

**Regular Meeting #21
Monday, April 18, 2011, 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 7:03 p.m. and led the audience in the pledge of allegiance to the flag.

Roll Call

Present: Mayor Winstead, Councilmembers A. Grady, T. Hulting, K. Nordstrom, S. Peterson, and V. Wilcox.

**PROCLAMATION –
Arbor Day**

Mayor Winstead read and presented a proclamation declaring May 7, 2011, as Arbor Day in Bloomington to Paul Edwardson, Assistant Maintenance Superintendent.

Edwardson stated the City's 7th annual tree sale will be held on Saturday, May 7 from 9-11 a.m. in the east parking lot of Civic Plaza. He reported 200 trees have been pre-sold and will be ready for pick up on Saturday. To date, over 1700 trees have been sold to the community. People were encouraged to come from 9-11 a.m. to learn about trees even if they didn't purchase one.

**Approved Relocation
Payment to All Home
Health, Inc.
ITEM 3.2**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve an advance relocation payment of \$20,000 to tenant All Home Health, Inc. in connection with the Lindau Lane extension street project. All Home Health, Inc. is a tenant at the Alpha Business Center properties and is scheduled to move out on or about May 31, 2011. SRF Consulting Group, Inc., the City's relocation consultant believes this request is reasonable and necessary and recommends the City make the payment as requested. The "advance" payment of \$20,000 will be deducted from All Home Health's full relocation entitlement when the relocations claims are filed.

Relocation benefits for this tenant and others will be paid from Fund 435, Project 2009-704.

**Approved Contract
with SRF Consulting
Inc.
ITEM 3.3**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve a professional services contract with SRF Consulting Inc. in the amount of \$36,800, which includes a 15% contingency for changes that may occur during the solicitation process. SRF will assist the City with the following 2011 Solicitation for Federal Transportation Funding Applications:

- Lindau Lane & IKEA Way Safety Improvement: \$9,000
- Lindau Lane (24th – 30th Avenue) Complete Street New Construction: \$9,000
- City Signal Optimization & System Management Project: \$9,000
- Normandale Boulevard (from approximately Nine Mile Creek to 94th Street): \$5,000

Funding is available in the 810 Fund.

**Approved Minutes
ITEM 3.4**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve the minutes for the July 26 and November 30, 2010, City Council study meetings as presented.

**Approved Relocation
Payment to Frontier
Precision, Inc.
ITEM 3.5**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve moving expenses in the amount of \$7,592.85 and reestablishment expenses in the amount of \$50,000 to former tenant Frontier Precision, Inc. in connection with the Lindau Lane extension street project. Frontier Precision, Inc. was a tenant at the Alpha Business Center properties and moved out on December 31, 2010. City staff reviewed the expenses and agrees with SRF, the City's relocation consultant, that the payments should be made.

Relocation benefits for Frontier Precision, Inc. and other tenants will be paid from Fund 435, Project 2009-704.

**Adopted Resolution
Approving Plans,
Specs and Schedule
for the 2011-103
Jersey Road & 113th
Street Improvement
Project
ITEM 3.7
R-2011-51**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to adopt a resolution approving plans and specifications and ordering advertisements for bids for the Jersey Road & 113th Street Improvement Project (City Project 2011-103). This project includes street and utility improvements previously approved and ordered for construction by Council.

This project is to be funded by special assessment in accordance with the signed Petition and the City of Bloomington Special Assessment policy.

**Adopted Resolution
Awarding Contract to
Global Specialty
Contractors, Inc.
ITEM 3.8
R-2011-52**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to adopt a resolution awarding the 2008-801 South Loop Wayfinding ITS Project (Mall of America) to Global Specialty Contractors, Inc. in the amount of \$714,609.08. This project is one of three components of an integrated Intelligent Transportation System (ITS) envisioned for South Loop and the Mall of America (MOA). Intelligent wayfinding systems help minimize geometric roadway improvements by better utilizing existing roadway capacity. The three components are:

- Freeway (T.H. 77, T.H. 5 and 494)
- Local Roadway (24th Avenue, 34th Avenue, Lindau Lane, etc.)
- On-site (within MOA ramps and other on-site areas, could be integrated with an electronic parking management system).

Funding for the project is split equally between Liquor and Lodging Fund 435 and an assessment to the Mall of America. Construction will start in May and be completed in November 2011.

**Authorized Staff to Set
Just Compensation
Relating to the West
81st Street & Penn
Avenue Realignment
Project (2010-702)
ITEM 3.9**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to authorize staff to set Just Compensation and make offers to the property owner for the 2010-702 (West 81st Street & Penn Avenue Realignment) Project. This right-of-way acquisition is for road improvements that were approved for the West 81st Street realignment at Penn Avenue and based on the appraisal dated March 10, 2011.

**Approved the
Agreement Between
the City and the
Recreational Sports
Officials Association
ITEM 3.10**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve an agreement between the City of Bloomington and the Recreational Sports Officials Association (RSOA) to provide officials for adult basketball, softball, touch football and volleyball seasons through March 31, 2013.

The total compensation for the Agreement will increase approximately 2% each year of the Agreement. The City paid RSOA approximately \$94,000 during the 2010 fiscal year.

**Approved Extension of
Contract with Peoples
Electric Company
ITEM 3.11**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve an extension of the contract with Peoples Electric Company to provide electrical maintenance and repair services for City-owned buildings, traffic signals, street lights, and park facilities for an additional 2-year term through April 30, 2013 at the adjusted contract labor rates requested.

Funding for these services is budgeted annually in the Facilities and Traffic Maintenance Budgets. Expenditures for these services in 2009 and 2010 were approximately \$120,000.00 annually.

**Awarded a Contract
to Common Sense
Building Services
ITEM 3.12**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to award a contract to Common Sense Building Services in the amount of \$775,325.83 to provide janitorial cleaning services for eleven (11) City facilities at various locations throughout Bloomington beginning May 1, 2011 through April 30, 2013.

Funding for this service is budgeted annually in the General Fund, the Facilities Replacement & Maintenance Fund, the Recreation Facilities Funds, and the Water Utility Operating Fund.

**Accepted I&I Grant
from Metropolitan
Council and Entered
into Grant Agreement
ITEM 3.13**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to accept \$169,571 in grant monies, as part of the Metropolitan Council Municipal Publicly Owned Infrastructure Inflow/Infiltration Grant Program, from the Metropolitan Council for the express purposes of mitigating I&I from the publicly-owned sanitary sewer system and authorized staff to sign the Grant Agreement-Construction Grant for the Bloomington 2010-2011 Manhole Rehabilitation and Sealing Project.

Based on the City's original submittal as well as a follow up submittal for work previously constructed in 2010, Bloomington was tentatively awarded a grant by the Metropolitan Council of \$169,571 for work previously completed and scheduled for completion in 2011.

