning Commission and adopted a resolution granting approval of the Final Plat of MC DONALDS BLOOMINGTON 4TH ADDITION located at 9516 Garfield Avenue & 9529 Lyndale Avenue South, Case 5735CD-06, for McDonald’s Corporation, subject to completion of the Preliminary and Final Plat conditions, receipt of the title opinion, necessary documents and deposits, and a review of all documents by the City Attorney. Motion passed 6-0-1 (Grady abstaining).

1. Title opinion or title commitment dated within the past six months shall be provided.
2. Connection charges shall be due prior to issuance of utility permits.
3. Right-of-way to 60 feet from centerline along Lyndale Avenue shall be dedicated on the final plat.
4. Standard drainage and utility easements, 10 feet along street frontages and 5 feet along internal lot lines; shall be provided.
5. A 10-foot sidewalk/bikeway easement shall be provided along all street frontages.
6. The Grading, Drainage, Utility and Erosion Control plans shall be approved by the City Engineer prior to issuance of permits.
7. Temporary street signs, lighting, and addresses shall be provided during construction.

and subject to the following Code requirements:

1. Property must be platted per Chapter 16 of the City Code (Section 16.03).
2. 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).
3. All development setbacks shall be based on planned widened rights-of-way for the abutting public street(s) (Section 19.42).

No public testimony was received.

Adopted Ordinance Vacating Easements at 9516 Garfield Ave. & 9529 Lyndale Ave. ITEM 5.2A5 O-2006-29

Motion was made by Peterson, seconded by Wilcox, to adopt an ordinance vacating sidewalk, bikeway and utility easements located at 9516 Garfield Avenue and 9529 Lyndale Avenue South for McDonald’s Corporation in order to combine two lots into one lot for redevelopment. Motion passed 6-0-1 (Grady abstaining).

No public or private utilities are affected by this vacation. New drainage and utility easements will be dedicated on the approved plat of MCDONALDS BLOOMINGTON 4TH ADDITION.

No public testimony was received.

Approved Revised Preliminary & Final Development Plan for Bloomington Central Station, LLC Case 2830CD-06 ITEM 5.2B1, 2

Motion was made by Peterson, seconded by Elkins and all voting aye, to approve the Revised Preliminary Development Plan and a Final Development Plan for a 175-stall replacement (temporary) parking lot to be located on Parking Areas G and H, at 8100 34th Avenue South, Case 2830CD-06, for Bloomington Central Station (BCS), LLC subject to the following 10 conditions as set forth by City Staff:

1. The temporary replacement parking lot shall be removed within 60 days of the City’s approval of a final development plan for the HealthPartners parking ramp in Parking Areas G and H, or earlier, should other structured parking become available off-setting the need for the temporary replacement parking lots. The City will withhold public financing for the parking structure located in Areas G and H until the developer has complied with this condition of approval;
2. A temporary parking agreement be executed noting conditions for removal;
3. No permanent parking lot improvements be made, other than those contained in the plans submitted in Case 2830CD-06, unless approved by the City Council;
4. Landscape and lighting plans shall be approved by the Planning Manager;
5. Revised grading, drainage, utility and erosion control plans shall be provided and approved by the City Engineer prior to issuance of permits;

**ITEM 5.2B1, 2
continued**

6. Temporary street signs, lighting, and addresses shall be provided during construction;
7. Landscaping, ponds, retaining walls, or any structures shall not be located within sidewalk, drainage, and utility or traffic easements;
8. Fire lanes shall be maintained during construction;
9. Access to existing fire hydrants on the south side of the Health Partners building shall remain clear during construction; and
10. All doorways around the Health Partners building (both inside and outside) shall be numbered in a clockwise direction from the main entrance.

Sharlin explained that these revised plans were necessary due to the BCS Park. The proposed temporary lot will provide 175 parking spaces. When the plan was originally approved, there was no provision made for temporary parking. The Final Development Plan is for construction of the replacement parking lot. He stated there were no conditions on the Preliminary Plat but there are 10 conditions on the Final Plat. The timeframe for the temporary parking lot could be between 3-5 years depending on the phasing of the new HealthPartners' parking ramp.

Axtell inquired as to the impact this project will have on the condition of East Old Shakopee Road.

Bernhardson replied that East Old Shakopee Road was just repaved as part of the Pavement Management (PMP) Program.

Nordstrom inquired about the proposed landscaping.

Sharlin replied that the landscaped yard will be 20 feet per City Code.

No public testimony was received.

**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.

**Approved Temporary
Conditional Use
Permit for Play &
Praise Christian
Daycare at 8443 2nd
Avenue South
Case 3470A-06
ITEM 5.2C**

Motion was made by Grady, seconded by Wilcox, and all voting aye, to approve a six-month Temporary Conditional Use Permit (TCUP) for a preschool facility in an existing church pursuant to plans contained in Case 3470A-06 for Play and Praise Christian Daycare at 8443 2nd Avenue South, subject to the following four conditions of approval as set forth by the Planning Division South:

1. Capacity not exceed 48 children nor hours of operation exceed those stated in Case 3470A-06 within the permit period without approval by the Planning Manager;
2. All pick-up and drop-off occur on site and off of the public street;
3. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code; and
4. Food service be as approved by the Environmental Services Division.

Sharlin presented the staff report explaining that the TCUP is for a period of six months. The applicant was located in Cedar Valley Church but it is being converted to a school. Therefore, the location at 8443 2nd Avenue South (Emmaus Lutheran Church) will serve as a bridge location until they get their Conditional Use Permit.

Speaker: Joyce Maki, Play and Praise Christian Daycare
She was available for Council questions but they had none.

**Approved the
Proposed Restriping
of West 86th Street
ITEM 5.3A**

Motion was made by Elkins, seconded by Grady, and all voting aye, to approve the revised restriping plan on West 86th Street to meet the requirements for minimum parking and drive lane widths for the south side of 86th Street between West Bush Lake Road and Texas Avenue as proposed by staff.

