

Regular Meeting #13
Monday, March 22, 2010, 7:00 p.m.
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

**Call to Order and
Pledge to Flag**

Mayor Gene Winstead called the meeting to order at 7:00 p.m. and led the audience in the pledge of allegiance to the flag.

Roll Call

Present: Mayor Winstead, Councilmembers S. Elkins, A. Grady, T. Hulting, K. Nordstrom, S. Peterson (left at 10:45 pm), and V. Wilcox.

**Postponed to April 12
Resolution Revoking
Certain Municipal
State Aid Segments
ITEM 3.3**

Motion was made by Hulting, seconded by Nordstrom, and all voting aye, to postpone to the April 12, 2010, Regular Council meeting, a resolution revoking certain Municipal State Aid segments.

**Postponed to April 12
Resolution
Designating Certain
Municipal State Aid
Segments
ITEM 3.4**

Motion was made by Hulting, seconded by Nordstrom, and all voting aye, to postpone to the April 12, 2010, Regular Council meeting, a resolution designating certain Municipal State Aid segments.

**Postponed to April 12
Agreement with
Cities Digital
ITEM 3.7**

Motion was made by Hulting, seconded by Nordstrom, and all voting aye, to postpone to the April 12, 2010, Regular Council meeting, an agreement with Cities Digital for an electronic document management system (EDMS).

**Approved Purchase
from Astleford
International
ITEM 3.1**

Motion was made by Hulting, seconded by Peterson, and all voting aye, to approve the purchase of two (2) 2011 International 7400 SFA 4x2 single-axle cab/chassis at a cost of \$70,546.06 each from Astleford International under State of Minnesota Contract #440949 for a total expenditure of \$141,092.12. Any applicable sales tax will be remitted directly to the State of Minnesota upon delivery, acceptance, and licensing of the units.

These vehicles will be used by the City's Street Maintenance Division for snow plowing and general hauling and needed during the year and will replace Units #58, a 1990 Ford L8000 single-axle dump truck and Unit #63, a 1990 Ford L8000 single-axle dump truck.

Funds are available in the 2010 Equipment Replacement Fund, Activity 617-0618-499.70-42.

**Approved Wireless
Antenna Lease with
Clear Wireless LLC
ITEM 3.2**

Motion was made by Hulting, seconded by Peterson, and all voting aye, to approve a wireless antenna lease with Clear Wireless LLC (dba Clearwire) at 7201 West 83rd Street (Northwest Water Tower) to collocate wireless antennas at the top of the Northwest Water Tower and equipment inside the water tower at the base. Rent will start at an annual rate of \$30,123 (the City's standard rate in 2010 for water tower leases) and will increase by 7 percent each calendar year. The lease provides Clearwater with a five-year initial term and up to four five-year lease renewal (25 years total). The approval also includes authorization for the Mayor and City Manager to sign the lease.

**Approved Minutes
ITEM 3.5**

As part of the Consent agenda, Hulting made a motion, which was seconded by Peterson, to approve the following City Council minutes as presented. The motion passed as follows: September 14, 2009 (Study) meeting (Hulting abstaining) and November 16, 2009 (Regular) meeting (Hulting & Peterson abstaining).

**Approved Grant Project Agreement with Minnesota Department of Health
ITEM 3.6**

Motion was made by Hulting, seconded by Peterson, and all voting aye, to approve a Grant Project Agreement with the Minnesota Department of Health for the Sage Women’s Clinic (breast and cervical cancer screening clinic) located in the Southdale Medical Building. The term for this Agreement is from January 1, 2009 to December 31, 2010. The funding will be increased from the original \$204,500 to \$410,300 for the term of the Agreement.

Funds for this Agreement are included in the 2010 Public Health Budget.

**Approved Contract with Stanley Consultants
ITEM 3.8**

Motion was made by Hulting, seconded by Peterson, and all voting aye, to approve the contract for professional services with Stanley Consultants for the South Loop District Energy Study in the not-to-exceed amount of \$249,995. A district energy system is an alternative that can provide for energy conservation and efficiency, allow for the utilization of a variety of fuels including renewable sources such as biomass, and provide savings on fuel and equipment costs. These potential benefits are important in meeting environmental goals, providing a reliable efficient source of energy, and supporting urban growth and development.

The study budget for both phases is \$249,995, with 38% allocated to the initial phase. Energy Efficiency and Conservation Block Grant (EECBG) will fund \$200,800 with the remainder being funded by City Fund 435. The study is scheduled to begin in late March 2010.

**Approved Hennepin County Agreement PW 33-07-09
ITEM 3.9**

Motion was made by Hulting, seconded by Peterson, and all voting aye, to approve Agreement PW 33-07-09 with Hennepin County for the maintenance of Hennepin County signals. The Agreement period is January 1, 2010 through December 31, 2014. Through the Agreement, the City will maintain, repair, set timing, and coordinate all City and County owned traffic signal systems at the following 8 signal intersections. The City will receive \$1,100 per intersection per year, pro-rated on a quarterly basis.

- CSAH 1 at East 79th Street
- CSAH 1 at American Boulevard (East 80th Street)
- CSAH 1 at Lindau Lane (East 81st Street)
- CSAH 1 at East 82nd Street
- CSAH 1 at Transit Station (8300 24th Avenue South)
- CSAH 1 at Killebrew Drive/East Old Shakopee
- CSAH 1 at East 86th Street
- CSAH 1 at Old Cedar Avenue

**Adopt Resolution Approving Plans, Specs & Schedule for following Projects:
2010-101 (PMP)
2008-303
2010-303
2010-802
ITEM 3.10
R-2010-15**

Motion was made by Hulting, seconded by Peterson, and all voting aye, to adopt a resolution approving the plans and specifications and ordering the advertisement for bids for the 2010-101 Pavement Management Program (PMP) Street Improvement Project (A) and the associated projects 2008-303 Street Improvement Project (B), 2010-303 Street Improvement Project (C) and 2010-802 Streetscape Improvement Project (D).

Following is a description of each of the four projects:

- A. 2010-101 PMP Street Improvement Project
Project includes street reconstruction and utility maintenance previously approved and ordered for construction.

Funding in accordance with the approved PMP policy, budgeted utility maintenance funds, and assessments.
- B. 2008-303 Street Improvement Project
Project is for improvements to Russell Avenue between 81st Street & 82nd Street in coordination with the Applewood Pointe development and includes watermain, sanitary sewer, storm sewer and construction of a public street.

Funding by assessment to the property owners (United Properties Residential, LLC).

ITEM 3.10 continued

C. 2010-303 Street Improvement Project

Project is for improvements to Lyndale Avenue between 95th Street & 96th Street and 96th Street between Lyndale Avenue & Aldrich Avenue in coordination with the Richfield Bloomington Credit Union development and includes curb, sidewalk and traffic signal work.

Funding by assessment to the property owners (Richfield Bloomington Credit Union).

D. 2010-802 Streetscape Improvement Project

Project is for improvements to the streetscape along Lyndale Avenue between 95th Street & 99th Street, Old Shakopee Road between Grand Avenue & Aldrich Avenue, Grand Avenue between 97½ Street & Old Shakopee Road, and 97½ Street between Grand Avenue & Garfield Avenue in coordination with the PMP construction. The Project includes landscape and hardscape work.

Funding by assessment to the property owners and allocated City funds.

**Approved Purchase from Aspen Equipment Company
ITEM 3.12**

Motion was made by Hulting, seconded by Peterson, and all voting aye, to approve the purchase of two (2) Henderson Model 1096-SA 10-foot elliptical single-axle dump bodies under State of Minnesota Contract #442283 from Aspen Equipment Company at a cost of \$86,268.98 each for a total expenditure of \$172,537.96 plus any State of Minnesota sales tax applicable at time of delivery. These units will be equipped with an underbody hoist and scraper, patrol wing, hitch, snowplow, and hydraulics. The completed vehicles will be used by the City’s Street Maintenance Division for snow plowing and general hauling needed during the year and will replace Units #58, a 1990 Ford L8000 single-axle dump truck and Unit #63, a 1990 Ford L8000 single-axle dump truck. Funds are available in the 2010 Equipment Replacement Fund, Activity 617-0618-499.70-42.