**Postponed to May 16
Contracts for
Providing Services
to City of Richfield
ITEM 3.1**

This item was held out by Nordstrom who asked if the Richfield contracts will ever be resolved.

City Manager Mark Bernhardson replied yes they will.

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to postpone to the May 16, 2011, Regular Council meeting, the contracts for providing Environmental Health and Building and Inspection services to the city of Richfield.

**Accepted Donations
ITEM 3.6**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to accept the following donations made by various donors to various City activities and to amend the revenue and expenditure budgets, as noted in the agenda item, to facilitate the appropriate use of these funds: \$100 donated by the Creekside Buyer's Club to the Mayor's Volunteer Appreciation Breakfast. The following donations were made to various Human Services programs and events: \$533 donated by Bloomington Public Schools – Office of Educational Equity to the Youth Leadership Retreat; \$75 donated by the Council of Metropolitan Area Leagues and \$54 donated by Monica Williams to the Youth Homeless Event; 8 dozen bagels valued at \$69 donated by Brueggers Bagel and 10 gallons of coffee valued at \$146 donated by Caribou Coffee to the Youth Homeless Forum; \$70 donated by the Bloomington League of Women Voters, \$1,000 donated by Normandale Community College, and \$1,000 donated by Bloomington Public Schools – Office of Educational Equity to the Human Rights Commission Patsy Mink event; and 800 burritos for participants valued at \$5,200 donated by Chipotle Mexican Grill for Diversity Day.

**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 reminded Council of the Joint Council/School Board meeting on Tuesday, April 26 at 7 p.m. at the Old Town Hall. He stated the May 30 study meeting will be cancelled but study meetings will be held at 5:30 p.m. ahead of the other two regular meetings on May 2 and 16. He added there will be a Joint Council/Port Authority meeting on May 3, 2011.

Peterson commented the National League of Cities (NLC) and other groups involved in telecommunication activities have asked cities to answer an inquiry regarding the use of cities' rights-of-way (ROW). Right-of-way being the land the City owns on either side of the street. He stated Bloomington allows telecommunication firms to use the ROW. He requested staff put some thought into a possible response to this inquiry. He said the City is encouraged to talk about its real world timelines and experiences and that the City needs to preserve its ability to control the right-of-way.

ITEM 6.1 continued

Bernhardson stated staff is looking at it. It involves public ROW and the restrictions for wireless tower sightings on private property, a land use issue. He said the City is trying to ascertain how the National League of Cities is plugging into what the National Telecommunications Communicators are doing and how the City should plug into the process. He said if the City shows how Bloomington does it and how well it does it, they may use that to go after everybody else to say they need all of these rules. He said staff is moving forward on this to see what the City can provide. The City is looking to provide at least local factual information. These are private businesses that are looking to advance their private business model in the public ROW. They could go on private land but they would have to garner easements all along that private property which would be very expensive.

Nordstrom stated she heard Comcast gives St. Paul senior citizens a discount and was told it was something the City Council would have to do.

Bernhardson stated it must have been part of St. Paul's franchise agreement with Comcast and that if one segment of the population gets a discount, the rest usually get to pay higher prices.

Diann Kirby, Community Services Director commented staff checked with them in 1999 and was told this was something Comcast wouldn't do. She said cable companies have gotten away from these types of discounts.

Grady stated NAIOP has strong opinions on property tax issues and they're calling for cities to adopt a standardized reporting by object code for how they report their spending, which she said she would provide to the City Manager. She suggested this could be discussed at a Council study meeting. It's not a rush but the Council should probably respond.

Bernhardson stated staff will take a look and discuss it but this is the first he's seen of this NAIOP initiative. He stated what Bloomington has done for a number of years is a better way to represent it and that may be suggested to them. He mentioned another initiative that is being rolled out by NAIOP this week for which staff will provide Council with information.

Peterson stated unless the Chart of Accounts was broken, companies didn't change it. He stated the City would have to bear all of the cost without getting any of the benefit and said there is probably no economic reason for the City to change.

**Approved New On-Sale Intoxicating Liquor License for Bubba Gump Shrimp Co. at 396 South Ave.
ITEM 5.1A**

Motion was made by Nordstrom, seconded by Grady, and all voting aye, to approve a New On-Sale Intoxicating Liquor license, expiring June 30, 2011, for Bubba Gump Shrimp Co. Restaurants, Inc. dba Bubba Gump Shrimp Co. at 396 South Avenue.

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

**Approved New On-Sale Intoxicating Liquor License for Cambria Inn & Suites at 2870 Metro Drive
ITEM 5.1B**

Motion was made by Nordstrom, seconded by Grady, and all voting aye, to approve a New On-Sale Intoxicating Liquor license, expiring June 30, 2011, for Interstate Management Company, LLC dba Cambria Inn & Suites at 2870 Metro Drive.

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

**Approved New On-Sale Intoxicating Liquor License for RedRossa Italian Grille at 1901 Killebrew Dr.
ITEM 5.1C**

Motion was made by Nordstrom, seconded by Grady, and all voting aye, to approve a New On-Sale Intoxicating Liquor license, expiring June 30, 2011, for FS Midwest Restaurant Ventures LLLP dba RedRossa Italian Grille at 1901 Killebrew Drive.

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

**Approved New
Therapeutic Massage
Enterprise License for
Gifts of Healing at
2120 West Old
Shakopee Road
ITEM 5.1D**

Prior to approval of this application, Nordstrom inquired if a thorough background check had been performed.

Doug Junker, Licensing Examiner explained this is a long-time establishment in Bloomington and that the applicant is getting out of her lease and moving to a new location.

Motion was made by Nordstrom, seconded by Grady, and all voting aye, to approve a New Therapeutic Massage Enterprise license for the period expiring August 31, 2011, for Gailey Westlund dba Gifts of Healing at 2120 West Old Shakopee Road.

No public testimony was received.

**Approved New
Pawnbroker License
for Max-it Pawn at
9432 Lyndale Ave. So.
ITEM 5.1E**

Motion was made by Peterson, seconded by Grady, and all voting aye, to approve a New Pawnbroker license for Red Dog Holdings, LLC dba Max-it-Pawn at 9432 Lyndale Avenue South.

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

**Adopted Resolution
Approving Conditional
Use Permit for West
Side Perk at 7700 West
Old Shakopee Road
and 10750
Bloomington Ferry
Road
Case 8300A-11
ITEM 5.2A
R-2011-53**

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt a resolution approving a Conditional Use Permit for a restaurant with a drive-through window in a B-2, General Commercial Zoning District at 7700 Bloomington Ferry Road and 10750 Bloomington Ferry Road, Case 8300A-11, for Reserve Company LLC (Owner) and West Side Perk (Tenant), subject to the following 5 conditions of approval as set forth by the Planning Division staff:

1. The restaurant must be consistent in size and character with the materials submitted for Case 8300A-11;
2. Food service plans be approved by the Environmental Services Division (City Code Sec. 14.360);
3. Changes in menu items that would generate additional trash volume or change in types of waste flow, such as grease or other wet food waste, shall be reviewed by the Environmental Health Division to assure compliance with the trash collection/storage and odor suppression requirements;
4. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code and the approved Uniform Sign Design; and
5. The drive-through stacking and circulation, including parking lot modifications, be approved by the City Traffic Engineer.