Elkins inquired about the discussions that took place between staff, the Minnesota Department of Transportation (MnDOT), and TTAC specifically relating to marking the 6-foot shoulders as bike lanes.

ITEM 5.3A continued

Shelly Pederson, City Engineer replied that the section from West Bush Lake Road to Texas Avenue is very tight in this area and that it's designed to have 8 feet of parking, 11-foot drive lanes, and 6-foot bike lanes. She stated originally MnDOT had recommended "Share the Road" signs be installed on the side where parking was to be allowed. However, since the narrower lane widths that don't meet the criteria for "Share the Road" signs, no signage will be installed. She added that the section from Texas Avenue east was not part of the staff or TTAC recommendation at this time. Even though the width for bike lanes does meet MnDOT's criteria, no additional painting or striping is proposed for that section at this time. Most of the parking in this vicinity is utilized on weekends and on holidays but the residents desired it to remain.

No public testimony was received.

**Adopted Ordinance
Rezoning 3900
American Boulevard
West for Mortenson
Development
Case 7970A-06
ITEM 5.4A1
O-2006-30**

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt an ordinance rezoning the parcel at 3900 American Boulevard West, Case 7970A-06, for Mortenson Development, Inc. from CS-1, Commercial Service to CS-1(PD), Commercial Service (Planned Development).

Sharlin referenced a handout regarding a Waiver of Platting that Council was given just prior to the start of the meeting and presented the staff report on the proposed hotel and parking ramp. He stated it has been reviewed by both the Planning Commission and TTAC. The Planning Commission recommended approval of the rezoning, the Preliminary and Final Development Plans with conditions, and the Preliminary and Final Plat subject to six conditions. He explained the aspects relating to the request for Waiver of Platting requirements: 1) Waive the MnDOT property that will not be purchased by the City that will continue to be utilized for right-of-way and transportation purposes and maintained by MnDOT and 2) Parcel B - required to have a waiving of the platting requirements. Parcel A, which is the parcel to be transferred to Mortenson, will be platted. The second aspect of the Waiver of Platting requirement deals with the waiver of the Park Dedication fee for Parcel A.

Speaker #1: Tom Lander, General Manager, Mortenson Development

He showed a color pallet of the building materials. The base of the building will be brick. The building will be constructed using an architectural pre-case material. He showed a computerized rendering of the building. It will be a full-service hotel with a ballroom, a full-service restaurant and bar, and a pool. He described the restaurant as a traditional steakhouse/chophouse type of restaurant and stated the architect and engineer were available for Council questions.

Council had no questions and no public testimony was received.

**Approved Preliminary
and Final Development
Plan for Mortenson
Development, Inc. at
3900 American
Boulevard West
Case 7970BC-06
ITEM 5.4A2**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve the Preliminary and Final Development Plan for a hotel development at 3900 American Boulevard West, Case 7970BC-06, for Mortenson Development, Inc. subject to the following 17 conditions and 13 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 following a review by the Nine Mile Creek Watershed District, permit and comments shall be provided;
4. Access, circulation and parking plans be approved by the City Engineer;
5. All surface parking stalls, except for those along the southwest corner of the site, be a minimum dimension of 9 feet by 18 feet;
6. Connection charges, as determined, be satisfied prior to issuance of utility permits;
7. Construction traffic control and staging plan shall be approved by the Issuing Authority;
8. A SAC determination be calculated and payment be paid;

ITEM 5.4A2 continued

9. A Stormwater Management Plan be provided, which shall include:
 - a) Water Quality Treatment which meets the requirements of the Bloomington Comprehensive Surface Water Management Plan (CSWMP);
 - b) Maintenance Schedule/Plan for Stormwater BMP signed by property owner and to be filed on record with Hennepin County. Proof of filing shall be submitted to Engineering;
10. 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;
11. Provide a petition and waiver for the construction of the public sidewalk north and west of the primary entrance;
12. An erosion control bond shall be provided;
13. Provide documentation showing proof of parking that would provide a total of 457 on-site parking spaces, if constructed, as approved by the Issuing Authority.

and subject to the following additional conditions:

14. Alterations to utilities be at the developer's expense, except as otherwise provided in Paragraph 4.5.2 of the agreement dated April 21, 2006 between the developer and the City;
15. All pickup and drop-off occur on site and off of public streets;
16. All parking, pickup, drop-off, loading and unloading shall be on-site;
17. Public sidewalk be constructed in the sidewalk easement;

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 parking lot perimeter and traffic islands (Sec 19.64);
5. All trash and recyclable materials be stored 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. Building be provided with an automatic fire sprinkler system as approved by the Fire Marshal (Mn Bldg. Code Sec. 904.1, Mn. Rules Chapter 1306; Uniform Fire Code Sec. 1003);
8. Fire lanes be posted as approved by the Fire Marshal (Uniform Fire Code Sec. 901.4);
9. Utility plan showing location of existing and proposed water main/fire hydrant locations be approved by the Fire Marshal and Utilities Engineer (City Code 6.20, Uniform Fire Code 903);
10. Food service plans be approved by the Environmental Services Division (City Code Sec. 14.360);
11. Parking lot and site security lighting satisfy the requirements of Section 19.54 of the City Code;
12. A Uniform Sign Design be submitted for approval by the Planning Manager; and
13. All signage be in accordance with the approved Uniform Sign Design (Sec. 19.109).

No public testimony was received.