**Accepted Donations
ITEM 3.11**

Motion was made by Hulting, seconded by Grady, and all voting aye, to accept the following donations made by various donors to various City activities and approved the amended revenue and expenditure budgets, as noted, to facilitate the appropriate use of the funds: Items donated to Public Health for needy families with small children from Kurt & Renee Polak (valued at \$200), Jason & Carolee Anderson (valued at \$100), Lee & Dawn Anderson (valued at \$100), Katie McComb (valued at \$100), and Scott & Jennifer McComb (valued at \$100); items donated to the Human Rights Commission for the Latino Resource Fair from Hennepin Technical College (valued at \$200), Normandale College (valued at \$100), Middlebrook Law Firm (valued at \$100), Hennepin County Library (valued at \$295); and \$100 donated by Creekside Buyer’s Club to the Mayor’s Volunteer Recognition Breakfast for entertainment.

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**

City Manager Mark Bernhardson noted the regular meetings in April will be held on the 2nd & 4th Mondays with study meetings ahead of those regular meetings starting at 5:30 pm and that the study meeting scheduled for April 19 is cancelled.

Elkins reported on the National League of Cities (NLC) conference he recently attended. He stated a second, smaller round of TIGER grant funds in the amount of \$600 million is anticipated with a heavy focus on multi-modal transportation with good connections between transportation and land use. He mentioned the American Boulevard Bus Rapid Transit (BRT) stop in conjunction with the 494/35W redesign project is the type of project that could potentially score very well on the TIGER applications. He encouraged City staff to get those ready for submission to the Minnesota Department of Transportation (MnDOT) as soon as possible.

ITEM 6.1 continued

Peterson reported on the meetings he attended during the NLC. He stated the focus was on the national broadband plan and the interest in developing the administration for it. He reported the FCC made a presentation at the conference on developing the plan. He stated the issue in Bloomington is access to right-of-way that might influence Bloomington. He explained in Bloomington, the City can only charge for recovery in the access. He talked about market structure. He stated Bloomington could use more broadband competition besides Comcast to create better pricing. He reported there was a call to action by the Administration on the broadband plan.

Bernhardson also attended the NLC Conference and stated most of the speakers were cabinet secretaries. He reported there were a number of proposals presented the week before the conference. He stated the log jam should free up once the healthcare issue gets decided. He stated the House has passed some transportation funding but it probably won't happen until the lame duck session.

Elkins stated the highway trust fund is running low and it won't get resolved without an increase in the gas tax but no one has the courage to say so.

Bernhardson mentioned the TIGER II funds as a possible funding source for 494/169 but stated the focus of those funds will be on a more multimodal approach.

Public Works Director Karl Keel stated there are three possible funding scenarios for 494/169: TIGER funding, (for which the City was not successful), a second stimulus package, which hasn't transpired yet, and leftover stimulus funding and a loan that the Minnesota Department of Transportation (MnDOT) had received from the Met Council, of which approximately \$34 million had to be paid back to TAB. Last week TAB voted to allow MnDOT to keep that \$34 million to use for the 494/169 project. That filled the bulk of the gap in the third scenario of leftover stimulus funding. He stated MnDOT is assuming they have a funded project and should be going out for a Request for Proposal (RFP) on a design/build contract sometime in June for an award in September. Bulk of work should start next spring. He mentioned the project that won't get funding because of the horse trading to get funding for 494/169.

Nordstrom reported Tom Kendall talked about the Bloomington Heritage Days event he is working on at a recent Rotary meeting. She stated the event is being planned for September 18 and would take place in the downtown Bloomington area near Lyndale & 98th Street.

Winstead commented the City's role in this event is yet to be defined.

PUBLIC COMMENT PERIOD continued

Speaker #1: Tom Nightengale, 4300 Morris Lane

He stated he's being attacked by Environmental Health staff and provided Council with copies of a letter the City sent to his wife. He stated he received the letter on February 24 but didn't pay much attention to it because of the address of 4732 111th Street. He stated it's regarding an old trailer. He described what was in the trailer and said he was planning to take it to the dump. He mentioned he's had several conversations on this with Environmental Health staff. He mentioned the Public Health Nuisance Notice the City put on his front door. He stated he took the trailer to the dump. He said he notified the City so they could come and take the notice off his door. Staff set up the time to remove the notice at 3:30 pm. He stated two police officers accompanied the two Environmental Health staff members when she came to take the notice off his door resulting in four City employees on this one particular visit. He said he went over all of the steps with staff. He stated staff pointed out two tires on the trailer (one without a rim and one that was stuck to the bottom of the trailer) and wouldn't dismiss the orders until the tires were removed from the trailer. He stated he brought a tire up onto his deck. He stated he's never threatened anyone and he's dealt with the same Environmental Health staff person for a long time. He stated he drove around his neighborhood with Council member Hulting and they saw junk in other people's yards.

Winstead requested a report from Police and other appropriate City staff on Nightengale's issues.

Bernhardson replied staff will investigate and reply by letter to Nightengale with copies to Council.

**PUBLIC COMMENT
PERIOD continued**

Speaker #2: Peter Clement, 8319 Wyoming Avenue South

His comments related to the current animal law regarding chickens. He stated current law requires a 100-ft. setback and addresses the number of chickens. He stated most other cities have adopted a 20-ft. setback. He provided Council with a copy of his letter.

Winstead stated the current conditions will be allowed until June 1, 2010, at which time the Council will reconsider this issue.

Bernhardson stated staff is looking at what type of animal control and the actual number of animals that would be allowed per the ordinance. He commented although the Council will be revisiting its ordinance, not everyone likes chickens.

Speaker #3: Chris Fields, 11309 Ridge Circle

He stated he's spoken with Council members Amy Grady and Tom Hulting about his encounters with Environmental Health staff. He stated he hasn't had any complaints about his property regarding trucks, trailers or weeds on his property. He stated he called the City to inquire about his violations and was told of the random, selective enforcement it uses to conduct inspections. He stated Environmental Health should operate 24 hours like the Bloomington Police Department. He suggested then Environmental Health staff would know what is happening after 4:30 pm. With regard to non-residential trucks, he stated there are some descriptions but not definitive ones. He was told he couldn't have a 1-ton personal truck in his driveway and yet someone down the street has a Comcast truck parked in their driveway. He asked why they don't get noticed. He inquired why there isn't a policy and procedure like the Police Department has with regard to enforcement. He stated he is currently in complete compliance.

Winstead thanked Mr. Fields for his comments and stated the City would respond.

Speaker #4: John Jacobs, 8518 4th Avenue South

He spoke on the same subject – regarding the stuff at his house. He stated the letter he received from the City was disturbing. It's about what he can store in his garage and who can be at his house. He stated he's been dealing with the same Environmental Health staff person as Mr. Nightengale. He stated he received a letter from this staff person for plows that were sitting in his driveway for three days so he asked the City for more time. He stated he might have a trailer sitting in his driveway. He mentioned there are others in Bloomington with worse yards adding, "once you're on the City's radar, they come and watch often." He stated this borders on harassment.

Speaker #5: Casey Wiseman, 9252 Green Briar Road

He expressed concern with all of the potholes he and others are dodging on Collegeview Road. He stated the real problem is how people try to avoid hitting the potholes by driving down the middle of the road creating a dangerous situation. He asked about the temporary patches.

Winstead replied Collegeview is in bad condition and will be reconstructed this year. He stated the City is currently doing "cold" patches until it can do the "hot" patches.

Hulting referenced the comments provided by Mr. Nightengale and stated he visited his home today over his lunch hour. He stated Nightengale had sent him several digital photos of his property after he received his first notice from the City and before the second inspection. He stated Nightengale essentially had three Hefty bags in a trailer with the top 8 inches being visible from the road. He stated he surveyed a quarter of a mile radius from Nightengale's home and saw easily a half dozen situations where there were six or more Hefty bags sitting alongside of garages. He stated Nightengale has a batting machine sitting in front of his garage that was characterized by the City as "industrial" equipment. He stated Nightengale's residence pales in comparison with others in his neighborhood in terms of violations. He stated something else must be going on. He asked what triggered Environment Health to keep going to Nightengale's property. He stated it appears to him that Nightengale's property is being singled out.

PUBLIC COMMENT PERIOD continued

Winstead stated staff needs to check and see if there are any outstanding orders for the surrounding properties also.

CLOSED PUBLIC COMMENT PERIOD

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

**Approved On-Sale
Liquor Special Event
License for Church of
The Nativity of Mary
9900 Lyndale Ave. S.
ITEM 5.1A**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve an On-Sale Liquor Special Event license application for Church of The Nativity of Mary at 9900 Lyndale Avenue South for their fundraiser event scheduled on Friday, April 23 from 6 pm to 1 am.

