

WOODLAND  
CITY COUNCIL MINUTES  
MONDAY, FEBRUARY 9, 2009  
7:00PM

**CALL TO ORDER & PLEDGE OF ALLEGIANCE**

Boy Scout John Dhamer, 2805 Stone Arch Road, led the City Council in the Pledge of Allegiance.

**ROLL CALL**

Present: Mayor Jim Doak, Councilmembers; Michael Jilek, Troon Dowds, Tom Newberry.

Absent: Sliv Carlson

Staff: City Attorney Joel Jamnik, Zoning Administrator Gus Karpas, City Clerk Shelley Souers.

Guests: Jeff Fuelner, Mary Louise Bowe, Steve Hornig, Maria Saulsbury, John Dhamer, Mike Schroeder, Steve and Tamela Schroll, Lowell and Nancy Weide.

**CONSENT AGENDA**

Councilmember Jilek moved and Councilmember Newberry seconded the motion to approve the consent agenda as presented. Motion carried 4-0.

**OLD BUSINESS**

**A) Appeal of Vegetation Alteration Permit – 18150 Breezy Point Road**

Mayor Doak summarized that the staff approved a vegetation alteration permit on December 16, 2008 for 18150 Breezy Point Road, to remove and install trees on the property in association with a new single family home being constructed. The City was served legal notice on December 23, 2008 from Steve and Penny Hornig to appeal the permit and actions of the staff. The letter from their attorney stated that the plans submitted by the Bowes would adversely impact their property in terms of value and aesthetics and that the issuance of permit was contrary to the City Code which led to a violation of the Hornig's due process rights.

Staff provided an overhead projection of the landscape plan to facilitate discussion.

Mayor Doak noted that both parties were present. Mayor Doak asked the City Attorney Joel Jamnik for comments.

Attorney Jamnik stated that the appeal is for the vegetation alteration permit. The Council and parties have been provided with a set of documents from the record regarding staff's evaluation of the Ordinances and the criteria specified in the Ordinances along with a copy of the Ordinance and supporting documentation. The Council heard from Mr. and Mrs. Bowe at the January Council meeting. City Attorney Jamnik noted that the Council will need to act on this matter by February 16 or the matter will be deemed automatically approved under State Statute without an extension.

Mayor Doak asked Mr. Hornig to speak to his appeal.

Mr. Hornig, 2830 Breezy Heights Road, thanked the Council for an opportunity to set forth his objections to the retaining wall and the landscape permit proposed by the Bowes. Mr. Hornig provided a history of the new construction project. Mr. Hornig stated that the Bowe's request for a

variance had been denied. Mr. Hornig stated that he had asked staff to contact him once a new house plan was submitted and was promised that they would be contacted when the plans came in.

Mr. Hornig stated that he was not contacted regarding the building plans as promised. Mr. Hornig stated that staff told him the developers were in a hurry and the Mayor had authorized issuance of the permit. Mr. Hornig stated that the house meets all the setbacks and various requirements; however, there are two areas where a neighbor has the ability to make comments. The two critical areas concern grading and tree removal, as both of the provisions require a finding and in the case of grading actually require a Special Use Permit so the authorization does not impact surrounding property values. Mr. Hornig stated the entire house should not have been built before staff considered whether the “massive re-grading of the property adversely affected the adjacent or nearby properties.” The re-grading involved scooping out dirt at the front of the property and piling it in the back. The natural lay of the land is 5-feet from the beginning of the house to the end of the house. The Bowe’s dug down 2 ½-feet and took the dirt and put in the back [south-side] creating a 10-foot beginning-to-end slope to their lot. Without the re-grading, just by the existing natural topography, the Bowe’s house would only have been allowed five extra feet under the current walk-out exception to the 35-foot “normal height limitation.” This means that the Bowe’s house could only have been 40-feet from the base floor to top of roof. The 5-feet allowed the Bowe’s to build a 45-foot structure, which is 5-feet higher than the natural terrain would have allowed. The Ordinance requires that a permit be issued before any re-grading is done and a Special Use Permit must be issued under section 900.15. This section requires the Council to consider evidence of the affect of the proposed use on the character and development of the neighborhood and the welfare of the surrounding lands and the affect on property values in the surrounding area. No grading permit was ever issues. Mr. Hornig stated that he asked to see the grading permit and was told by staff that a grading permit had not been signed at that time. Mr. Hornig stated that this was well after the permit had been issued to build a house. Mr. Hornig continued, noting that no Special Use Permit has ever been obtained with respect to the massive grading that has occurred on this property.