No public testimony was received.

**Adopted Resolution
Approving Conditional
Use Permit for Little
Caesar’s Pizza at
8421 Lyndale Ave. So.
Case 4213A-11
ITEM 5.2B
R-2011-57**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to adopt a resolution approving a Conditional Use Permit for a take-out restaurant in the retail building at 8421 Lyndale Avenue South, Case 4213A-11, for Lyndale Green Holdings, LLC (Owner) and P.E.T. Investments (dba) Little Caesar’s Pizza (User), subject to the following 8 conditions of approval and 5 City Code requirements as set forth by the Planning Division staff:

1. The restaurant is limited to take-out food service operation only. No provision for any on-site consumption is allowed;
2. The Conditional Use Permit is limited to the leased space as shown on the plans in Case 4213A-11;
3. The food service is limited to that shown on the menu submitted in Case 4213A-11. Any changes to that menu must be approved by the Planning Manager and Environmental Health Services and include any changes in or to operational equipment, including that for odor control, as may be required;
4. Product/supply delivery shall be scheduled to avoid undue blocking of service and circulation drives and noise impacts on the abutting residential property to the north;
5. The only exterior changes allowed to the building are those necessary for allowed business signage and the rooftop heating, ventilation and air conditioning equipment and related screening;

ITEM 5.2B continued

6. Trash and recycling collection and storage facilities and practices shall be as approved by Environmental Health Services;
7. SAC determination be completed and charges, if any, be satisfied prior to the issuance of any permits;
8. Any changes to the exterior lighting for the building first be approved by the Planning Manager;

and subject to the following Code requirements:

1. All rooftop equipment shall be fully screened (Sec. 19.52.01);
2. Food service plans be approved by the Environmental Services Division (Sec. 14.360);
3. Signage shall comply with the requirements of Chapter 19, Article X of the City Code;
4. Existing automatic fire sprinkler system be adjusted as approved by the Fire Marshal (MN Bldg. Code Sec. 903.1, MN Rules Chapter 1306; MN State Fire Code Sec. 903.1); and
5. Discharge of sanitary effluent containing fats, oil, grease, or wax in excess of 100 mg/L is prohibited (Sec. 11.31(6)(B)).

No public testimony was received.

**Adopted Resolution
Approving Conditional
Use Permit for DQ Grill
& Chill at 9304, 9308,
9320 & 9336 Lyndale
Avenue South
Case 10872A-11
ITEM 5.2C1
R-2011-54**

Acting Planning Manager Glen Markegard presented the application by 94 Lyndale LLC (Owner) and Anderson Franchise Investments dba DQ Grill & Chill (User) on the northwest corner of 94th Street & Lyndale Avenue. He stated the applicants propose to develop the northerly acre as a Dairy Queen (DQ) restaurant. The remainder of the parcel would be available for future development yet to be determined. He explained the Conditional Use Permit (CUP) applies to the DQ restaurant, the Final Site Plans and Building Plans apply to the DQ and to the driveway connection south to 94th Street. He stated nothing else on the plan would be constructed. He stated the subdivision proposes to divide the four parcels into two new parcels. It will be a typical drive-through restaurant with proposed hours of operation from 10:00 a.m. to 10:00 p.m. each day. He showed a rendering of the exterior materials to be used. He stated this application was reviewed by the Planning Commission and is recommended for approval by the Planning Commission and Planning Division staff.

Grady asked how the median on Lyndale Avenue will fit with this driveway.

Markegard stated the median stops south of that point but may extend to the north in the future. He stated this intersection will work in the short-term and that once the medians are extended in the future, the driveway will be a right in/right out only.

Nordstrom inquired if the colors shown will be the actual colors.

Markegard replies yes, as this is the prototype.

Motion was made by Peterson, seconded by Grady, and all voting aye, to adopt a resolution approving a Conditional Use Permit for a freestanding restaurant with a drive-through at 9304, 9308, 9320 and 9336 Lyndale Avenue South, Case 10872A-11, for 94 Lyndale LLC (Owner) and Anderson Franchise Investments dba DQ Grill & Chill (User), subject to the following 2 conditions of approval and 2 Code requirements as set forth by the Planning Division and Engineering Division Staff and the Planning Commission:

1. The restaurant must be consistent in size, character, and orientation with that shown on and described in the documents in Case 10872A-11; and
2. Final Site Plans and Building Plans must be approved for the restaurant;

and subject to the following Code requirement:

1. The Conditional Use Permit will expire one year from the date of City Council approval unless utilized in accordance with Section 21.504.04(g) of the City Code.
2. Property shall be platted in accordance with the requirements of Chapter 21 of the City Code.

No applicant presentation was made or public testimony received.

Approved Final Site Plans & Building Plans for DQ Grill & Chill at 9304, 9308, 9320 & 9336 Lyndale Ave. So. Case 10872B-11 ITEM 5.2C2

Motion was made by Peterson, seconded by Grady, and all voting aye, to approve the Final Site Plans and Building Plans for a freestanding restaurant with a drive-through at 9304, 9308, 9320 & 9336 Lyndale Avenue South, Case 10872B-11, for 94 Lyndale LLC (Owner) and Anderson Franchise Investments dba DQ Grill & Chill (User), subject to the following 23 conditions of approval and 13 Code requirements as set forth by the Planning Division and Engineering Division and the Planning Commission:

1. The approval shall be valid only for the restaurant on proposed Lot 1 and the temporary drive on the proposed outlot as shown on the plans approved in Case10872B-11;
2. Exterior finish materials shall be as approved by the Planning Manager;
3. Restaurant seating must not exceed 69 inside seats and 16 patio seats;
4. The Grading, Drainage, Utility, Erosion Control, and Traffic Control plans shall be revised for approval by the City Engineer;
5. Access, circulation and parking plans be approved by the City Engineer;
6. Connection charges shall be determined and satisfied;
7. Sewer Availability Charge (SAC) be determined and be satisfied as required;
8. An external grease interceptor shall be constructed on the site and a grease interceptor maintenance agreement filed with the Utilities Division;
9. An erosion control surety shall be provided to the Manager of Building and Inspection Division;
10. Approved erosion control measures shall be in place prior to issuance of grading permits;
11. A Storm Water Management Plan shall be provided and approved by the City Engineer, which includes a maintenance plan to be signed by the property owner and filed of record with Hennepin County;
12. A Nine Mile Creek Watershed District permit shall be obtained;
13. A common driveway/access/parking/circulation and utility agreement or easement be provided by document in recordable form for the proposed lot and outlot as approved by the City Engineer with proof of filing to be provided to the Manager of Building and Inspection;
14. Building Permit plans must show sidewalk of conforming width along north side of building as approved by the Planning Manager;
15. A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained and submitted prior to issuance of any City permits;
16. A National Pollutant Discharge Elimination System (NPDES) construction site permit and Storm Water Pollution Prevention Plan (SWPPP) shall be provided if greater than one acre is disturbed;

and subject to the following Code requirements:

17. All customer parking shall occur on-site and off of the adjacent public street(s);
18. All construction related parking, loading and unloading, staging, and material storage shall occur on-site and off of adjacent public streets except as may be approved by the Director of Public Works for a temporary period.
19. The site and development shall be maintained in a neat and orderly manner;
20. Alterations to utilities be at the developer's expense;
21. Approved and installed erosion control barriers shall be maintained in an effective and functional condition throughout the construction period and shall not be removed until all disturbed areas are stabilized in an approved manner and removal is authorized by the Issuing Authority;
22. All pickup and drop-off occur on site and off of public streets; and
23. All inventory or stock loading and unloading shall occur on site and off of public streets;

ITEM 5.2C2 continued and subject to the following Code requirements:

1. Three-foot high solid screening be provided along Lyndale Avenue as approved by the Planning Manager (Sec. 19.52);
2. Landscape plan shall be approved by the Planning Manager (Sec 19.52);
3. A landscaping surety shall be provided to the Manager of Building and Inspection Division in accordance with Sec. 19.52(h)(5) City Code;
4. All rooftop equipment shall be fully screened (Sec. 19.52.01);
5. Property shall be platted in accordance with the requirements of Chapter 22 of the City Code;
6. Unused water services shall be properly abandoned (Sec. 11.15, City Code);
7. The developer must submit electronic utility as-builts to the Public Works Department prior to the issuance of the Certificate of Occupancy;
8. Building be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code Sec. 903.1, MN Rules Chapter 1306; MN State Fire Code Sec. 903.1);
9. Fire lanes shall be posted as approved by the Fire Marshal (Sec. 8.73 City Code; 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 Fire Code Sec. 508);
11. Food service plans be approved by the Environmental Services Division (Sec. 14.360);
12. Parking lot and site security lighting shall satisfy the requirements of Sec. 21.301.07 of the City Code; and
13. Signage shall comply with the requirements of Chapter 19, Article X of the City Code;

No applicant presentation was made and no public testimony was received.

Approved Preliminary Plat & Adopted Resolution Granting Final Plat Approval for 94TH AND LYNDALE COMMERCE CENTER at 9304, 9308, 9320 & 9336 Lyndale Ave. So. Case 10872CD-11 ITEM 5.2C3,4 R-2011-55

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve the Preliminary Plat and adopt a resolution granting Final Plat approval of 94TH AND LYNDALE COMMERCE CENTER located at 9304, 9308, 9320 & 9336 Lyndale Avenue South, Case 10872CD-11, for the Ryland Group, Inc. and 94 Lyndale, LLC, subject to completion of the following 7 conditions and 1 Code requirement, receipt of the title, necessary documents and deposits and a review of all documents by the City Attorney:

1. A title opinion or title commitment that accurately reflects the state of the title of the property being platted, dated within the past 6 months, shall be provided.
2. A signed consent to plat from any mortgage company with property interest shall be provided.
3. Right-of-way on Lyndale Avenue and West 94th Street shall be dedicated on the Final Plat as needed per the preliminary intersection layout provided by staff.
4. Standard drainage and utility easements 10 feet along street frontages and 5 feet along internal lot lines shall be dedicated on the Final Plat.
5. A 10-foot sidewalk/bikeway easement shall be provided along all street frontages.
6. A signed copy of a private common driveway/parking/access easement agreement shall be provided.
7. A signed copy of a private common utility easement agreement shall be provided.

Code Requirement:

1. The approved Final Plat shall be filed with Hennepin County (Section 22.06).

No public testimony was received.

CLOSED PUBLIC COMMENT PERIOD

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

**Adopted Ordinance
Vacating Drainage,
Utility, Sidewalk and
Bikeway Easements at
9320 Lyndale Ave. So.
ITEM 5.4A
O-2011-13**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to adopt an ordinance to vacate drainage, utility, sidewalk, and bikeway easements over and across Lot 1, Block 1, EARL C. HILL AMERICAN LEGION (9320 Lyndale Avenue) for Anderson Franchise Investments and 94 Lyndale LLC.

The vacation was requested to clear title for the re-platting of the property into the plat of 94TH AND LYNDALE COMMERCE CENTER. The vacation will not be effective until the new plat is filed with Hennepin County.

Drainage and utility easements will be dedicated in the new plat and a sidewalk and bikeway easement will be obtained by separate document.

**Al Farooq Youth and
Learning Center at
8201 Park Avenue So.
Case 8915A-11
ITEM 5.2D**

Markegard presented the application for a Conditional Use Permit for a private school, a day care, and a place of assembly/community center for Concordia Academy Association of Schools (Owner) and Al Farooq Youth and Learning Center (User) located at 8201 Park Avenue South, Case 8915A-11, explaining that this was continued from the April 4, 2011, Council meeting at the request of Council for the purpose of receiving additional information from staff. His presentation was as follows:

- Overview of the Request
- Proof of Parking: Using an aerial photo, he stated the 1998 Final Development Plan shows 50 parking spaces in the Xcel Energy corridor. Since then, the City developed a community garden in this location. He said there is sufficient space to provide the Proof of Parking spaces. However, the applicant doesn't want to displace the community garden so they desire to relocate the 50 spaces in two different places: directly in front of the school and in two areas in the Xcel corridor. He stated this would be the easiest to develop. It would put the parking closest to the building and further from the residences. He stated staff agrees but the applicant doesn't have control over that property so they are pursuing some type of ownership.
- Change in Proof of Parking Condition: Staff recommends adding the following underlined text in the condition: "Proof of Parking agreement for 50 spaces on land controlled by the applicant be approved by the Planning Manager."
- Table 1: Parking Comparison - Places of assembly without schools/day cares
- Table 2: Parking Comparison – Places of assembly with schools/day care. Most fall between 4.5 and 6.5 spaces per 1,000 square feet. He stated should it become necessary, the Proof of Parking would be important.

Council comments/questions:

- Grady inquired if the bottom number is the worst case scenario.

Markegard explained the very bottom numbers are if every square foot of the building was used at one time, which he said cannot meet the City Code with the current amount of parking and hence the condition of approval that states the gymnasium cannot be used at the same time the Assembly occupancies are in use.