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

**Therapeutic Massage
Business Violation
ITEM 5.1B**

**(Relaxation Massage)
R-2010-16**

Associate City Attorney Lisa Netzer provided an overview on the five therapeutic massage license violations and stated Licensing Examiner Doug Junker would be presenting the cases. She stated in 2009, the Bloomington Police Department received many complaints about massage therapy enterprises in Bloomington. As a result, the Police Department conducted an undercover inspection. She stated out of all the businesses, five were found to have license holders who had violations occurring within their establishments. Four license holders will be appearing tonight except for Bloomington Asian Massage who informed staff she would not be returning to Minnesota for this hearing tonight and was going to close her business. She stated an interpreter is present for the three license holders who requested one. She referenced the spreadsheet she provided Council summarizing the facts relating to the five violations as well as staff's respective recommendations. She explained there is no prior staff action available on this type of violation. Stipulation of Facts were provided to the Council. She explained the actions Council could take and the two types of resolutions they could adopt (revocation or suspension). She stated Bloomington's ordinance allows the City Council to take one of the following three steps: 1) Take no action, 2) revoke the license, in which case the license holder could never reapply for another one in Bloomington, or 3) suspend the license and for what specified period of time. She explained in the case of a suspended license, the license holder could reopen after the suspension and could reapply and renew their license in the future with the City of Bloomington. She stated per Minnesota case law, "the Council must determine if the license holder has permitted such violations in the operation of his/her business that the continuance of that business is detrimental to the public good." She stated "permitted" implies no affirmative act or no intent on the part of the license holder." Instead, mere passivity or abstaining from preventive action is the same thing as permitting. She stated license holders are held to a higher standard. She stated ignorance on the part of the license holder is not a defense they can use nor can they delegate that responsibility to another employee. If their name is on the license, they're responsible for what happens at their business. Each licensee needs to be responsible for their employees' conduct at their business.

Junker presented the following five license violations reading from the Stipulation of Facts:

1. Relaxation Massage, 674 West 92nd Street (Lai Fung Poon)

On November 24, 2009, an undercover cop received a massage from a therapist whose license expired on January 26, 2010. After the massage, the therapist engaged in an act of prostitution. Based on this activity, the Bloomington Police Department executed a search warrant of the business on January 26, 2010. Two female employees, neither of whom were licensed by the City, were performing massages on two males in two separate rooms. One of them was Kennedy who owns Oriental Massage Therapy located at 10558 France Avenue South. She stated she was helping watch Relaxation while the owner was gone. The therapist on November 24 faces gross misdemeanor offense with prostitution in a public place and an improper massage. Kennedy and the other therapist are facing charges of misdemeanor offenses of massage without a license. Lai Fung Poon faces charges of misdemeanor offense of employment of an unlicensed massage therapist.

**Therapeutic Massage
Business Violation
ITEM 5.1B continued****(Relaxtation Massage)**

Grady inquired if two therapists without licenses ever possessed them.

Junker replied when Kennedy was found doing a massage she was licensed under the City's old ordinance (two-year affidavit) but that had expired.

Speaker #1: Cliff Todd & Lai, Fung Poon (Business partners planning to be married) Mr. Todd stated when this violation occurred, they were building a warehouse in Asia. He stated Ms. Poon has spent \$28,000 to remodel the building that houses Relaxtation Massage. Together they have spent approximately \$54,000 locally, as they are renting an apartment in Bloomington. He stated they want to remain in business and be a part of this community.

Winstead asked Poon if there was anything she wanted to add.

Poon stated, through the interpreter, that she loves and is devoted to Bloomington. She has a business here but needed to spend time on business outside of Bloomington. She apologized for the mismanagement of her business and stated it is was not her intention to mismanage it. This was an unfortunate case.

Hulting inquired what happened to the others referenced in the paperwork.

Netzer replied the City has charged the gross misdemeanor prostitution case but it has not been processed by the court yet. It's still in process. The misdemeanor charges of massage without a license have been processed and have been assigned court dates in April.

Todd replied they are no longer there.

Hulting asked if it was reasonable to suspect that these individuals were running a side business out of Relaxtation or were they a part of it.

Todd replied the others were not part of Relaxtation Massage. He stated they were not aware of the situation until they got a phone call about a problem in Bloomington so they cancelled a \$1,600 plane ticket to deal with it. And now they are here. He suggested the Council consider a common sense fourth option of a probationary period that would allow Poon to stay open. He said it would never happen again.

Elkins inquired if Poon is able to adequately supervise the business.

Poon replied yes. She stated she has a side job involving computers and that she could hire someone capable of supervising the business.

Todd replied their business in Asia is almost all computerized.

Wilcox referenced a claim that she was told not to get a license.

Todd stated Poon never told her not to get licensed. He stated he believes the other gal tried to get licensed but might have been denied by the City.

Poon stated she would never tell an employee not to apply for a license.

Wilcox stated he is bothered that no one had a license and that Poon doesn't take it seriously.

Poon stated she trusted someone else who appeared competent to run the business in her absence.

Nordstrom inquired how long has Relaxtation been in business.

Todd replied since August of 2009. He stated it's the only place she owns.

**Therapeutic Massage
Business Violation
ITEM 5.1B continued**

(Relaxation Massage)

Wilcox inquired if there is any connection to Oriental Massage.

Poon replied there is no relation between the two businesses. She knew the other person from having gone to massage school.

Grady stated this business is listed on an erotic massage Website and that it's advertised as that.

Todd restated they want to become a part of Bloomington and if Poon had been there this violation wouldn't have happened.

Winstead asked if Poon was shocked that acts of prostitution took place.

Todd replied yes she was and apologized for it happening. He stated if they can continue the business, they will operate it above reapproach.

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to close the public hearing on the therapeutic massage license violation that occurred at Relaxation Massage.

Grady commented these licenses are in place to protect people and because there were two people operating in that business without licenses she recommended revocation of the license.

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to adopt a resolution revoking the Massage Enterprise License and Massage Therapist License of Lai Fung Poon, dba Relaxation Massage located at 674 West 92nd Street.

**Therapeutic Massage
Business Violation
ITEM 5.1B**

**(Oriental Massage
Therapy)
R-2010-17**

2. Oriental Massage Therapy, 10558 France Avenue South (Min Zheng Kennedy, owner)
Junker described the incident that occurred on November 24, 2009, when a Bloomington Police Department uncover officer received a 16-minute massage from a therapist named Teng. He stated Teng is not licensed to perform massage in Bloomington. Teng is facing a charge of misdemeanor offense of massage without a license. He stated on February 9, 2010, an undercover officer wore a listening device while receiving a massage from He. He is not licensed to perform massage therapy in Bloomington. Another patron was receiving a massage from a therapist named Ren who is not licensed to perform massage in Bloomington. On February 9, the officers spoke with Kennedy who admitted she was the business owner and that He and Wren worked for her business. Both He and Ren face a misdemeanor offense of practicing massage without a license. Kennedy faces charges of a misdemeanor offense of employment of unlicensed massage therapists.

Grady commented Teng was later found performing massage at Plum Blossom without a license and inquired why that establishment isn't on this list of violations.

Junker replied Plum Blossom is not a licensed business so it will be dealt with only as a criminal offense.

Speaker #1: Min Zheng Kennedy (Owner)

Through the interpreter, she stated there is an individual massage therapist that was alleged to have worked in her shop without a license. She stated she had no knowledge of this person or of them working in her shop. She was not there when this unlicensed therapist was there.

Winstead inquired if Kennedy is alleging that she was not aware of all of the people working that were listed in the stipulation or just one.

Kennedy stated she had no knowledge of the therapist that was working in her shop in November. That person was invited by one of her employees and Kennedy had no knowledge of her. She stated there were only two working in her shop without a license.

**Therapeutic Massage
Business Violation
ITEM 5.1B continued**

**(Oriental Massage
Therapy)**

Winstead stated one stipulation identifies a therapist named Teng and another stipulation identifies an unlicensed massage therapist named He and one named Wrenn and asked if Kennedy knows any of them.

Kennedy stated she was forced to sign the Stipulation of Facts or she would be arrested. She stated she doesn't know why that person was working in her shop in November. She acknowledged there were two that were working without license.