**Approved Preliminary
& Final Plat of
BLOOMINGTON 44TH
ADDITION (Case
7970D-06), Vacation of
Easements, & Waiver
of Platting for
Mortenson Develop-
ment, Inc. at 3900
American Boulevard W
ITEM 5.4A3-6
R-2006-83
O-2006-31
R-2006-84**

Motion was made by Grady, seconded by Wilcox, and all voting aye, to approve the Preliminary Plat subject to the following 6 conditions, adopted a resolution granting approval of the Final Plat subject to 8 conditions and 3 Code requirements for BLOOMINGTON 44th ADDITION located at 3900 American Boulevard West as set forth by the Planning Division Staff, the Planning Commission, and the Engineering Division Staff, receipt of the title opinion, necessary documents and deposits; and a review of all documents by the City Attorney, adopt an ordinance vacating street and utility easements located at 3900 American Boulevard West for Jim Gates, Deputy Director of Public Works for the City of Bloomington for the purpose of clearing title for platting of the property, and adopted a resolution approving a Waiver of the Platting Requirements for the lands which are not being transferred by MnDOT and which are being retained for highway and street ROW purposes:

**ITEM 5.4A3, 4
continued**Preliminary Plat Conditions:

1. The property shall be platted per Section 16.03 of the City Code. The approved Final Plat shall be filed with Hennepin County and a certified copy shall be provided to the Engineering Division prior to the issuance of building permits;
2. Drainage and utility easement be shown along the frontage(s) and interior property lines respectively as approved by the City Engineer;
3. Sidewalk/bikeway easement shall be provided along all public street frontages;
4. The Grading, Drainage, Utility, and Erosion Control plans shall be approved by the City Engineer prior to issuance of permits; and
5. Up to a 20-foot temporary easement for construction purposes, without compensation, shall be provided at the time of reconstruction of American Boulevard as approved by the City Traffic Engineer.

Final Plat Conditions:

1. Title opinion or title commitment dated within the past 6 months shall be provided.
2. Connection charges shall be due prior to issuance of utility permits.
3. Right-of-way to 50 feet from centerline along American Boulevard West shall be dedicated on the Final Plat.
4. Standard drainage and utility easements, 10 feet along street frontages and 5 feet along internal lot lines, shall be provided.
5. An 8-foot sidewalk/bikeway easement shall be provided along American Boulevard West and a 10-foot sidewalk/bikeway easement shall be provided along France Avenue.
6. The Grading, Drainage, Utility, and Erosion Control plans shall be approved by the City Engineer prior to issuance of permits.
7. Surveyor shall provide monumentation letter certifying that all monuments shall be placed within one year of filing the plat, unless set before filing.
8. A temporary easement for construction shall be provided 20 feet along American Boulevard as approved by the City Traffic Engineer.

and subject to the following Code requirements:

1. Property must be platted per Chapter 16 of the City Code (Section 16.03).
2. 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).
3. All development setbacks shall be based on planned widened rights-of-way for the abutting public street(s) (Section 19.42).

Waiver of Platting Conditions:

1. An approved final plat for that portion purchased by the City of Bloomington must be filed with Hennepin County within one year of City Council approval of the waiver to platting;
2. The property acquisition for a portion of the property be completed and Plat for that portion be filed by the City of Bloomington;
3. Any future non-transportation development of the parcel not being platted will require platting.

It was stated construction is anticipated to begin in September.

Bernhardson thanked City staff and Mortenson Development for moving this project forward, as it is not an easy site to develop. He also thanked Tom O'Keefe and MnDOT's staff for getting the proper development on this site moving in a timely fashion.

**Continued to August 7
Amendment to the
Zoning Code
Establishing New
Neighborhood &
Commercial Zoning
Districts & Standards
ITEM 5.4B1**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to continue the items amending the Zoning Code (Item 5.4B,C,D,E and H) to the August 7, 2006, Regular Council meeting.

Elizabeth Shevi, Planner provided the first portion of the staff report. She explained what would be covered in the zoning ordinance amendment and recapped what steps have occurred over the past 1½ years and reviewed Council's discussion at their July 10th meeting.

She explained the four parts of Item 5.4B, which creates the zoning districts, and Items 5.4C, D & E, which applies the zoning to specific areas. Her presentation reviewed the following:

- The various meetings and public hearings that have been held to gather input and where the updated information has been posted for public review and input.
- The rezoning notification process to date that has gone beyond what is required by ordinance.
- Commercial zoning districts & standards and the ten key underlying principles and assumptions.
- Background on the current zoning districts within the city and their complexities. New zoning ordinance would consolidate the districts down to eight total districts: (3) Neighborhood districts and (5) Freeway districts. The old freeway districts were identified according to density; the new districts will not.

Shevi proceeded to provide an overview of the ordinance amendments:

- B1 District (Neighborhood Office District): Would apply to 35 citywide parcels. Used as a transitional district to buffer commercial from residential. Preserves neighborhood commercial and promotes pedestrian walkways.
- B2 District (General Commercial): Includes retail strip centers and gas stations. Permitted uses: restaurants and auto repair. Currently applies to 100 parcels citywide. Residential will not be permitted. Reduces setback from 65 to 35 feet.
- B3 District (Neighborhood Commercial Center): Creates neighborhood commercial areas with higher density. Pedestrian friendly with buildings close to the street with parking in the rear. Mixes residential and commercial uses. Prohibits auto uses. Shops on ground floor with residential above. The Point at France and Old Shakopee Road does not include residential but does achieve some of the desired commercial zoning aspects of the district. Currently applies to 17 parcels citywide. Imposes special design standards, preserves neighborhood commercial, promotes walkability, and reduces setbacks.

Glen Markegard, Senior Planner addressed Elkins' question regarding whether The Point development complies with the B3 District.