- Wilcox asked if any other schools or churches have a shared parking agreement regarding park property or anyone else's property or is it all private.

Markegard stated he's not aware of any other joint "park" parking arrangements.

- Winstead confirmed for clarification that the parking space number used includes the shared parking with the parks.

ITEM 5.2D continued

Markegard stated the Park also has an additional 34 spaces to the east that are above and beyond what Al Farooq has access to. Using an aerial photo, he described the parking Al Farooq has access to: the spaces in front of the school, both on Xcel property and on the school property, the lot to the north which is partially on City property and partially on Xcel property, and to the spaces to the east which is located on City park property, and an additional lot with 34 spaces to the east of the tennis courts that the school does not have access to but Smith Park does.

- Grady inquired if the parking will get squeezed when Smith Park gets heavily used on the weekend and the northerly lot is filled up and the extra 50 parking spaces.

Markegard stated it's important these two sites be coordinated because both will have levels of demand that when put together will cause overflow situations.

- Grady asked when the squeeze point occurs. Is it once a year or more often?

Markegard continued with his presentation:

- Parking Condition Changes: Friday midday is the Center's biggest use day. Staff recommends revised conditions to read as follows:
 - "While the school/day care is in session, the use of the large gymnasium and cafeteria is limited to school/day care activities."
 - "While other on-site assembly areas are in use, the use of the large gymnasium and cafeteria is limited to student activities that do not generate additional parking demand."
 - "The capacity of the large gymnasium is limited to 500 occupants."
 - "The property owner must provide traffic control services if overflow parking occurs."
- Smith Park Parking Demand: Table indicating peak number of vehicles to be parked at Smith Park during different times throughout the year resulting in a need to coordinate schedules.
- Parking Condition Changes: They were originally written for a high school so the use agreement needs to be changed. Following are more recommended conditions:
 - "Joint parking and outdoor recreation/athletic facilities usage agreements between the City and the property owner must be updated by September 1, 2011 to reflect proposed site use patterns, subject to the approval of the Parks and Recreation Manager."
 - "The property owner, subject to the review and approval of the Parks and Recreation Manager, must prepare in January of each year, an annual plan that coordinates the use of joint parking areas and outdoor recreation/athletic facilities in a manner that minimizes overlapping demand."
- Planning Commission reviewed and recommends approval subject to conditions as does Planning Division staff.

More Council comments/questions:

- Wilcox inquired if the existing parking on the Xcel property to the west of the school is currently under an easement to Concordia.

Markegard explained it's part of the cross-easement agreement. He stated the applicant doesn't want to use the property to the south.

ITEM 5.2D continued

- Wilcox asked if the applicant was going to buy or lease the property from Xcel.
Markegard stated Xcel would be allowed to sell a portion of the corridor and Al Farooq is proposing to purchase everything from 83rd Street to the northern property line extended. He said if that were to happen, a replatting with Council approval would need to occur. There would be an easement Xcel would need to take for the power lines and the City would likely require an easement for the trail that is envisioned long-term to go north to south.
- Wilcox asked if that had to be agreed to prior to the approval of this permit.
Markegard stated the applicant must demonstrate they have control over any parking area, which will require a permanent easement in this area.
- Wilcox asked if a playground goes in to the south, would it require an amendment to the Conditional Use Permit.
Markegard replied no, it would not.
Bernhardson explained Al Farooq has a Proof of Parking on the southerly property they own now and as they are able to get either an easement of fee simple, they can substitute that at a later date.
- Wilcox asked for clarification regarding the area outlined in orange on the aerial photo and if it is part of the cross-easement agreement.
Markegard stated there is a joint field easement between the School District and the City.
- Peterson inquired about the parking demand in this location for the Park and the school.
Markegard stated 380 total parking spaces would be needed when all of the different uses are in operation. However, if the large gym is not utilized, 214 spaces would be needed. If the large gym is in use, the peak demand would be for 240 parking spaces. He explained the trigger for the Proof of Parking is if any overflow parking occurs on the site. He stated having an agreement will help Al Farooq closely manage their parking usage. He stated it is their hope to never build that Proof of Parking.
Bernhardson asked how many times the parking would have to overflow in order to trigger development of the 50 Proof of Parking spaces.
Markegard stated it would be when the City has observed the overflow parking and instructs them to construct the Proof of Parking, which he said would probably be after some repeat pattern develops.
- Hulting inquired about the 500 capacity number.
Markegard explained it will be added to the Conditional Use Permit. He stated 2,500 people would be a violation of the Code.
- Hulting asked if there was any way the tennis court could be used for parking.
Markegard stated if they were used, it would be a violation of the City Code.
- Grady stated the whole development hinges on the gymnasium and Assembly use happening at the same time and she asked how the City will know if they're being used at the same time.
Markegard stated the City would probably get calls from the neighbors at which point staff would investigate.

ITEM 5.2D continued

- Wilcox asked if staff had considered requiring a performance bond for this.
Markegard stated typically the City’s Proof of Parking agreements do not include bonding for that parking. It’s not something the City has done in the past.
Markegard said a Temporary Occupancy Certificate would be issued.
- Grady stated her concern is the, “if they build it, they will come” scenario. She commented the parking is tight and over 800 people attended their open house. She said if this center is as popular as she believes it will be, it will create a hardship on the neighborhood. She said her initial thought is they need that parking now but there are a lot of steps that can be taken if necessary.
Markegard stated a conditional approval could be granted if the applicant doesn’t have the resources to construct them all at this time.
- Winstead stated it’s been demonstrated that it’s been under-parked so it’s got to be parked correctly. He doesn’t believe there are enough parking spaces now. He said he’s not big on conditions that say, “You can’t do this on this day …” and believes the City would be setting itself up for problems.

At this time, Mayor Winstead invited the applicant to speak.

Speaker #1: Ferdinand Peters, Representing Al Farooq (Applicant)

Referencing the report in Parks and Recreation Manager Randy Quale’s memo dated April 15, 2011, he stated it mentions usage of the north parking lot, which is subject to joint use and shows the peak time for vehicles starting at 6:30 p.m. in the evening. He stated the peak time for his client will be at noon every day. He explained the open house was a one-time event for the public to visit this place. He said it was never estimated that there would be 900 to 1,000 people using this facility. He added management of the parking is one of the conditions. He believes these items had been addressed previously. He said looking at the square footage of other churches in the area, they too have high numbers for attendance and he read from the schedule of the parking used by other churches. He said according to the City’s Parks and Recreation Manager, there has never been a problem of parking between the two uses.

Grady stated adding the assembly is the unknown factor and asked if the applicant will build the Proof of Parking if the City determines it’s under parked a day after it opens and requires the Proof of Parking.