Winstead inquired about the fact that Kennedy didn't have a license either.

Kennedy stated she was asked to replace an employee that had gone back to California and that it was unfortunate she was working just that one morning.

Winstead commented on the fact that Kennedy said she was forced to sign the stipulations.

Netzer explained the Stipulation of Facts were mailed to Ms. Kennedy and that she came in to sign one of them while the other one she brought in was already signed. Netzer stated both stipulations arrived in her office signed.

Kennedy stated there was a restriction noted in the bottom of the letter that she interpreted as meaning if not signed, she would be arrested.

Winstead inquired if Kennedy was unclear regarding the stipulation.

Kennedy confirmed that was the condition under which she signed the stipulations.

Netzer showed copies of the two stipulations that were sent to Kennedy and stated there was nothing in them to entice Ms. Kennedy to sign it. This is not a criminal proceeding. Staff simply mails it and asks for a signature. She stated there was no communication by Ms. Kennedy to her office.

Winstead inquired if Kennedy had received any legal advice upon receiving the stipulations.

Kennedy replied no because she didn't think she had committed any criminal offense plus it would have cost her a fortune to get legal advice.

Nordstrom asked how long the Oriental Massage business has been open.

Kennedy stated she started in business in August of 2008.

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to close public hearing on the therapeutic massage license violation that occurred at Oriental Massage Therapy.

Peterson stated after looking at the list of folks doing massages without a license, this one rises to the level of revocation.

Motion was made by Peterson, seconded by Nordstrom, and all voting aye, to adopt a resolution revoking the Massage Enterprise License of Min Zheng Kennedy, dba Oriental Massage Therapy, LLC located at 10558 France Avenue South.

**Therapeutic Massage
Business Violation
ITEM 5.1B**

**(Yuan-Yuan Spa)
R-2010-18**

Junker presented the next violation:

3. Yuan-Yuan Spa, 8746 Lyndale Avenue South (Qinqi Lu)

Junker stated on September 9, 2009, an undercover Bloomington Police officer received a 60-minute massage from Lede. On December 31, 2009, an undercover officer received a massage that started with Qinqi Lu until another therapist named Li Di finished the massage. On January 19, 2010, an undercover officer received a massage from Jesse. He stated none of the females listed above were identified. There was no record of their proper names nor were there any licenses matching the names of these therapists.

**Therapeutic Massage
Business Violation
ITEM 5.1B continued****(Yuan-Yuan Spa)**

Grady inquired if there should be three different violations of performing massage without a license, as the incident on September 9, 2009 with Lede was missing from the spreadsheet.

Junker confirmed there should be three incidences listed on the spreadsheet.

Speaker #1: Eric Olson, Attorney Representing Qinqi Lu dba Yuan-Yuan Spa
He asked the Council to consider the standard, which is to determine if the licensee has been guilty of such an unlawful conduct in the operation of its business that its continuance is detrimental to the public good. He stated Ms. Lu's business is not a detriment to the public good. He stated there was criminal activity taking place in some of other establishments but in this case, it's only a matter of having unlicensed therapists. He stated some employees of Ms. Lu may have come to City Hall to get a license but weren't given one. He stated his client understands that the therapists need licenses and there will no other individuals working for her that are not properly licensed. He stated when the undercover officers went to Ms. Lu's establishment, they were looking for some type of illegal activity but they found none. He stated the officers said none occurred and that the therapists appeared professionally trained or had experience in massage therapy. He said having unlicensed therapists could lead to other criminal activity but that was not the case at Yuan-Yuan Spa. He stated no propositions were made during any of the three visits made by the undercover officers. He stated that type of illegal activity has never and will never occur at Ms. Lu's business. He stated she won't have any other unlicensed massage therapists working for her. He stated she is a licensed massage therapist so she can perform the massages on her own, which she will do until she can employ someone else to do that. He stated his client is not making excuses and if given a second chance, she will operate a legal business and will follow the City's ordinance.

Winstead inquired if Ms. Lu understands what her attorney is representing.

Ms. Lu replied yes she does.

Winstead stated for clarification this is a license hearing and is not a criminal proceeding so the standard can be different. The activity that took place in this establishment was by unlicensed or unidentified massage therapists, which is outside of the proper procedure.

Wilcox inquired if there was a posted price schedule because it seems everyone is charged a different price. He asked what dictates the price.

Lu replied there is a fixed price except for the \$10 discounts given out on their first day.

Wilcox stated the police were there to check on illegal operations and operating without a license is illegal.

Nordstrom inquired how long has Ms. Qinqi been in operation.

Lu replied since May of 2009.

Nordstrom inquired if Lu is aware that her business is listed on the erotic Website.

Olson replied any business can end up getting posted on a Website like that without their knowledge and asked the Council not to rely on that information.

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to close the public hearing on the therapeutic massage license violation that occurred at Yuan-Yuan Spa.

Grady stated there were three unlicensed employees at this one and made the following motion:

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt an amended resolution revoking the Massage Enterprise license and Massage Therapist license of Qinqi Lu, dba Yuan-Yuan Spa located at 8746 Lyndale Avenue South, to include the additional incident that occurred on September 9, 2009.

**Therapeutic Massage
Business Violation
ITEM 5.1B****(Best Massage)
Continued to April 12**

4. Best Massage, 9923 Lyndale Avenue South (Yen Ping “Michael” Chang, Owner)
Junker stated on January 19, 2010, an undercover officer received a 60-minute massage from a woman identified as “Lely” who was later identified as Chunhong Guo who was not licensed to perform massage therapy in Bloomington. Based on the criminal activity, the Bloomington Police executed a search warrant of the business on January 26, 2010. During that search of the business, Police found two female employees. Officers detained Guo and Cristi Lin Hoffpauir. Hoffpauir is licensed in the City of Bloomington. Guo stated she had been working at Best Massage for approximately three weeks and stated she works at Best Massage every day and averages three massage customers per day. He stated she knew she needed a license to perform massages. He stated Ms. Guo is facing a misdemeanor charge of massage without a license and Mr. Chang is facing a charge of misdemeanor offense of employment of an unlicensed massage therapist.

Speaker #1: Loren Gross, Attorney Representing Michael Chang (Owner)
Gross explained that Ms. Guo had applied for a license on January 11, 2010, but she never heard back from the City. He said in the meantime, she was hired by Chang to take appointments and answer the phone, etc. and that she was not to be doing massages. He stated Cristi Lin Hoffpauir was the licensed therapist on site. He stated Chang does have a license as the owner of the business. He stated Chang assumed Guo was going to be receiving a license from the City and doesn't know why she hadn't received one. Gross stated she is an experienced masseuse and had done this work before. He stated she hadn't been approved or denied during an 8-day period. He stated he doesn't believe any of the complaints have been about Chang's business. He stated something other than revocation seems more appropriate in this case. He said Chang is a local character. He graduated from Kennedy High School. He used to work at the Mandarin Yen Restaurant in Bloomington and wants to stay in Bloomington and run a legitimate business. Gross stated he had advised Chang that he had to be very careful about prostitution. He stated since these violations occurred, Chang now has four cameras that run 24 hours and located in his lobby. He stated Ms. Guo was terminated immediately and has left the state so Chang now has three licensed massage therapists. He stated their licenses and photographs are displayed on the lobby wall of Chang's business. He stated the unlicensed therapist was not supposed to be giving any massages at that time. Gross disputed the fact that Guo had performed three massages per day. He stated that is impossible, as that is all that was being done in that place. There was a licensed masseuse there who was doing approximately three massages per day. He stated Ms. Guo did very few massages if any.

Winstead questioned if there were there were three massages performed each day, was there a side business going on that Chang wasn't aware of.

Olson stated according to Chang, Guo has very bad English and is mistaken in terms of what she told the police officers.

Chang stated they have averaged between 2-3 massages per day because it is a new business.

Winstead inquired if Chang knew Guo had worked at another establishment in Bloomington and had never been licensed.

Chang replied he was aware that she was with Yuan-Yuan Spa when he hired her and that she was trying to get her license. He stated she was supposed to answer phones and take appointments while she was waiting to get her license. He apologized for this situation.

Wilcox asked Chang how many hours per day he spends at his business.

Chang replied he owns a couple of rental properties so it's hard for him to be at Best Massage very much. That's why he has cameras that go to his office and his home.

**Therapeutic Massage
Business Violation
ITEM 5.1B continued****(Best Massage)**

Wilcox inquired if Chang really knows what is happening at his business when he's not there.