- C-1 Freeway (Office & Service): Includes office buildings and hotels, a minimum Floor Area Ratio (FAR) of .4 to a maximum of 1.0. Minimum setbacks and minimum size 20,000 square feet. Encourages intensity along I-494 corridor.
- C-2 Freeway Commercial (large retail uses & restaurants, office & hotels allowed): Similar to B2 District but it's regionally oriented rather than neighborhood oriented. A well distributed goods and services district.
- C-3 Freeway Commercial Center (large retail uses– two-story big box and lifestyle centers): IKEA is a good example of this type of use. The Downtown Target store in Minneapolis is another example. It allows a .5 to 1.0 FAR. Minimum building size is 50,000 SF. Requires two-story buildings and at least 60% of building must be two stories in height.
- C-4 Freeway Office (office & hotel, restaurants and retail only as accessory uses.) Increased intensity up to 2.0 FAR. Examples: South Pointe Office Center & Hilton Hotel. Well distributed goods and services and encourages intensity along I-494.

- ITEM 5.4B1 continued**
- C-5 Freeway Mixed Use (Excelsior & Grand, Kensington in Richfield – to be applied in a limited fashion within the City where Council would like to see very high development intensities in both residential and non-residential. Office, hotel & retail service uses allowed.) Residential uses are proposed to be required at 15 units per acre. Minimum development intensity proposed at 1.0 FAR with a maximum of 2.0. Buildings required to be close to the street with parking on the side or rear. At least 60% of the building footprint area must be two stories. Improve walkability, promote development of a few mixed-use commercial nodes, encourage intensity along I-494 & American Boulevard, and encourages residential use in commercial areas and exemplifies that new zoning standards should be forward looking.
 - Ordinance addresses citywide sidewalk standards to apply universally.
 - Ordinance addresses citywide drive-through standards. New standards to ensure commercial uses are compatible with residential uses.
 - New structure design standards to be addressed in ordinance regarding blank facades, building massing, architectural unity, window signs and entrance buffers.
 - Standards for motor vehicle sales uses: Would apply citywide and would address noise, where vehicles may be repaired, test driving, storage and display of vehicles, loading and unloading of vehicles.
 - Citywide residential uses in commercial zones standard: How residential and commercial might be integrated.
 - Sign standards: In B3 and C5 Districts, close to street, which creates the need for new sign changes.

Council inquired how many properties are located in the old freeway districts.

Markegard explained that there is no count of the old Freeway Districts. It applies to many parcels along the freeway. He reviewed the following issues raised at the last Council meeting and the proposed changes:

Issue #1: Wording of Finding B regarding Nonconformities: Staff proposes to delete that finding and to replace it with a new finding that would read: “The expansion complies with City Code requirements to the maximum extent practical given the configuration of the site and the purpose of the expansion.” (*Council had no questions.*)

Issue #2: Classification of Government Facilities (Reference Section 19.03): Staff split the definition of government facilities between General and Limited. Limited facilities would not be allowed in the proposed commercial zoning districts. General government facilities are proposed to be allowed in all the commercial zoning districts. There are two City facilities that would fall into the Limited definition that are currently zoned R1 and both could be rezoned in the future.

Elkins inquired if open storage includes vehicle storage.

Markegard replied yes. It would include open vehicle storage, not just having one or two vehicles parked on the site but the predominant use of the site for storage of heavy equipment and such. The City has a facility in an R1 District but it’s adjacent to a large industrial area. The City’s Western Maintenance Area is another example.

Issue #3: Definition of Studios: Proposed to broaden the definition making it studio, audio or video. They are proposed to be permitted uses in all new neighborhood and freeway commercial districts except for the B1 District. (*No Council questions.*)

Issue #4: Purpose of Neighborhood Commercial Zoning Districts regarding services needed on a “day to day basis.” Staff proposes to delete the “day-to-day” reference.

ITEM 5.4B1 continued Issue #5: Allowing Integrated Fuel Sales: Staff added the definition of “integrated fuel sales.” (*No Council discussion.*)

Issue #6: Allowing Private Fuel Pumps Where Auto Rental is Allowed: Staff modified the “Use Matrix” to allow private fuel pumps in the B2 and C2 Districts in addition to the C1 District. (*No Council discussion.*)

Issue #7: Sidewalk Standards: The language was clarified to indicate that the Design Standards do not apply to private sidewalks on single and two-family residential sites. (*No Council discussion.*)

Issue #8: Proposed Underlying Principles upon which the ordinance was prepared and the potential conflict between the 4th Principle (having well distributed goods and services throughout the community) and some of the other principles: Staff believes that Principle #4 and others can be met at the same time through the broad and frequent application of the more inclusive zoning districts – the B2 and C2 Districts with more of a narrow and focused application in the specialized B3 and C5 districts. (*No Council discussion.*)

Markegard summarized some of the concerns that have been raised during the public comment process to date:

- Proposed Minimum FAR in the C1 District and how it applies to motor vehicle sales uses: Impetus is to promote higher intensities along freeway districts as a way to make high quality transit services more feasible. As the FAR increases, the intensity of the development increases. In the future, a more urban configuration for auto dealerships, a .04 FAR would be reasonable. The new Penske BMW dealership at 35W & 494 has an FAR of 0.67 based on the most revisions to their building permit. All of the current dealerships in Bloomington are below the 0.4 FAR threshold. Current dealerships commented it will be hard for them to meet the new 0.4 FAR through an expansion. A dealership in the C1 District that wanted to expand but at a level below the 0.4 FAR would have the ability to seek Planned Development flexibility. Applications could be applied for with Council making the final decision. The Planning Commission recommended that an exception be created specifically for motor vehicle sales. The minimum FAR in the C1 District for existing motor vehicles sales and sites, including expansion thereof, shall be 0.24 or greater. The exception would not apply to new motor vehicle sales but only to expansions.

Grady stated she doesn’t like the idea of having more buildings like the new big, white Walser parking ramp. She doesn’t know if requiring that they have a ramp like that should be a goal of the Council or not. She wouldn’t want to see 16 of those types of buildings in Bloomington.