Mr. Hornig stated that without the grading of the five extra feet, the Bowes would probably have had to build a two-story house rather than a three-story house. Two feet of “head room” would have probably been removed from each floor. Mr. Hornig stated this is what the walk-out exception to the Ordinance was designed to allow. A five-foot shorter house would have meant that they [Hornigs] would have sunlight in the house two hours earlier in the morning. Mr. Hornig stated that they used to get sunlight when the sun came up and now need to wait until noon until they get any sunlight on the east side of the house. The additional 5-feet has allowed the Bowe’s main living space to be 5-feet higher than their living space and because the homes are about 35-feet apart, the Bowes living space can look down into their [Hornigs] windows. Mr. Hornig stated that the extra 5-feet of height has caused a loss of property value between \$200,000-\$400,000.

Mr. Hornig stated that the first thing he noticed was the removal of trees to accommodate the Bowe’s house. Mr. Hornig stated that he asked staff for a copy of the permit because many of the trees were 100 year old cedar trees that were 50-feet tall. Mr. Hornig pointed to the overhead plan to identify his house, built in 1903, in relation to the cedar trees that were removed for the Bowe’s house. Mr. Hornig stated that several of the cedar trees were 12-15-feet from the Bowe’s house. Mr. Hornig stated that staff said trees were removed to allow for construction of the house, pursuant to an exception in the Ordinances. Mr. Hornig stated that under Woodland Ordinances, trees over

6-inches in diameter may be removed if the removal is “necessary for the construction of structures, provided that any trees removed, as a result of such construction, shall be replaced as provided in subdivision 6”.

Mr. Hornig stated that he asked staff if a determination was made that trees located 15-feet away from the house had to be removed in order for the house to be built. Mr. Hornig stated that he was told staff never considered these trees. Mr. Hornig stated that three huge trees, “300 years of growth”, were down in ten minutes. The loss of the trees has resulted in additional diminution of value to his property. The top of the Bowe’s deck sits about 10-feet above their [Hornig’s] deck and the trees had offered some protection. Subdivision 6 of the Ordinance requires that replacement trees be of the same species and no less than 7-feet high. Mr. Hornig stated that they have asked, no less than 15 times, that the City require the Bowes to replace trees along the area between the decks with Black Hills Spruce that will grow to 40 to 50-feet high, similar to what was removed. Mr. Hornig stated that the Bowes have refused and are proposing a row of 10-feet tall arborvitae along the property line. Mr. Hornig stated that he doesn’t mind the row of arborvitae further down the property, but believes that there should be taller trees in the area between the decks, consistent to what was removed.

Mr. Hornig addressed an area of trees near the lake stating that the Bowe’s plan to leave old scrub tall trees in the lake area adjacent to the property line. Pointing to an overhead landscape plan, Mr. Hornig noted that from their deck, they look towards the lake [north easterly] and stated that it would be nice to see the lake, rather than a huge patch of old vegetation. The Bowe’s propose to plant arborvitae down the fence line, but leave a huge wild patch near the lake. Mr. Hornig stated that the patch obstructs their view and would like it removed in the same manner that the Bowe’s removed 70% of similar vegetation along the center of the property to accommodate their own view. Mr. Hornig stated that they ask no more and no less. Mr. Hornig stated that if this is not done, and the City doesn’t grant this, then they would like the Bowes to conform to the Ordinances which absolutely prohibit any intensive vegetation clearing. Mr. Hornig stated that there is intensive vegetation along the [west] property line and the Ordinances absolutely prohibit intensive vegetation clearing. Mr. Hornig stated, to be clear, they would like nothing cleared along their side of the property, just leave it as is, unless the City requires that the patch [at the lake area] also be removed.

Mr. Hornig addressed the retaining wall stating the Ordinances permit retaining walls to be built. Mr. Hornig stated that no special permit has been issued for re-grading and the only reason the retaining wall is being discussed is because of the re-grading required by putting the driveway by the property line. Mr. Hornig pointed to an area along the retaining wall on the landscape plan noting that the grade will be raised about 5-feet from the current grade. Mr. Hornig stated that the retaining wall will be 1 ½-feet higher than the driveway on Bowe’s side and 5-feet high on their [Hornig] side. Mr. Hornig reiterated that they will be looking at a 5-feet high brick wall. Mr. Hornig stated that the wall exceeds the height of ground that it will retain by approximately 1 ½-feet (1.4 feet). Mr. Hornig stated that they consider this 1.4-feet, which is the height above the driveway, to be in violation of the ordinance because it is not retaining anything and becomes a structure once its function does not retain dirt. The wall must conform to the 10-feet setbacks under the Ordinance. Mr. Hornig stated that they would like the retaining wall brought down by at least 1-foot.