Chang stated this is a risk to his business. That is why he has hired three licensed therapists. He stated you have to trust your employees. He stated he would do his best to make sure nothing more happens in his store.

Nordstrom inquired when he opened his business.

Chang stated he opened one month before this incident occurred.

Nordstrom inquired why he opened this business.

Chang replied he needed to generate some money for his rental properties in case he can't find good renters.

Gross stated Chang's business is somewhat seasonal as he does landscaping and plowing.

Nordstrom inquired how Chang can be making any money from only four massages per day. She stated his business is also on the erotic Website.

Grady stated the Signed Stipulation references the massage on January 19, the criminal activity observed by the officer on January 26. She asked if there were two incidents.

Netzer stated there was a mistake on the date and that it should read, "based on the observations on January 19, Police went ahead with a search warrant on January 26." There were two incidents; January 19 and 26.

Gross commented on the records that were taken from the business and the licensed masseuse and that they found no criminal activity. He stated the only potential criminal activity is the unlicensed masseuse on the location.

Netzer explained this is one incident of a massage without a license. She clarified there was only one incident so a period should be inserted at the end of "January 19, 2010" and cross off "and January 26."

Elkins asked Chang why there appears to be a pattern of unlicensed massage therapists moving back and forth between businesses.

Chang stated it takes a long time for out-of-state residents to get a license, as Bloomington requires up to 600 hours of training. He stated many live out of state and it can take 4-6 weeks to get a license. He stated background checks take longer. He added Guo was terminated when she made a bad decision to do a massage without having a license.

Speaker #2: Chris Fields, 11309 Rich Circle

He inquired if there were licensed massage therapists in Bloomington other than Asian masseuses.

Winstead stated yes and that many are located in sports clubs, in chiropractic offices, in hotels, etc.

Fields inquired if this was a random thing.

Winstead stated he understood the direction of Fields' question and that since these violations are all at Asian businesses is that all the City looked at. He explained the City looked at all of its therapeutic massage licenses within the city.

Fields stated he resented the fact that the Mayor thought that was the direction he was going. He said he was just curious. He stated these are sources of income for these people and that revoking a license for these "incidents" seems very harsh.

**Therapeutic Massage
Business Violation
ITEM 5.1B continued**

(Best Massage)

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to close public hearing on the therapeutic massage license violation that occurred at Best Massage.

Hulting inquired as to the appropriate length of a suitable suspension. He stated in Chang’s case, he’s made an investment in licensing a number of individuals. He appears to be committed to running a legitimate business.

Bernhardson inquired if other licensees had licensed masseuses. He stated the City’s ordinance doesn’t address fines so none could be imposed. With regard to the length of time for a suspension, it’s up to the Council.

Junker replied all of the establishments had a licensed masseuse at some point.

Wilcox inquired about Chang having only one licensed masseuse.

Chang replied he has hired two masseuses (Eva and Shirley) since the violation and that they each have a certified license good until May 31, 2010.

Junker explained once a therapist is licensed with an establishment, Bloomington allows you to practice massage throughout the city of Bloomington. He stated it sounds like Chang has subcontracted with another licensed facility to use a couple of their licensed therapists in his store. He said he would verify that. He stated it sounds like the two therapists might be from the Mall of America location. In other words, once they are licensed, they can work at other places.

Peterson floated the suggestion of a two-week suspension for discussion.

Winstead stated he knows Chang as a business owner in the community and that he is troubled that this establishment operated outside of the rules, as he allowed unlicensed massage therapists to work there. He claimed the owner knew the rules but allowed someone to work there anyway.

Grady commented Chang is busy doing other things and questioned how much control he has over his business.

Peterson stated he is troubled with the testimony regarding the supervision of the business. He stated watching the business from home doesn’t meet his standards.

Wilcox suggested continuing this violation, as he’d like to know if the two therapists are properly licensed and requested staff provide verification of that.

Nordstrom commented she doesn’t want Bloomington to be known as a community that fosters massage parlors. She’d like to see these establishments go away.

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to continue to the April 12, 2010, Regular Council meeting, the massage therapist violation that occurred at Best Massage Therapist LLC dba Best Massage (Yen Ping “Michael” Chang, owner) located at 9923 Lyndale Avenue South so staff can determine if the recently hired help has the proper credentials to perform massage therapy in Bloomington.

Wilcox stated he wants to make sure there is no connection between Chang’s rentals and the people from out of town and his employees. He wants to know how long the current therapists have had licenses.

**Therapeutic Massage
Business Violation
ITEM 5.1B**

**(Bloomington Asian
Massage)
R-2010-19**

5. Bloomington Asian Massage, 8905 Penn Avenue South (Li Ying Li)
Junker explained there is no signed stipulation but the owner informed him she was closing the business. He stated in January 20, 2010, an undercover officer received a massage from Mei. After approximately 15 minutes, Mei began an act of prostitution, which the officer told her to stop and said no. He stated that female remains unidentified.

**Therapeutic Massage
Business Violations
ITEM 5.1B continued**

**(Bloomington Asian
Massage)**

Netzer reported the charges have yet to be countersigned by the District Court.

Bernhardson stated even though this person says they are closing the business, the Council still needs to act on the license to prevent this licensee from coming back in the future to get another license.

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to adopt a resolution revoking the Massage Enterprise License and Massage Therapist License of Li Ying Li, dba Bloomington Asian Massage located at 8905 Penn Avenue South.

No public testimony was received on this violation.

Short Recess

The Council took a 10-minute recess to allow Jefferson High School students to get their agendas signed off by Council members.

**Continued to April 12
Ordinance Modifying
Therapeutic Massage
Licenses
ITEM 5.4C**

Winstead stated this ordinance has been recommended for continuance to April 12.

Motion was made by Nordstrom, seconded by Peterson, to continue to the April 12, 2010, Regular Council meeting, an ordinance modifying therapeutic massage licenses thereby amending Chapter 14 of the City Code. Motion passed 5-0-2 (Wilcox and Hulting temporarily absent.)

**Approved Revised
Final Development
Plan for Friendship
Village (Lifespace
Communities)
8100 Highwood Dr.
Case 7975A-10
ITEM 5.2A**

Planning Manager Bob Hawbaker showed an aerial of Friendship Village and explained this application is to remove two garages and parking areas for the construction of an 18,000-square foot fitness center with a swimming pool and exercise area. It will be connected to the main center. He stated the fitness center will displace two parking garages (one with 22 stalls and one with 8 stalls) and 33 surface parking spaces. He stated all of the 63 parking spaces will be replaced either in the proposed underground garage (35 spaces) or by new surface stalls created along the service road. He stated both the Planning Commission and staff recommend approval with conditions.

Nordstrom commented she is glad to see a fitness center in this facility.

Motion was made by Nordstrom, seconded by Grady, and all voting aye, to approve a Revised Final Development Plan for a fitness center, underground parking, and new surface parking at 8100 Highwood Drive (Friendship Village), Case 7975A-10, subject to the following 10 conditions and 14 Code requirements being satisfied prior to the issuance of permits:

1. A development agreement, including all conditions of approval, shall be executed by the applicant and the City and shall be properly recorded by the applicant with proof of recording provided to the Director of Community Development;
2. The Grading, Drainage, Utility, Erosion Control and Traffic Control plans shall be revised for approval by the City Engineer;
3. A Stormwater Maintenance Plan shall be provided that is signed by the property owner and filed of record with Hennepin County;
4. A Nine Mile Creek Watershed District Permit shall be provided;
5. A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) shall be provided if greater than one acre is disturbed;
6. An Erosion Control Bond shall be provided;
7. Sewer Availability Charges (SAC) shall be satisfied;
8. A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit shall be obtained or notification from the MPCA that this permit is not required shall be submitted to the City;

and subject to the following conditions:

9. All construction stockpiling, staging, and parking take place on-site and off of adjacent public streets and public rights-of-way; and
10. All loading and unloading occur on site and off of public streets.