Markegard stated the proposed minimum FAR coincides with the guiding principle to have higher density development along the American Boulevard corridor and a good example of this FAR is the Westside Volkswagen off of Hwy. 100. The thought is to try and condense the surface parking to make more land available in the corridor for another land use.

Bernhardson stated that in previous discussions during this zoning exercise, Council had not indicated any objection to having some minimums in the freeway districts to meet the principle of having more compact development along there. He stated the BMW building is 80% greater than the minimum standard. He asked the Council if this is the direction they want to go as far as setting an FAR for these particular zones as they relate in particular to auto dealerships or not?

Markegard added that as proposed, the C1 would apply to seven auto dealership sites in the interim period between today and adoption of the strategic planning process, if all of the proposed rezonings were adopted. That would leave ten additional new car dealerships in the city that would not be zoned C1, but would likely be rezoned to C1 after the strategic planning process but would be on hold until that process is completed.

ITEM 5.4B1 continued Peterson stated this is only applied to certain parts of the city where the Council wants to encourage a certain intensity of development, primarily due to wanting to have higher intensity levels for transportation reasons. He mentioned that he observed lots of car dealerships with structured parking in Miami, FL along I-95 in areas that are very similar to Bloomington. He stated the City needs to be as uniform as possible so the zoning can be applied equally throughout the district.

Elkins agreed and stated that the minimum FAR is required for all structures in these zones not just car dealerships. He stated it's key to have a certain level of density along the American Boulevard corridor if it's ever going to support transit. He stated the City needs to make sure that the land uses become more supportive of transit in that corridor.

Axtell commented he struggles with this one. He stated the Council has an obligation to the strategic planning process and in particular to having a vision for the freeway areas but he struggles with protecting property owners' rights to make sure the City doesn't cause a diminution of their value. He would prefer not to have 45 dealerships in Bloomington, even though they provide a very valuable service, but doing something special on American Boulevard is a once in a lifetime opportunity for the City. He stated the Council will need to make the tough decision on what's right for the entire city of Bloomington.

Winstead inquired if there are ways to leave the existing car dealerships in place or ways that could make them more comfortable in knowing that the future is not going to be rammed down their throats as a hard written Code with some very strict findings so they can live their life. But if redevelopment does happen with another use, there is a new way that things would have to go forward. Could the ordinance leave the existing auto dealerships with a way to survive as written but would require them to change upon expansion or redevelopment?

Peterson stated he doesn't want Bloomington to be known as the bad guy that doesn't like auto dealerships, as there are 16 located in Bloomington. But yet unlike Eagan, that has similar freeway exposure as does Bloomington, they have made it uneconomic to have car dealerships in their city.

Wilcox stated he agrees that the Council needs to be visionary and direct the future of the city, but it also has a responsibility to the existing property owners to uphold their property values. He struggles with making properties go from a conforming use to a nonconforming use and the legality and financing relating to it. It's hard on businesses to get loans for a non-conforming use.

Bernhardson stated Council could: 1) Make no change to the current ordinance – don't have any FAR in this zone, 2) Propose a 0.4 density or a variation of that as 3) 0.24 for existing as a minimum increasing to a 0.4 for anything new. Existing businesses would have the ability to overcome those issues through the variance and Planned Unit Development process. It's a building issue and not a use issue.

Winstead inquired if a site could be deemed conforming if it has a conforming use until the old use goes away or is changed in order to create a comfort level for some of these long-standing businesses.

Dave Ornstein, City Attorney explained that there is language that grandfathers in non-complying characteristics that basically say they are not considered to be nonconforming.

Peterson stated the City has routinely had buildings that get financed all over the city with structural nonconformities and no one has expressed having financial issues with it.

Elkins mentioned that in Garland, TX, a transitional ordinance or overlay district was created that grandfathered in existing buildings/uses until the land becomes ripe for redevelopment at which time the new ordinance kicks in and inquired if Bloomington should look at something like that.

ITEM 5.4B1 continued Bernhardson replied that the City has some state law concerns and that there may be a simpler way to deal with it. If the Council is interested in grandfathering in those characteristics to not make them nonconforming, between grandfather language and the nonconforming language, staff could craft something. It would allow existing businesses to continue in a relatively conforming status not making them nonconforming even from a building or characteristic standpoint but point them in a direction desired by the Council with minimums if they do make any changes.

Winstead stated that is the direction he would like to see the Council go.

Grady inquired about the issue of equality among auto dealerships in Bloomington and stated that staff said they would only be allowed in the C1 District and that it applies to seven dealerships. She inquired if it includes the ones along 35W and what happens with the other dealerships that wouldn't be in a C1 District?

Markegard replied that seven out of the ten that are proposed for rezoning are all zoned B3 today and that new auto dealerships would not be allowed in B3. He stated he would be talking about changing the B3 District to a B4 District and that it will add another potential solution for the interim period until the strategic planning process is completed. He stated it is intended that after the strategic planning process, the majority if not all of the existing car dealerships will become C1.

Winstead inquired if Council wanted staff to pursue grandfathering permitted uses with language that deems the site characteristics conforming until such time the use changes on the site changes or the grandfathering is no longer.

Nordstrom stated that she would be comfortable with .24 FAR with the grandfathering capability.

Peterson inquired if the grandfathering would run along the lines of the revised nonconformities language in terms of content?

Bernhardson stated one way to grandfather the car dealers in is the language proposed by the Planning Commission. However, if Council wanted to address other businesses than just car dealerships, a combination of grandfathering on the nonconformity issue with a movement to minimums established by Council could be crafted.

Winstead stated they would be permitted uses in the zoning district but the site characteristics start to deem them nonconforming site characteristics and that is what he would like to see grandfathered but how does that apply to other permitted uses or other site characteristics for different kinds of businesses and buildings?

Peterson stated the big picture process should not be how to deal with non-conformities.