Mr. Hornig stated that the lot slopes towards the lake. The edge of the driveway to the grade is 2 to 3-feet lower than the driveway. Mr. Hornig stated that they would like to see the retaining wall drop down to the grade making it 3-feet shorter than currently proposed. Mr. Hornig stated with the wall at the grade there is no need to cut the existing arborvitae in that area. Mr. Hornig noted that there are seven or eight 25 year-old old arborvitae about 30-feet tall that protect their property from seeing the 45-foot tall structure that run 135-feet along the property line. These arborvitae should remain undisturbed.

Mr. Hornig summarized, thanking Council for their time, and reiterating that they would like to see the existing clump of wild vegetation removed. If this is not granted, they would like no change from the end of their house, not including the deck, down to the lake. If the Council allows the clump of vegetation to be removed at the lake, consistent with the current removal along the lake, they [Hornigs] are Ok with the arborvitae trees to the deck area and then would like taller Black Hills Spruce to give both more privacy. Mr. Hornig stated they would like the retaining wall brought down to grade as quickly as possible and as near to the grade as possible and all existing arborvitae north of the driveway line left in place. Mr. Hornig also asked that the chain link fence running along the property be removed at their [Hornig's] expense.

Councilmember Jilek asked for clarification on the location of the existing 25 year-old arborvitae.

Mr. Hornig referenced the location of the arborvitae on the overhead landscape plan. Mr. Hornig noted that some of the arborvitae will need to be removed in order to accommodate the driveway, but some of the arborvitae should be allowed to remain if the wall is brought down.

Mayor Doak asked if the Black Hills Spruce trees would be along the property line or in the Bowe's yard near the location of the old spruce.

Mr. Hornig stated that he would be "Ok" with the Spruce trees along the lot line and suggested that the last six arborvitae, shown on the plan, be Black Hills Spruce which would give height and privacy.

Mayor Doak noted that Mr. Hornig mentioned an estimate of the loss of value to his property and asked if he had substantiation for the devaluation.

Mr. Hornig stated that he could provide the information.

Mayor Doak confirmed, with legal counsel, that the retaining wall is not part of the vegetation permit and is considered a separate entity. Mayor Doak asked if the wall is in accord with the City Ordinances.

Zoning Administrator Karpas stated that the wall is in accord with the ordinances.

Mayor Doak asked if the wall could be built simply as a wall and not a retaining wall.

Zoning Administrator Karpas stated that provided the location of the wall meets the setback requirement of 2/3 of the height.

Mayor Doak confirmed the wall complies with the setback and can be located as planned.

Mr. Hornig noted that the retaining wall is not a fence, but a structure and therefore must be 10-feet off the property line.

City Attorney Jannik noted that the appeal tonight before the Council is regarding the vegetation alteration permit and the retaining wall is not germane to the appeal. The grading in-conjunction with the construction and the previous tree removal associated with the construction of the house is not before the Council tonight. The Council can consider the comments from the property owners regarding those items, but the appeal is based on the vegetation alteration permit. The Council can discuss other issues as terms and conditions or related factors, but that is not the focus of the appeal.

Mayor Doak reiterated that the extent of the appeal is consideration of the planting of arborvitae and various species along the lot line and the removal of existing vegetation and the criteria of the Ordinance related to this appeal.

Mrs. Bowe, 18150 Breezy Point Road, asked that the landscaper-architect, Jeff Fuelner, speak as a professional to the questions and issues.

Jeff Fuelner, architect with Keenan and Sveiven, stated that the Techny Arborvitae shown in the plan are 6-feet in width. Mr. Fuelner noted the Black Hills Spruce requested, would have a width of over 20 feet once at 50-feet in height. The Black Hill Spruce would be three times the width of the symbols on the plan and if planted along the line would be growing on the Hornig's property. If the Spruce are planted entirely on the Bowes property they would close off access to mowers and maintenance equipment and access to the lake. Based on the proximity of the Hornig's home, the property line and the Bowe's home, there is not room for tree to get 60 feet tall due to the associated width. That is the reason they selected Techny Arborvitae that have a mature height of 12 to 15-feet, which is as tall and similar to most of the trees along the property, with the exception of the cedars that were removed by the deck area.

Mr. Fuelner noted that the wall elevations may be confusing, but the wall will only be 6-inches higher than the driveway for a curb top. It is not 1½-feet taller. Mr. Fuelner pointed out the area of the existing arborvitae and noted that the grade is 2-feet higher than existing and is closer to the property line.

Mayor Doak asked about the wall height.

Mr. Fuelner, pointing to the overhead projection of the landscape plan, denoted the high point of the wall at 5-feet and stated that it tappers to 3-feet quickly as it runs toward the lake. The Pyramidal Arborvitae will be 8-feet high the day they are planted and will grow to 20-feet. These arborvitae will obscure the wall. Past the driveway the arborvitae will be on top of the wall and will grow 12-15-feet tall. Mr. Fuelner noted that the top of the arborvitae trees on the wall will be 19-20-feet tall, (15-feet height of the plant plus the height of the wall), which should block views into the homes.