ITEM 5.2A continued

and subject to the following Code requirements:

1. Operations on the site must comply with the noise standards in Sec. 10.29.02;
2. Exterior building materials shall be approved by the Planning Manager (Sec. 19.63.08);
3. Landscape plan be approved by the Planning Manager and landscape bond be filed (Sec 19.52);
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 screened and stored inside the principal building (Sec. 19.51);
7. Recyclable materials shall be separated and collected (Sec. 10.45);
8. Building shall be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code Sec. 903, MN Rules Chapter 1306; MN State Fire Code Sec. 903);
9. Fire lanes be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3);
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, MN State Fire Code Sec. 508);
11. Electronic utility as-builts, per City of Bloomington requirements, shall be submitted to the Public Works Department prior to the issuance of the Certificate of Occupancy.
12. Connection charges shall be satisfied;
13. Parking lot and site security lighting shall satisfy the requirements of Section 19.54 of the City Code; and
14. A Uniform Sign Design in conformance with the requirements of Chapter 19, Article X of the City Code shall be approval by the Planning Manager.

No public testimony was received.

Accepted Feasibility Study & Adopted Resolution Ordering Improvement Project (City Project 2010-303) ITEM 5.3A R-2010-20

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to accept the Feasibility Study and adopt a resolution ordering improvements for the 2010-303 Richfield Bloomington Credit Union Improvement Project. The project consists of replacing all curb along Lyndale Avenue and West 96th Street, constructing sidewalk along Lyndale Avenue and West 96th Street, constructing driveway approaches on Lyndale Avenue and West 96th Street, and modifying the traffic signal at Lyndale Avenue and West 95th Street.

The estimated project cost is approximately \$290,000 with 100% assessment to the petitioning property owner, Richfield Bloomington Credit Union.

No public testimony was received.

Adopted Ordinance Rezoning Multiple Parcels to C-4, Freeway Office Case 10002A-10 ITEM 5.4A O-2010-6

Senior Planner Glen Markegard provided the staff report on an application by the City of Bloomington to rezone 25 parcels to a new commercial zoning district C-4, Freeway Office. He stated the three areas to be rezoned include: The area west of East Bush Lake Road (3 separate areas), the area south of 98th Street (west of 35W) and (south of 106th Street east of 35W). He stated these are currently zoned FD-1 and FD-2 Freeway Development and allow office, hotel, warehouse and manufacturing uses among others. The C-4 District would also allow office and hotel uses, office warehouse and health club uses that are currently existing among others. He stated manufacturing and pure warehousing would not be allowed. He stated one comment letter was received from Kraus-Anderson supporting tonight's rezoning but expresses concern about future unrelated rezonings. He stated staff and Planning Commission recommend approval.

Elkins asked staff if they were aware of the signage issues for one of these properties located on the north side of 494, Advanced Auto Parts headquarters.

Bernhardson reported staff is aware of it and is working on a response.

ITEM 5.4A continued

Speaker #1: Parham Javaheri, Representing Lifetime Fitness (Owners of 6701 West 78th Street & 9930 Bloomington Freeway)

Javaheri expressed two concerns; one with each parcel. He stated one concern is the change in allowed uses for the property at 6701 West 78th Street. Their concern is about losing the marketability and resale of that property due to the changes in the office/warehouse use. They are also concerned with the change in residential use going from a conditional use to an accessory use, as that property could be a candidate for a high density residential use. They would prefer it stay a conditional use. They understand what the City is trying to do but the office market is not a hot real estate market at this time so it will extend the period that they hold onto this property. He stated this will limit the potential uses on their property. He asked the Council to do something about high density and office/warehouse. He stated the grandfathering of existing fitness clubs is helpful. He requested this be grandfathered as a fitness club regardless of whether it changes names. This particular club has had a high membership so they want to have the ability to improve it in the future. He asked what would happen if they want to add onto it or rebuild in its place in the future. They don't want to hinder the progress of this club in Bloomington.

Winstead asked the question ... what would happen if they want to expand or rebuild.

Markegard explained for the existing health club south of 98th Street, that use will remain a conforming use. It would not be a grandfathered use. If they were to totally redevelop that site, that use would still continue to be a conforming use and they would be able to expand but they would have to meet the C-4 development standards, which includes setback differences and Floor Area Ratio (FAR) differences. They could scrape the building, expand it, or remodel. He stated office/warehouse, similar to health clubs, is allowed as an existing use but it won't be allowed as a new use. As a result, that parcel would be affected in terms of limiting the scope of potential redevelopment. He stated residential uses are allowed in C-4 as accessory uses. Residential should be accessory to a commercial use rather than a pure freestanding residential use. He stated retail is an accessory use. It could be oriented towards the hotel's internal users or an office building could have a shop or two, which would be oriented towards the office tenants. He stated office/warehouse is allowed as an existing use if it is in use as of January 2, 2010, but not as a new use.

Grady commented retail is prohibited in District C-4 per the Zoning District Comparison chart.

Markegard stated the Chart is incorrect. He said commercial retail would be allowed as an accessory use.

Hulting inquired as to the driving force behind some of these rezoning initiatives. Why is the City initiating these before a developer comes in to ask for something different?

Markegard stated the City adopted a series of new commercial zoning districts three years ago to be applied over time and now is the time to implement those rezonings. He explained the main difference between the C-4 and Freeway Development Districts is that the Freeway Development Districts allow manufacturing and warehousing uses, which was the initial vision along the freeways. He stated that vision has changed and new industrial uses occurring now should be focused on those established areas. He stated freeway adjacent sites are to be reserved for higher employment uses. He stated a lot of new manufacturing and warehousing uses are looking for cheaper land, which is not located along the freeway.

Elkins stated this is a top to bottom modernization of our zoning districts.

Peterson stated the Duke parcel is an example similar to this and that Council is trying to find the closest fit.

Javaheri stated they understand what is going on and they're not opposed to it just expressing some concerns.

ITEM 5.4A continued

Winstead stated for the record they can enlarge, rebuild, enhance, etc.

Speaker #2: Bruce Malkerson, Representing Lifetime Fitness

He stated the Code required the intent be codified for the future. He suggested adding the codification as a footnote. He stated he met with Planner Elizabeth Shevi and she suggested they send a letter to the City. He stated he would like to submit a letter for Council to vote on regarding its legislative intent.

Bernhardson suggested they send a letter so staff can review it and get back to them.

Speaker #3: Bruce Warner, 9026 Kell Circle, JGM Properties (Tenant at 10740 Lyndale)

He stated their concern is what if they convert some of the space in the office/warehouse to office and then want to change it back to warehouse again in the future.

Markegard stated staff would view the use as an office/warehouse. He stated the main issue is parking but it appears this site has a fair amount of parking.

Bernhardson stated the owner is the one ultimately responsible and Warner is the tenant so it would be a private party matter. He stated the property rights stay with the owner.

Speaker #4: Ken Vinje, Kraus-Anderson Realty

He referenced the letter they sent expressing concerns with 6301 Cecelia Circle. He too requested a letter of confirmation regarding the future.

Motion was made by Grady, seconded by Elkins, and all voting aye, to adopt an ordinance amending the Zoning Map to rezone certain properties located at 9801 Dupont Avenue, 9930 Bloomington Freeway, 7801, 7807, 7815 & 7825 Washington Avenue, 6625, 6701, 7500, 7504 & 7700 West 78th Street, 7801 & 7807 CreekrIDGE Circle, 6301 & 6401 Cecelia Circle, 7800 and a portion of 8000 East Bush Lake Road from FD-2, Freeway Development to C-4, Freeway Office; properties located at 801 West 106th Street, 10640, 10700, 10740 & 10800 Lyndale Avenue from FD-1, Freeway Development to C-4, Freeway Office; a portion of the property located at 10800 Lyndale Avenue from RO-50, Residential Office to C-4, Freeway Office; and properties located at 7508, 7600 & 7610 West 78th Street from R-1, Single Family to C-4 Freeway Office.

Staff indicated they would provide Council with more information clarifying future circumstances.

**Adopted Ordinance
Modifying Driveway
Approach Standards
Case 1000B-10
ITEM 5.4B1
O-2010-7**

City Engineer Shelly Pederson explained these multiple miscellaneous amendments regarding driveway materials are recommended for approval by the Planning Commission. She stated the first three feet from the curb is the area in question. She reviewed the existing Code requirements for asphalt and concrete. She stated staff recommends Modified Option 2B, which would require the City to reimburse the property owner for the cost of a replacement standard Portland cement driveway approach for the disturbed area due to a City construction project. She showed some driveway approaches and the 3-foot driveway behind the curb. She stated there are a multitude of decorative driveways in Bloomington. She stated after all of the studies and a review of the neighboring codes from other cities, a modified Option B was determined to be the best. She stated decorative bricks would be removed by the City’s contractor and they would be piled gently on the driveway. The City would calculate the area that was disturbed and would reimburse the homeowner for the cost of the concrete. He won’t need to make the apron, won’t need to sign an encroachment agreement and the City will give him an equivalent of a concrete driveway. He would be responsible for the installation of any different materials.