Bernhardson suggested that the grandfathering could be limited to the new FAR.

Grady reminded Council that just because higher density is desired along I-494, the backs of those car dealerships abut residential property and that is why she's not comfortable with the 0.4 FAR.

Elkins stated that the surrounding neighborhood supported the former Walser development when it came forward.

Getting back to his presentation, Markegard stated another concern expressed by the public was regarding drive-through restrictions relating to the hours of operation and proximity to residential. A drive-through located less than 300 feet from residential triggers screening requirements, noise limitations, and hours limitations. Under the State non-conformity statute, this would only apply to a new drive-through restaurant or a new operation. An existing drive-through would be considered an operational nonconformity that could continue on indefinitely.

Wilcox stated he has a problem with this in that the intensity of the use varies between drive-throughs. A bank or a pharmacy seems less intense than a fast food drive-through, for example.

ITEM 5.4B1 continued Peterson referenced the comment letter Council received regarding the Taco Bell stating the comment related to the noise of the vehicles and not necessarily the squawk box itself.

Markegard stated the restrictions apply to the R1 residential zones and that the B3 and C5 Districts wouldn't allow restaurant drive-throughs.

The next concern addressed by Markegard was regarding nonconformity. He stated there are two issues: A policy issue and a Code issue. As far as the policy issue, the question is how forward-looking should the standards be and how much should they try to minimize nonconformities. He asked the Council if the City should allow expansion of nonconforming site characteristics. Staff recommends that it should be subject to the findings. Should the City allow expansion of nonconforming uses? Staff is recommending against allowing nonconforming uses to expand, given they can remain in place indefinitely per State law. He stated a classic example of a nonconforming use in Bloomington is the Gas For Less station. The site has been in place for many years and is zoned R1 so the gas station is legally nonconforming but is grandfathered in. Therefore, they could not expand on their site unless they go through a rezoning process and rezone to one of the commercial districts.

Bernhardson stated that the C5 District has the most potential for creating nonconforming uses.

Markegard stated there are two primary decision points with regard to the timing of the ordinance amendment: Adopt the ordinance now or wait. He described the advantages and disadvantages in adopting the ordinance now and described the advantages and the disadvantages in adopting the three rezonings now with some alternatives to consider if delayed.

Ornstein added that the Comp Plan trumps zoning. He discussed a particular case that defined what constitutes a conflict between zoning and the Comprehensive Land Use Plan. He stated that case determined that the Comp Plan and zoning need to be consistent. He stated if the new zoning classifications were adopted now by Council and they were applied to properties, it could result in some conflicts with the existing Comp Plan classifications, which would have to be resolved by Council down the road.

Winstead commented that there should be flexibility in the zoning ordinance going forward so that Council can tweak and change it to keep improving it.

Peterson agreed stating that this is how Council has always conducted its business.

With regard to the rezoning of the area south of Southtown, Markegard stated the Planning Commission desired to defer the rezoning in this area until after the strategic planning process so as a result, they recommended keeping the existing B3 District in place and renaming the proposed district to B4. Staff concurs with the Planning Commission's recommendation to retain the B3 standards but rename B3 to B4. He added that all B3 parcels (17) of them are proposed for rezoning. He explained how the rezonings would apply to the land. For land zoned B1 and B2, upon adoption of the ordinance, those changes would go into effect as soon as it's published. In the existing B3 District, it all depends on what Council does with the rezonings. Regarding the proposed districts, he stated the B1 and B2 would be in place immediately, the B4, C2, C3, C4 would not exist anywhere in the city. They would be paper districts. They would be available if the Council or the Planning Commission or the landowner wanted to rezone to one of those districts but they would not apply in the interim period. In the C1 and C5, if the rezoning was approved, it would be applied but in a very small area of the city.

Mayor Winstead invited the public to comment on the ordinances as they stand.

➤ Speaker #1: Leo Fair, 8127 Fremont Avenue South

He mentioned that they received notice for a parcel on American Boulevard that some rezoning was going to be done but noticed that private clubs and lodges - non profit have been crossed as permitted uses. He inquired if and when it gets rezoned, would their use be allowed.

ITEM 5.4B1 continued Winstead explained that if the ordinance was adopted and that particular zoning code was applied to the site Mr. Fair was speaking of, they would fall into the trap of a non permitted use, whether in a conforming or nonconforming building. The ordinance is one thing but where it gets applied is the next step but the Council hasn't taken it to that level yet. He stated American Boulevard will probably be analyzed within the next three years.

Markegard replied that the existing zones, B1 and B2 for example, are proposed for deletion but staff is adding those uses back into the Use Matrix.

➤ **Speaker #2: Whitney Peyton, C.B. Richard, on Behalf of Peerless Land**
With regard to the new urbanism, he stated the lifecycle of a retail business is 10-15 years where the lifecycle of a residential piece is closer to 40 years. He stated this type of development creates noise and odors. He used the development on 66th Street in Richfield with the Champs located downstairs with residential above. He stated the floor plates are different for residential, office and residential. The zoning in C5 almost demands stacking, which creates challenges. He stated the development cycles are different for developing residential, restaurants and offices. For example, the Excelsior & Grand project had community subsidy for stacked parking and cautioned the Council to be prepared to deal with some issues. If not careful, it can be perceived as condemnation for the property owner or an adverse taking. He warned the Council to be careful when dealing with owner's rights. He suggested the Council follow the marketplace. Let the marketplace dictate what should happen. The C5 zoning poses some real challenges. They would like to see development continue. Take a serious look at what the zoning amendment will do to the commercial districts. He suggested the City talk to the residents at Excelsior & Grand and to TOLD Development about the retail component. The retail component isn't healthy, the bars and restaurants are going upside down, and the parking is a challenge. He suggested single-use buildings.