Peters replied yes they will, as it’s their desire to perform.

Bernhardson stated the concern is there needs to be additional spaces for Smith Park and that the Council wants that reassurance on the front end. He said once there’s a problem, it’s harder to appease the neighborhood.

Peters stated attendees will carpool so there won’t be near as many cars as there are numbers of people.

Peterson stated the neighbors would be okay if the use only spills over twice a year. But if that spillover occurs on a daily basis, it will be a problem and that is why the City requires Proof of Parking.

Wilcox stated he’s seen the parking lot full on a summer weekend and believes problems will occur when Smith Park is busy on the weekend. He stated that is why having the parking in place when the Mall of America opened was so important.

Winstead stated the parking could work with a lot of conditions but he’s uncomfortable with too many moving parts. He believes the parking will be needed upon the opening of the Center. He believes in this project but the parking needs to be taken care of now.

ITEM 5.2D continued

Hulting commented he attends St. Michael's Church and believes the comparison used based on square footage is a little misleading and doesn't tell the whole story. He said it's not an apples to apples comparison. He said he's lived in this neighborhood and the parks in this area are greatly used. He believes parking will be a big issue and said the neighbors shouldn't have to put up with it.

Nordstrom stated St. Michael's Church has a 1,000-seat auditorium and asked if they experience parking issues.

Peters commented Al Farooq will work with the City's Parks and Recreation Manager on the issues relating to parking and field use.

Speaker #2: Resident at 9101 Old Cedar Avenue South

He grew up in Cairo, Egypt in a Christian neighborhood and said kids sitting in the street instead of being in school could cost the City more than this parking issue. He believes this building can help build a lot of bridges for kids and the community. He asked the Council to consider everything about the social issue. This building was a school before and it will still be a school. He mentioned they've had to take a defensive position and reiterated the building was in use prior to this application.

Winstead again said he believes in this project and that it can be great for the community and the people of this faith. He believes it can work well within Bloomington and this neighborhood. He said this building started out as an elementary school and then it became a high school. The parking was added in conjunction with the City park. He said these are all good uses but believes the site is under-parked. He said the City needs to address the parking issue before this permit is granted rather than afterwards. He doesn't want this matter to take on any other tone.

Wilcox stated the space goes back 40 years but then the park was underutilized. He said the City did a lot of improvements to that park with taxpayer money.

Winstead commented the new applicant is saddled with problems the previous owner didn't deal with. Concordia deferred acting on those problems so now the City is demanding they be corrected by the new owner because there is no rule to restart the clock.

Bernhardson asked staff if there is a Proof of Parking for 50 spaces, do they have to build the 50 spaces now. He said it's also an issue regarding the cost of the parking. He said the City needs to quantify the cost of that parking and then it's how the applicant deals with that number. It's not an issue of faith or what the people did before.

Grady commented if this was just a school and their enrollment was limited, it wouldn't be a problem but the numbers are unknown with the community center. She questioned how many will be attending. It's an open community center so it's hard to know. It's so open ended.

Nordstrom asked if use of the community center could be delayed until the parking is installed.

Peters asked if Al Farooq could, as part of this acquisition, agree to build the parking next to the school for now, which would provide at least 20 spaces, and the total Proof of Parking be used for the other space. He asked if that would address Council's concern so this could move forward.

Winstead stated according to the charts, the City's knowledge of the area, its familiarity with other places in the community, the City is setting itself up for problems in the future.

Speaker #3: Hyder Aziz, Director of the Al Farooq Community Center (Applicant)

He said they will do whatever it takes within their means to accomplish this project. Their families are anxious to call the Concordia campus their home.

Grady said she needs some feel from Mr. Aziz as to what he believes will happen.

ITEM 5.2D continued

Aziz agreed these are legitimate concerns. He said it's possible they could see more overcrowding than what is anticipated but he doubts the Council's fears will be realized. He said there are different avenues they can explore to control the numbers. He said their families will listen and they will turn people away if necessary. They'll ask them to carpool. They'll put up signs about no parking in the neighborhood. It's a promise he's made to the City so he will ask his people not to park in the street but in the parking lots. He explained there are two occasions they will most likely be overwhelmed but it won't happen on a regular basis. He's confident they really can control the parking situation. He stated they would build the parking space in front of the school and with more time, they would acquire that space from Xcel. He said they can provide 50 Proof of Parking spaces if the Council will give them time to construct half now when they move in and the rest later.

Winstead asked Council if they would be interested in allowing the applicant to provide half of the Proof of Parking now with the other half coming later plus possibly an additional 50 plus Proof of Parking spaces.

Wilcox said he's concerned this applicant is underestimating their future success. He doesn't want to negotiate the parking now and would prefer it come back.

Aziz inquired if a decision on this could be deferred so they could make a new agreement with the Planning Commission.

Winstead asked Aziz if a delay would cause problems for them.

Short Recess

Council recessed briefly to allow Council the opportunity to sign off on the agendas of the Jefferson High School students sitting in the audience.

Reconvened Meeting

Mayor Winstead reconvened the meeting after the 5-minutes recess.

Speaker #4: Mike Luke, 8208 Kingslee Road

He asked about the consequences if the applicant overbuilds the parking.

Winstead stated he did not come to his viewpoint lightly. It has been demonstrated there is a need for this amount of parking at other similar facilities in the community. He doesn't believe the City is requiring they build too much parking.

Aziz said if it would help the Council in making a decision today, he would propose on behalf of his community, that they forego opening the school this year until they have enough Proof of Parking but they will commit to developing approximately 25 spaces directly in front of the school now and will commit to developing the other two spots as Proof of Parking as soon as they acquire the land from Xcel Energy. He stated if they can't start the school by September 1, 2011, the opening would be deferred for another year. He believes he can convince his community that such a delay would be okay. They would just go with the community center and the Assembly hall at this time.

Wilcox stated he'd prefer to lie this over for two weeks to get these conditions in writing rather than act on it tonight.

Nordstrom stated she's comfortable acting on this application tonight.

At Peterson's request, Sandra Johnson, City Attorney read the recommended changes to Conditions #1 and #4. Condition #1 would read as follows, "That the property owner must construct approximately 25 Code compliant additional parking spaces on property controlled by the property owner prior to the issuance of a Certificate of Occupancy for the use as a community center and in place of assembly." Condition #4 would read as follows, "The 25 remaining Proof of Parking spaces must be constructed by the property owner prior to the issuance of a Certificate of Occupancy for the school."

ITEM 5.2D continued

Grady asked if 25 parking spaces now and 25 as soon as possible would work. She asked if Condition 4(c) is still necessary or is 50 spaces the maximum.

Johnson explained 50 spaces was the number the Planning Commission required for overflow parking. She said the Council could go beyond that if they desired.

Grady requested a new aerial showing what was being proposed.