Grady inquired if someone could remove their own bricks/pavers.

Pederson stated the contractor would carefully remove the pavers and then staff would credit the cost of a concrete driveway so the homeowner could install his decorative driveway. They would not have to sign an encroachment agreement.

- ITEM 5.4B1 continued** Wilcox inquired if there would be an issue if the City's contractor removed the decorative stone.
- Pederson stated the City could offer an option for the homeowner to have his own contractor remove the decorative part for use later.
- Nordstrom referenced a fact sheet she was provided by resident Rob Lunz.
- Bernhardson stated the City is going to credit the owner a flat amount.
- Pederson stated if the curb has to be installed or reconstructed in a street reconstruction, undoubtedly a portion of the decorative driveway would be disturbed.
- Bernhardson mentioned other circumstances whereby driveway aprons could be disturbed.
- Peterson stated he likes the fairness of this policy and that no encroachment agreement is needed.
- Motion was made by Peterson, seconded by Wilcox, and all voting aye, to adopt an ordinance updating various standards pertaining to driveway approaches, thereby amending Chapters 15, 17, 19 and 21 of the City Code including the Modified Option 2B text in Section 17.13. Also included in the motion was direction to staff to add language pertaining to a reimbursement that would be available for homeowners who want to remove their own bricks/pavers rather than have the City's contractor do it.
- No public testimony was received.
- Adopted Resolution Directing Summary Publication of O-2010-7 ITEM 5.4B3 R-2010-21** Motion was made by Peterson, seconded by Wilcox, and all voting aye, to direct staff to publish a summary of Ordinance No. O-2010-7 updating application processes in the official newspaper rather than the 10-page ordinance itself.
- No public testimony was received.
- Updated Pavement Management Program Policy ITEM 5.4B2** Pederson provided the staff report on the Pavement Management Policy update and referenced an enclosure that was provided in the City Manager's Information packet regarding the calculation for the reimbursement to the homeowner for the cost of a Portland concrete driveway approach. She suggested something could be added to address the homeowner who wants to remove the bricks from his decorative driveway.
- Motion was made by Wilcox, seconded by Peterson, and all voting aye, to adopt the Pavement Management Program Policy as presented and discussed including direction to staff to add in language to address the homeowner who wants to remove or have his contractor remove a portion of their decorative driveway.
- No public testimony was received.
- Approved FY 2010 Community Development Block Grant Budget & Application ITEM 5.5A** Bryan Hartman, Housing & Redevelopment Authority (HRA) Program Manager provided the staff report on the FY 2010 Community Development Block Grant (CDBG) budget and application for submission. He explained the 2010 CDBG Program fiscal-year runs from July 1, 2010 to June 30, 2011, and the total budget for 2010 is \$801,000 with anticipated repayment of loans in the amount of \$300,000. The grant amount will be approximately \$401,000.
- Motion was made by Elkins, seconded by Grady, and all voting aye, to approve the FY 2010 Community Development Block Grant budget and application and FY 2009 adjustments.
- No public testimony was received.
- <Peterson left the meeting.>

**Approved Agreement
for Purchase of Alpha
Business Center at
8100 26th Avenue &
2600 East 81st Street
ITEM 5.5B1**

Port Authority Development Manager Jill Hutmacher presented information on one of the first implementation efforts staff is proceeding with in Bloomington's South Loop District. Her slide presentation included the following:

- Bloomington's Development Potential
- South Loop District Plan Goals
- Chart of Existing and Projected Development Totals
- South Loop Employment
- South Loop Assessed Value
- Scale Comparisons
- Plan Features
- Lindau Greenway

(The direction given at the July 28, 2009, Joint Council/Port Authority meeting was to proceed with a framework plan that included the Lindau Greenway but did not include the 24th Avenue realignment. They also directed staff to begin negotiations with Duke Realty for the acquisition of the property that would be needed to make the Greenway a reality.)

- Why is the Greenway Important?

- Grady inquired as to the height restrictions in the Airport Runway Zones.

Hutmacher replied they are limited to 4-5 stories in height. In terms of uses, a convention center would not be allowed or places where there would be large gatherings of people. Offices, hotels, and restaurants would be acceptable uses.

- Benefits of Lindau Greenway
- Greenway Acquisitions

(Five buildings owned by Duke Realty. [A distribution center, two office buildings and two flex space buildings.] She showed the parcel to the right that is currently owned by Metro Transit and is also being considered for acquisition. Discussions are occurring on how to mitigate the ponding on the site.)

- Duke Remnants

- Lindau Greenway Acquisition Budget:

- \$10.7 million (negotiated purchase price)
- \$2.5 million (acquire and mitigate parking or ponding on Metro Transit site)
- \$3 million (demolition and relocation costs)
- \$8.8 million (construction of roadway in 2013)
- \$500,000 (lease revenue taken in prior to demolition of buildings)
- \$7.5 million (land sale proceeds)
- \$17 million (net cost for this project)

Purchase Information: (Associate City Attorney Eric Berg)

- Two Key Items

(Purchase Agreement and the resolution regarding funding to be used to purchase it.)

- Terms of Purchase Agreement Key Dates (March 22, April 5, April 19, & May 19)

- Significant Terms

(Negotiated purchase price of \$10.7 million and \$100,000 in earnest money. A payment in lieu of leasing in the amount of \$70,000. Liquidated damages with Duke Realty under which they agreed not to lease to new tenants during the period from the date of the purchase agreement until the time of closing. At the time of closing, the amount paid will be applied to the purchase price. He discussed other fees and various contingencies. One contingency relates to Metro Transit right-of-way but the City feels confident it will be able to acquire that right-of-way when necessary for the rest of the Greenway. He requested Council give authority to the City Manager to make decisions regarding the contingencies prior to closing.)

ITEM 5.5B1 continued

- Operations Pending Closing
- Closing Costs
- Management Agreement
(Duke will manage the property on a month-to-month basis with a 30-day termination. Council will approve this budget contained in the Agreement prior to closing. The City does not want to enhance the property but maintain it until such time as it initiates demolition.)

Funding Resolution:

(A revised resolution was distributed to Council authorizing and directing the use of liquor/lodging taxes in the 435 Fund for the purchase of the Duke Realty Alpha Business Center property. He explained what law authorizes use of the liquor/lodging taxes for citywide improvement related to the development of the former Met Stadium site and Mall of America. He described the Greenway and how it's related to the development of the former Met Stadium site.)

- Recommendation
(Approve the purchase agreement, adopt the resolution, and authorize the City Manager to make the decisions regarding the contingencies.)

Council questions/feedback:

Winstead commented on the letter the Council received today from the Mall's attorney.

Grady inquired what type of occupancy is in there right now.

Berg replied Building 5 is close to being fully occupied and the other 4 buildings are 50% occupied.

Winstead inquired as to when demolition would begin.

Hutmacher replied if construction on the Greenway starts in 2013, the City would want buildings 1-4 vacant by mid 2011 and Building 5 vacated by mid 2012 for demolition and construction in 2013.

Hulting inquired as to the loss of tax revenue with this Greenway project.

Hutmacher explained the buildings currently contribute in total tax under \$400,000 in taxes each year and that will not change in 2010. In 2011, any space that continues to be occupied will pay what is similar to a personal property tax.

Bernhardson stated approximately one-third of the residential property tax dollar goes to the City.

Elkins asked if there was anything in the timing of this that would preclude the City from doing the work the Mall would like the City to do on the section of Lindau Lane west of 24th or 28th Avenue.

Hutmacher replied no, they are two separate projects and this project could go forward with or without the Mall project happening. Ideally they could go together.

Bernhardson stated the Restated Contract between the parties only addresses Tax Increment Financing (TIF) monies and it's done on a reimbursement basis only. The City never advances them money. It's a function of a formula that was put in place in the late 1980s. The liquor/lodging monies were never part of the Restated Contract but most of what has been expended did go to the Mall. He stated those are City funds that can be designated by the Council. Staff believes this is an appropriate use for those funds. It's a combination of TIF, the ARBLES, and the liquor/lodging taxes, if the Council so chooses. He stated it's not clear who will take the risk of lowering Lindau Lane but a significant amount of liquor/lodging tax could be used for it.