➤ **Speaker #3: Jim Erickson, Representing a Lessee (KFC), the South of Southtown Area & a Small Shopping Center Owner**

He associated his remarks in general with those of Mr. Peyton about the ethicacy of this urbanism vision in general and is not so sure that type of zoning is appropriate for this area. They have their own visions for how the land south of Southtown should be developed or redeveloped and believe the marketplace should dictate what that is and that it has some problematic elements to it.

With respect to his representing Border Foods, specifically Taco Bell and the larger drive-through fast food restaurant community, Erickson continued by referring to page 30 of the ordinance and staff's belief that there will be ample opportunity for the distribution of goods and services and that the B2 and C2 zoning districts are appropriate for that. He stated the Taco Bell's of the world don't fall into either the C1 or the C2 District, as their building size is smaller than what is required in those districts according to the ordinance. Therefore, the basic quick-service restaurants of the franchise variety, i.e. Taco Bell, KFC, Pizza Hut and the like, will only end up being in a B2 District so they request that the B2 District be applied expansively. On page 36, he requested the Hours of Operation prohibition be deleted, which prohibits the operation of a drive-through after 10:00 p.m. He requested drive-throughs be dealt with on a case-by-case basis.

Erickson's final comment was to congratulate Mark Bernhardson's daughter Jenna on being elected and selected as the Aquatennial Princess of the Lakes.

Winstead commented that the Council received correspondence dated July 21, 2006, from the President of Crown regarding their Wendy's restaurant making the same point regarding the hours of operation.

- ITEM 5.4B1 continued** ➤ **Speaker #4:** Buz Anderson, President of MN Business Retailers Association
 He requested the Council keep in mind the proposed drive-through provision restriction from 10 p.m. to 6 a.m. for pharmacies and chain restaurants and that these types of businesses play an important role in the community. He stated these businesses are huge economic engines within a community. They employ lots of people and pay huge property taxes. They're a large collector of sales taxes, some of which comes back to Bloomington as LGA. It's an extremely competitive business. A restriction on drive-throughs would cut the margins to very slim levels, as that is 60-70% of their business. Retailers have responded to this type of service need by the community. Consider that some communities have asked their retailers to close their inside restaurant by 10 p.m. but keep the drive-through operation open after 10 p.m., due to security reasons. He urged the Council not to restrict their hours. Don't put an impediment into their money making ability. There's a need for the 24-hour operation type of retail business.

Out of curiosity, Axtell asked Mr. Anderson about Eagan's restrictions relating to drive-throughs. Anderson replied that he did not know but could get Council that information.

Winstead requested staff put together what the impacts of the new ordinance would be on those businesses.

- **Speaker #5:** Dan Rahn, Johnson Hardware Owner, 78th & Portland Avenue South
 He stated he had a vision and bought a business but now the City's vision will change the lot size from 100 feet to 150 feet. He was told his business would be grandfathered in but he's uncertain as to its future and wonders what will happen when he tries to sell his property. He can run it as it is but what will happen if the new restrictions take effect. He believes many people are getting stepped on in this process and that his property value will decrease in relation to the future use of his property.
- **Speaker #6:** Peter Beck, Representing Luther Companies (Affinity & Acura Operators)
 He expressed concerns regarding the C1 District and auto dealerships. He stated the proposed zoning scheme will put car dealerships into one zone - C1. Auto dealerships are different and there's a legitimate reason for treating them differently. He requested Council consider a different FAR for auto dealerships, as it takes physical space to store automobiles. That's why they can't live within the 0.4 FAR. He stated his clients are supportive of the City's long-range goals but have concerns with the transition. Under State law, they can stay in their buildings but questioned whether the proposed organization would allow them to invest more money into their businesses to expand. Their new dealerships are ranging from .1 to .6 to a .2 FAR, as that is what is economically feasible right now. The dollars are generated in the building. Cars need to be on site in order to be sold. Regarding dealerships going to a Planned Development to get a variance, he requested Council not draft standards that will require variances. In regard to a housekeeping issue regarding Class I and Class II motor vehicle sales, he stated Class I requires a franchise and Class II is an accessory use. He suggested the City create one definition for a new car franchise dealership that encompassed everything that a new franchise includes, which is used, service, etc.

Speaker #7: Jeff Andrews, 2362 Wellswood Curve

Regarding page 33 (4) – He questioned how is that going to be enforced to make sure people aren't putting up signs? Why require street side entrances when it's not used in other developments. He has an issue with the FAR, on page 37 regarding land use conflicts, B3 District safety issues with parking in rear of the buildings. Does the rear parking create a need for screening? He believes more examples of how the new zoning would affect existing businesses and parcels would be beneficial.

- ITEM 5.4B1 continued** ➤ Speaker #8: Rob Lunz, Nicollet Partners, 1221 Nicollet Mall
Regarding nonconformity, he stated it's broader than financing. It's a matter of resale also. Peerless Land Company with five properties would be made nonconforming regarding site characteristics and uses. He stated seven dealers would be affected by C1 including Chrysler Jeep, Bloomington Saturn, Bloomington KIA, and the Infinity. Bloomington Chrysler Jeep already has a Planned Unit Development in place but would have to come back in increments in order to meet the required FAR. He stated Southtown sits on 37 acres on a .34 FAR. He stated Target sits on 12 acres with an FAR of .9. He mentioned other properties – Southtown Office Building, Radisson South, Bloomington Sheraton, Toro, Ziegler, Donaldson, etc. if the City is trying to get rid of the asphalt.

Winstead stated the ordinance will be back in two weeks and that Council will have to accept, reject, pass or move on the amended ordinance. Applying the zoning is another step. He would like staff's feedback regarding what will be coming back.