Speaker #6: Kevin Thompson, 650 East 82nd Street

He said he attended the Planning Commission meeting and stated 50 spaces probably won't fulfill the needs of the building when it's at capacity but it might work. He mentioned the applicant said they may need to make other parking arrangements utilizing shuttle buses. He said parking is definitely an issue and that any extra spaces could be utilized by BAA. He commented Park Avenue is 5 feet narrower than it used to be, which makes it's harder to park on.

Wilcox asked Thompson what his experience was regarding parking on the weekends.

Thompson replied it's full when there are baseball games. He said those generally occur Monday-Thursday nights unless it rains in which case they might play on Friday. He reported the Smith Park parking lot is completely filled on Saturdays and on Sunday. He said people reserve the BBQ areas and that families fill up those areas on Sunday. He added the park use will probably increase as we get into summer.

Speaker #7: Anthony Luci, 8145 Oakland Avenue South

He said he can see the Park and the gymnasium parking lot from his house and that he has concerns about the parking also.

Closed the Public Hearing and Cont. to May 2 an Application by Al Farooq Youth and Learning Center at 8201 Park Ave. So. Case 8915A-11

Motion was made by Peterson, seconded by Nordstrom, and all voting aye, to close the public hearing on an application by Concordia Academy Association of Schools (Owner) and Al Farooq Youth and Learning Center (User) for a Conditional Use Permit for a private school, a day care, and a place of assembly/community center at 8201 Park Avenue South, Case 8915A-11.

Motion was made by Wilcox, seconded by Grady, and all voting aye, to continue this item for two weeks to May 2, 2011, in order to work out all of the proposed changes to the conditions.

Peterson stated he would like more specific direction for staff on what changes they are to be making.

Wilcox suggested there be an agreement for Al Farooq to add 25 spaces directly to the west of the building and add an additional 25 spaces when the applicant gets the easement but prior to the opening of the school on the south end of the existing parking by the Park, and a Proof of Parking for an additional 50 spaces somewhere on the lot to be added as needed.

Winstead stated he believes there would generally be support of this application by the Council when it comes back if the language can be worked out. He stated he doesn't want this to be a punitive delay for Al Farooq.

Peterson asked if there were any other conditions Council was considering should be added before this comes back.

Winstead stated there are other problems with the tank and the sprinklers that will need to be addressed per the Code.

**Adopted Resolution
Granting a Noise
Exception for the
Police Training Facility
at 10500 Hampshire
Avenue South
ITEM 5.5A
R-2011-56**

Lynn Moore, Environmental Health Manager provided a review of what was previously discussed at the March 21 Council public hearing. She described the location of the Police Department (P.D.) training facility in the northwest corner of the City's Western Maintenance Facility located at 10500 Hampshire Avenue South. She stated it's zoned residential (R-1) and that a police training facility is a legally conforming use. She stated the City also owns the undeveloped property immediately to the west at 6800 West 106th Street, which acts as a buffer zone to the single-family residential area on Kentucky Avenue. She reported the Police Department began using this property for training 36 years ago and that they provide "reality-based" training that can't be replicated indoors making this location more valuable to the P.D. She reported several residents testified at the public hearing on a Permanent Noise Exception that was conducted by the City Council on March 21. Following the testimony and discussion, the Council directed staff to meet with the neighborhood to discuss the issues to see if some conditions could be implemented to lessen the noise impact on the neighborhood. She reported staff met with seven residents who had several requests of the Department. She reviewed the following changes staff has agreed to include in the operating conditions for the noise exception:

1. 7-day advanced notification to neighbors of training exercises. Some limited use of the range for testing firearms that have been repaired would not require the notice. (All training operations would be noticed to the residents 7 days ahead.)
2. The Police have agreed to discontinue use of the range on Saturdays. (It is currently not used on Sundays or holidays.)
3. Police will discontinue use of the sniper rifles at the outdoor range and will move the training for the SWAT team to another location out of town.
4. The maximum number of days the range will be used will be reduced from 40 to 30.
5. The weekday training hours will be changed from 9 a.m. to 5 p.m. to 8 a.m. to 4 p.m.
6. Use of the range by the Police Reserve officers and Police Explorers will be discontinued.

It was stated Community Development, Legal and Police recommend adoption of the revised resolution as presented.

Council had no questions at this time. Mayor Winstead stated it's a facility that is used and needed but there is an impact to the neighborhood. He said these were good communications between the staff and the neighborhood.

Moore said ideally, the neighborhood would like the range to go away someday and that they had very direct questions. She stated the Police Department has accommodated the majority of their requests.

Mayor Winstead invited the public to testify.

Speaker #1: Matt Birhanzel, 10500 Kentucky

He stated the neighbors asked for 40 caliber hand guns. While the Police agreed to remove the rifles, he said that still leaves the shotguns and submachine guns, which they would also like to see removed and asked if that would be possible. He stated it would be good for the Council to hear this noise in person. He said the next shooting opportunity will be in May. He said the seven neighbors that showed up for the meeting realize the range can't go away immediately but they would like it phased out over a three-year period. They'd like see the use go from 30 days per year, to 20, to 10 days in 2014, and eventually taken completely offsite. He said this plan, however, was not agreed to by Police. They were told moving the training offsite to another city would cost \$20,000 plus the officers' time.

Bernhardson restated the Council has been invited by the residents to hear the noise firsthand.

ITEM 5.5A continued

Police Chief Jeff Potts commented sniper rifles are by far the loudest. Hand guns and other weapons are always near the officer at all times so they must requalify on all three weapons. He said the P.D. is exploring to see if the AR 15 rifles can be made quieter but they can't be moved. He said there is cost and clean-up considerations to phasing out the rifle range altogether.

Wilcox stated rather than reducing the number of days from 30 to 20 to 10, perhaps it would be better to just pick one day and take all of the training offsite.

Hulting said he has a friend who's lived on Maryland for 20-30 years and that he and his neighbors knew about the range and what would be occurring there. It wasn't a mystery to them. He said every fall he hears shotgun blasts from dawn to dusk for two months during hunting season and he has to live with that.

Speaker #2: Ann Hanson, 6925 West 105th Street

She said she doesn't live within 500 feet of the buffer zone and yet she is very much affected by the noise at the shooting range. She purchased her home in 2000 when the market was really hot. She said she didn't have time to get all of the little details she should have gotten about a shooting range located in her backyard. She said she didn't have time to think about the air traffic from Flying Cloud Airport, or the freeway traffic on 169, or the noise from warehouses in the immediate area. You purchase a house and pay your taxes. She stated the shooting range was a big surprise to her and that everyone doesn't know it's there. She said they back up to the Hyland Park Reserve, and as a result, their houses are more valuable. She said it's weird that the shooting range is a neighbor to the Park. As a runner on the path in the park, she said she has encountered others that don't know what's going on and that it sounds like they're shooting at you while you're running. She stated her support for Matt Birhanzel and Mr. & Mrs. Saff, who are really affected by it. She lives by the range and accepts it but would like the plan to only allow handguns and not the noisy weapons and machine guns. She too would like to see the range phased out completely. There are retirees and young families living nearby. She said if you're having a backyard BBQ, you can hear the guns. She asked Hulting why he didn't knock on their doors to get their opinions. She requested the Council delay their decision on this and invited them to sit out on Mr. Birhanzel's deck when the Police is conducting its training. She said that would be a fair way to approach this. She said other communities train their officers outside of their own communities and asked the Council to just say this is the way it will be but rather consider other opportunities going forward.