ITEM 5.5B1 continued Winstead commented it would be a portion of the liquor/lodging tax, not the entire amount.

Speaker #1: Paul Wilson, Sheraton Hotel General Manager (representing other hoteliers)
On behalf of the hospitality association, he requested City staff attend a meeting they are having tomorrow to answer their questions. He stated the hotels originally wanted the Council to postpone its decision on the purchase. He stated the hotels want to support the City but they have concerns regarding the resale and redevelopment of the purchase and the use of the funds for competing restaurants and hotels down the road. He stated this fund uses liquor/lodging taxes for a potential competitor.

Winstead inquired how postponing this decision would affect the purchase. He stated the City will be spending money on the Greenway and not on competition for any of the existing hotels.

Bernhardson stated if the City is going to build a road, it's cheaper to buy the land and sell what it doesn't need later. He stated it would be more expensive if the City was going to try and carve out these properties. He stated the City might not sell until the market improves and that this is incidental to the competition.

Grady inquired if this was pulled in through Bonnie Carlson and when did they hear about it.

Wilson replied they didn't know this item was going to be on this agenda until this past weekend.

Hutmacher stated staff has given this presentation to anyone who would listen but it has not been given to the hospitality industry. She reported public meetings have been occurring since last summer. This parcel has been on the market so now is a good environment to acquire the property.

Wilson stated most of the hoteliers knew about the potential acquisition.

Wilcox inquired if Wilson's group would be better served by expressing their concerns to a specific development.

Wilson stated they have some concern with the taxes they helped create to help fund possible competition.

Bernhardson stated there will be opportunities for the hospital industry to comment on the rezoning.

Grady commented on the hospitality industries' concerns regarding the use of the funds.

Speaker #2: Chuck Goberg, General Manager of the Minneapolis Airport Hilton Hotel
He stated using liquor/lodging taxes is new language and they didn't understand that Fund 435 was used to backstop the TIF Fund. He stated the Greenway won't do anything to help the flow of traffic to the Mall and the hospitality district. He stated the fact that the 435 Fund is made up of the liquor/lodging taxes just came to light. He stated Bonnie Carlson didn't know that the 2% or 435 Fund was the liquor/lodging taxes. He requested the Council extend the hospitality industry the courtesy of the time necessary to understand the use of 435 Funds to purchase a roadway so they can look at how the funding will be used. He stated they've paid into this fund for 20 years. He commented the hospitality industry has worked well with the City. He doesn't believe this presentation was ever made to the hospitality industry. He stated his concern is how the purchase of the property will be funded.

Elkins stated this acquisition will help provide a better purpose and use of traffic in the area and suggested it could be postponed to allow the City to make their presentation to the hoteliers tomorrow.

Winstead stated this is a conclusion of some significant studies and the City believes the funds will be used as they were originally intended, including how it was mapped in the legislation, etc.

Bernhardson stated it's for land, transportation improvements, and the parking ramps – what is backed by the bonds. This is just another transportation improvement. He stated transportation improvements are key to enhancing the access across the entire Airport South area.

ITEM 5.5B1 continued Goberg inquired if there is a sunset on the 2% tax that is paying the bonds on Phase I.

Winstead stated there is currently no sunset on the 2% tax or on any of the hotel/motel liquor tax but that's not to say there couldn't be legislation. He stated these improvements have been discussed for a decade. What is new are the dollar amounts involved in the acquisition.

Grady suggested the Council could call a special meeting on April 5 to deal with this issue.

Bernhardson stated this is money that comes to the City and is paid for by the hotel guests. The use of this money is in line with how the money was intended to be used. He stated staff is happy to make a presentation to the hospitality association but regardless of whether the association supports it or not, it's the Council who was elected to make the overall decision.

Speaker #3: Brett Crone (Tenant in the Alpha Business Center)

He asked about the timeline for removing the buildings.

Hutmacher stated she spoke with Mr. Crone's wife last week. She stated notices haven't been sent to the tenants yet, as the City doesn't know what the timing will be. She stated his business is located in Building #3 or #4 and they wouldn't be demolished until at least 2011. She stated his current lease expires in November 2010 and there would be no need for them to move prior to that. She stated if they are tenants at the time the City actually acquires the space, they will be eligible for relocation benefits.

Bernhardson stated he understands the concerns of the hospitality industry but the Council needs to take action.

Wilcox stated the concern is the use of the funds. He asked what the funds would be used for if not for this. He stated it takes a body like the City Council and Port Authority to make the decision, as it doesn't have a stake in this area. He stated South Loop needs to grow. It can't just be the Mall or Reflections and this Greenway will help connect everything in the District. He believes this will be a good use of these funds. He stated no one wants to turn American Boulevard into a one-way and the Council wants to work with the hoteliers and hospitality industry.

Winstead explained the funds were intended for Phase II of the Mall and the South Loop area inclusively for hotels, office buildings, restaurants, and the Mall. Hotels in South Loop have always been part of the Mall's plans.

Elkins stated Duke has had this property on the market for some time. If the City doesn't buy it, another hotelier could buy it, which would result in more competition. This lets the City extend the road at a bargain price and it will improve transportation in the entire area. It will be a good investment for the City.

Grady expressed concern regarding the dates for a council meeting. She inquired how this will affect the closing date of May 19, 2010, if the Council postpones this item to April 12.

Berg stated Duke Realty doesn't want the process strung out any longer than necessary.

Speaker #4: Carl Awalt, Duke Realty

He stated Duke is not marketing the property because they're working with the City but the dates keep getting pushed. They'd like to know what's going to happen with their building.

Hulting referenced the letter Council received from Bill Griffith, attorney representing the Mall. He stated Griffith mentions concerns the City hasn't adequately addressed. Hulting expressed concern that there has been a lack of communication or partnering with some of the parties involved. He believes this could go more smoothly with more communication and cooperation. He doesn't like the idea of it being "my way" or "no way." He stated Mr. Griffith requested a 30-day extension but he believes it could be done sooner. He would rather see the Mall and the hospitality industry support the City on this and recommended the Council postpone its decision.

ITEM 5.5B1 continued Bernhardson stated the concerns by Mr. Griffith and Kurt Hagen can't be resolved in 30 days.

Winstead stated the question is should the City pull the trigger on this purchase and should it be done with the 435 funds.

Wilcox stated the City needs to take it away from the Mall discussion. This should move forward regardless of whether MOA Phase II develops now or later. He has given it a lot of thought. He stated it's a good use of 435 funds. He stated the Council will work with the hospitality industry to make this work for them and questioned where else would they prefer the funding come from.

Motion was made by Wilcox, seconded by Elkins, and all voting aye, to approve an agreement for the purchase of Lots 1 and 2, Block 1, Alpha Business Center from Duke Realty Limited Partnership located at 8100 – 26th Avenue and 2600 East 81st Street, which presently contains five buildings operated for office and office/warehouse purposes at a price of \$10.7 million. The properties to be used for the purposes of constructing the "greenway" extension of Lindau Lane eastward, between the Mall of America (at 24th Avenue) to 30th/31st Avenues.

Funding for the acquisition to come from Fund 435 (see next item).

**Adopted Resolution
Authorizing Use of
Fund 435 for Purchase
of Alpha Business
Center at
8100 26th Avenue &
2600 East 81st Street
ITEM 5.5B2
R-2010-22**

Motion was made by Wilcox, seconded by Elkins, to adopt the revised resolution presented at the meeting authorizing and directing the use of liquor and lodging taxes (Fund 435) imposed pursuant to laws of Minnesota 1986, Chapter 391, for the purchase of certain lands described as "Lots 1 and 2, Block 1, Alpha Business Center." No vote was taken at this point.

Motion was made by Grady to amend the item postponing it to Monday, March 29 until after City staff meets with the hospitality industry. The motion failed for lack of a second.

Mayor Winstead called for the vote on the original motion. It passed 4-2 (Grady & Hulting opposing).

**Authorized City
Manager to Exercise
Contingencies
Relating to Alpha
Business Center
Purchase
ITEM 5.5B3**

Motion was made by Wilcox, seconded by Elkins, to authorize the City Manager to make the necessary decisions regarding the exercising of the April 19th contingencies under the purchase agreement, including the contingency regarding the Met Council transit station right of way.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 11:54 p.m.

Barbara Clawson
Council Secretary