Bernhardson summarized the issues regarding the text as follows: Cautions on the C5 District, and how that develops and being able to deal with a mixture of uses on limited sites and the question of mixed uses in one building versus a mixture of uses on the same site, issues of car dealership and FARs, drive-throughs and the 300 feet as they relate to hours of operation, lot sizes in Districts B1 and B2, nonconformity and grandfathering and how they tie in, look at application of car dealers, short-term versus long-term, the B3/B4 District issue, and regarding the application, should the parcels away from Southtown be rezoned to B2 that are currently B3, and ultimately what should be done with Southtown with those rezonings. He stated Council will need to address what may evolve from application of the new zones as substitutes for the other zones after the strategic planning process.

Winstead concluded the discussion by stating this item will be continued on August 7.

Adopted an Ordinance Amending the City Code Relating to One-way Streets Within the City
ITEM 5.4F
O-2006-28

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to adopt a revised ordinance amending Section 8.33.01 of the City Code as it relates to one-way streets within the city per Council's discussion as follows: The following streets are hereby designated as one-way streets:

- East Bloomington Freeway from 82nd Street to **80½ Street** heading north.
- ~~Clover Drive from American Boulevard to Dupont Avenue heading north and east.~~
- 80½ Street (south frontage) from East Bloomington Freeway to Fremont Avenue heading east.

Staff was directed to proceed with the ordinance installing the enhanced curb and readjusting the ordinance as needed to add No Outlet signs as needed.

Using a map, Shelly Pederson described the approvals Council made on March 20, which included a cul-de-sac at the intersection of 80½ Street and the Bloomington Freeway frontage road. This plan required the City obtain easements from Bentley Forbes, owner of the GN ReSound property but after many phone calls and written documentation in an attempt to obtain the necessary easements, staff is proposing to proceed with Option #2 are previously discussed.

Winstead inquired if the City could take the land needed for the cul-de-sac.

Bernhardson explained that it could but would delay construction until next year, which would delay the work on 80½ Street.

Winstead inquired if traffic could continue to go two-way and turn around in GN ReSound's parking lot.

Pederson replied that the City's plows and emergency vehicles could do the turnaround in GN's parking lot and discussed where staff has considered putting in a cul-de-sac.

ITEM 5.4F continued

Grady stated she doesn't believe it's right to penalize all of the businesses from two-way traffic because GN ReSound didn't agree to what they had previously agreed to, therefore, she wouldn't support the ordinance.

Peterson inquired if a smaller cul-de-sac would work.

Pederson replied that a smaller cul-de-sac wouldn't work due to the need to safely accommodate snowplows, etc. Pederson stated that No Outlet signs could be installed.

Grady stated she is sympathetic to allowing two-way traffic.

Speaker #1: Neil Peterson, 9640 Xylon and Representing Freeway Properties (HOM Furniture and Golf Galaxy)

He stated a one-way creates an incredible hardship for their property. If the road is made one-way, many of the Budget Rental trucks would enter through their property. A one-way would be devastating to their business.

Speaker #2: Leo Fair, 8127 Fremont Avenue South

He inquired why couldn't trucks use the built-in cul-de-sac at the corner entrance to GN ReSound?

Speaker #3: Fred Guyot, 8121 Fremont Avenue South

He inquired if the new plan of a one-way from Clover Drive to East Bloomington Freeway is approved, could GN employees go down Fremont again?

Pederson replied that there will be curbs and medians that will be constructed to replace the temporary barriers and that it should deter drivers from doing that.

Guyot stated he prefers Option #1.

Wilcox commented that if a standard curb is installed, people will jump the curb so inquired if a 12-inch curb could be installed or the median built up on the one end.

Pederson stated a berm could be raised another four feet to create a 10-foot barrier.

Winstead requested staff make it visually and physically apparent that it would not be a good idea for vehicles to jump the curb.

Winstead suggested taking it two-way all the way to 80½ Street.

Pederson reviewed the proposed changes and stated staff will put the revised design in the City Manager's Information and that it will move ahead unless the City receives the GN ReSound documents, at which point the cul-de-sac would be reconsidered. She added that No Outlet signs will be added.

**Adopted Ordinance
Amending City Code
Relating to Public
Right-of-Way
ITEM 5.4G1
O-2006-32**

Motion was made by Peterson, seconded by Grady, and all voting aye, to adopt the ordinance amending the City Code as it relates to the administration and regulation of public right-of-way as presented. These changes will align the Bloomington City Code with the Minnesota Office of Pipeline Safety under Minnesota Rules Chapter 7650 which was effective January 1, 2006. The ordinance includes new fees and standards for the maintenance of information regarding the location of privately owned and installed underground facilities within the public right-of-way through the City of Bloomington Right-of-Way Permit program.

Peterson stated he's comfortable with the proposed amendment.

Jen Densrude, Engineering Development Coordinator was present to answer Council questions but they had none.

No public testimony was received.

**Adopted Resolution
Directing Summary
Publication of O-2006-
32 Relating to the
City's Right-of-Way
Ordinance
ITEM 5.4G2
R-2006-85**

Motion was made by Peterson, seconded by Grady, and all voting aye, to adopt a resolution directing summary publication of O-2006-32 relating to the City's Right-of-Way Ordinance.

**Adopted Resolution
Designating Director &
Alternate to Minnesota
Counties Computer
Cooperative (MCCC)
ITEM 6.2
R-2006-86**

Motion was made by Peterson, seconded by Grady, and all voting aye, to adopt a resolution designating Amy Cheney, IS Manager as Director and Michael Piram as Alternate to the Minnesota Counties Computer Cooperative (MCCC) Board of Directors, which is an information consortium for municipal governments and public sector agencies.

Bernhardson thanked Jen Densrude for all of her work in getting this item ready for Council approval.

Ornstein stated that this ordinance will likely be looked upon as a model ordinance for other cities to follow.

Adjourned Meeting

Mayor Winstead adjourned the meeting at 11:44 p.m.

Barbara Clawson
Council Secretary