Wilcox stated this would be a permanent noise exception and asked Council if they wouldn't rather consider a 2-3 year noise exception if the training facility is going to be phased out in a few years. He asked if the permit should be given a timeframe for when it comes back to Council.

Grady said she liked the resolution adding the Police will be reporting back. She said they need to figure out the balance between the need for the City and the community and the neighbors who are impacted. She wants to hear this come back so maybe Council shouldn't approve it permanently but treat it like an Interim Use Permit. She wants to see if this will work. She suggested eliminating the word "permanent" from the exception.

Bernhardson stated whether the noise exception is permanent or temporary doesn't matter. He proposed there is the language about annual reporting.

Winstead stated this doesn't mean it will be phased out.

Peterson stated he listed the things he didn't expect to hear when he bought his house. He explained all of the annoying things near his house and the benefits each of them brings. He said the City needs to share in the burden of these issues.

Hulting stated there is value in having a police force that is well trained and ready to go. Those are benefits to the community, which are a direct result of that training facility.

ITEM 5.5A continued

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt a resolution approving an exception from Section 10.29.02 of the City's Noise Code for operation of a Police Department training facility with an outdoor firing range located in the northwest corner of 10500 Hampshire Avenue South subject to the following revised conditions:

1. The Police Department will notify residents and property owners seven days in advance of the dates of training exercises involving elevated sound levels. Some limited use of the range for the testing of firearms that have been repaired would not require the notice.
2. The Police Department will not allow anyone other than Bloomington Police officers and Police officers from other agencies participating in joint training exercises with Bloomington Police officers to discharge firearms or elevated sound-producing devices at the training facility.
3. Use of the training facility will be supervised in person by a Police Department Range Officer to ensure that the conditions of the noise exception are met.
4. All training exercises involving elevated sound will be done between 8 AM and 4 PM on weekdays. There will be no training exercises or discharging of firearms at the training facility on Saturdays, Sundays, or City-recognized holidays.
5. No weapons or training devices other than those approved by the Police Department will be used at the training facility. SWAT sniper rifles will not be fired at the training facility.
6. The Police Department will ensure that exercises involving elevated sound levels occur no more than 30 days per calendar year.
7. The Police Department will report to the City Council by January 31 annually, a summary of the previous year's exercises involving elevated sound levels at the training facility and any elevated sound level related complaints received.

Winstead stated a report and a review of the operations conducted at the Police Training Facility will be presented to Council on an annual basis and that it could be altered in the future.

**Appointment of
Tim Busse to fill
the District III City
Council Vacancy
ITEM 6.2**

Mayor Winstead stated the City Council needs to make an appointment to fill a vacancy on the Council for District III. He explained an interview process was held for nine candidates. The appointment will run through the end of this year, as the District III seat is up for election in November and will be a two-year term going forward. With regard to the process, he stated the Council is acting under the guidance of the City Charter. He explained the voting process involving the appointment. He said the Council will be polled and they must make the appointment within a specific timeframe. If the Council fails to do so, the Mayor will then make the appointment within 15 days. He commented it was an enlightening process and that a number of competent and qualified applicants applied for this Council vacancy.

Peterson agreed with the Mayor on the quality of the candidates. He was impressed by the resumes and the personal interviews. He said he considered the candidate's ability to understand the material adding it takes a person with a high energy level. He was interested in someone who has performed civic work in the community. He also stated he was happy that all of the candidates were satisfied with the current form of government in Bloomington. He mentioned he received some random feedback on the candidates from people. He said he desired a person with no particular agenda but someone who was open and willing to learn.

Wilcox concurred stating there were some great applicants. He stated there are now eight choices, as one withdrew, but only one can be selected. He suggested those who don't get appointment not give up but consider a commission appointment. He was interested in people with experience in the community who could hit the road running.

ITEM 6.2 continued

Grady stated this process confirmed her desire to conduct interviews for future commission appointments. She said there were six very good candidates in this group. She likes having others on the Council who have proven their leadership ability in other ways. She was interested in a team player who works well with others. She was desirous of someone with a certain energy level adding it should be someone who is interested in serving long-term. She was very impressed with the choices and said she would like to see members of this group move up the ranks from commissions to the City Council.

Nordstrom agreed. She said she watched the replay of the interviews on TV and talked to some people over the weekend. She said her final choice ended up being different than her initial choice.

Hulting stated this is among the hardest decisions he's made while serving on the Council. He said all of the candidates were well qualified and that any of six could have sat on this City Council. He stated five of the current seven Council members (including Steve Elkins) came up through the Planning Commission route. He believes not having served on the Planning Commission himself might have been a handicap for him. He said service on the Planning Commission or the Housing & Redevelopment Authority (HRA) gives one insights or perspectives and a history of the issues that face the City Council because they have worked their way up to the City Council level. He said it would have been helpful to have served on one of those commissions. While it wouldn't have necessarily changed his perspective, it would have been helpful.

Grady stated the Council lost a major power within the City Council in terms of Steve Elkins' ability to research and ponder issues. As a result, she looked at the depth of intellect and degrees of education that would be an asset to the City Council; important criteria for her.

Winstead stated the quality of the applicants was refreshing. He said he narrowed his choices down in the first phase. Then he talked to people who had worked with the candidates. He stated the Council will be polled and asked to name the individual they would like to see serve on the Council for District III adding this initial round will provide some guidance prior to the official appointment.

Council members were polled to select one of the following candidates: Jack Baloga, Russell E. Burnison, Tim Busse, Johanna Harris, Matt Holmes, Joel J. Jennissen, Jonathan Michael Larson, and Maureen Peterson.

Individual Voting Results:

Baloga (Hulting & Wilcox) and Busse (Peterson, Nordstrom, Grady & Winstead).

Motion was made by Peterson, seconded by Nordstrom, and all voting aye, to appoint Tim Busse to fill the District III vacancy on the Bloomington City Council.

Winstead stated Tim Busse will be sworn in at the next City Council meeting on Monday, May 2, 2011. He stated it was a tough decision due to the many qualified candidates.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 10:13 p.m.

Barbara Clawson
Council Secretary