Mayor Doak asked if Mr. Fuelner could provide an estimate of the height of the arborvitae that exist there now.

Mr. Fuelner stated that the existing arborvitae are about 25-feet.

Mayor Doak reiterated that the plantings will be 15-feet, plus the plants will be elevated along the top of the wall. Mayor Doak asked for a description of the wall.

Mr. Fuelner stated that the wall is a modular block Keystone product. It has the look of natural stone with a random block pattern.

Mrs. Bowe stated that it is the same wall that is on the east side of the property.

Mayor Doak asked why the decision was made to leave the vegetation at the lakeside and clear the middle of the property.

Mr. Fuelner stated that there is a band of overgrown arborvitae and honeysuckle along the property. There are also some nice smaller maple trees in the area. They plan to clear out the buckthorn and honeysuckle and let the maples mature.

Mrs. Bowe stated that the wooded aspect of the lot was appealing and they have attempted to keep within the spirit of the codes and maintain as much of the clean and healthy vegetation as possible. The intention in the corner area is to remove the junk and determine, as they live on the property, what is appropriate and what is not. Mrs. Bowe stated that their plan is to view the property season-to-season and remove overgrown and poorly kept vegetation and leave beautiful trees and healthy vegetation.

Mr. Fuelner stated that they are not leaving trees to block views. They are doing the same thing on the other side [east side] of the property. There are not as many maples along the east side. The plan is to re-vegetate with lower growing native species to stabilize the hill and create a natural look from the lake.

Mayor Doak asked if Mr. Fuelner could explain what the west side line of arborvitae are replacing.

Mr. Fuelner responded stating that overgrown honeysuckle and overgrown and un-kept arborvitae and a mix of volunteer plants that have not been properly maintained and not a desirable growth exist along the line.

Mayor Doak asked if there were any further questions or comments.

Mr. Hornig stated that Mr. Fuelner noted they could not plant Black Hills Spruce on the property line. Mr. Hornig suggested that the Black Hills Spruce could be planted on the property line similar to where the arborvitae are, so the proximate growth would still be on the Bowe's side of the property. Putting Black Hills Spruce in the area [between the decks] is what they would like to see. Mr. Hornig noted that the Bowe's have stated they want to be selective with removing trees along the lakeside, but removed vegetation in the middle of the property but not from the sides.

Mr. Fuelner stated that there is a large maple in the center area and it will remain. There are no other maples along the center of the hill, only buckthorn and scrubby trees.

Mr. Hornig stated the removal should be similar to what they have done in the center area and be consistent all along the hillside.

Mrs. Bowe stated that they understood, when granted the permit after months and months of conversation, that they had satisfied the Hornigs and that was the intention. Mrs. Bowe stated that their intention is not to make the neighbors uncomfortable. Mrs. Bowe stated that Pat [Bowe] and Mr. Hornig had a conversation a year ago and Pat told Mr. Hornig they were planning on planting a row of arborvitae for privacy, and at the time Mr. Hornig said "great". Mrs. Bowe stated that all along they have felt they were doing something appropriate and that the neighbor would be Ok with. There was an issue with the type of trees, pyramidal versus Techny. In an effort to work with the neighbor the trees were changed to pyramidal trees, which is not what is being used anywhere else on the property. Mrs. Bowe stated that she is concerned the requests are all over them map. The Hornigs are concerned with sunlight, but want tall trees. The landscape architect has explained why the spruce trees do not make sense in this scenario. They understand Mr. Hornig's desire for screening from the porch and are building a wall so they will not be looking at them. There are very few windows on the [west] side of the house in an effort to give both parties privacy. Mrs. Bowe stated that they are not sure how to continue to satisfy the demands and wants to be sure the City Council recognizes how many time that they have tried to do what they are being asked in the spirit of neighborliness. Mrs. Bowe stated that this has been deeply disturbing to them and they desire to do what is fair and believe they have a fair plan.

Mayor Doak asked for any other comments.

City Attorney Jannik stated that as shown in the record the permit was applied for in mid December and there is an exchange of correspondence going back to the middle of August regarding this matter. Also in the record there are conversations noted with Shelley [Souers] and Mr. Hornig, August 28 regarding some of the outlines of these issues and his proposed compromise that he would accept arborvitae near the north side deck. There are also in the records exchanges between Gus [Karpas] and Jeff [Fuelner] regarding the type of arborvitae and their location to the property line. It was one of the staff criteria for approving the permit that the complete, to the extent possible, tree or shrub envelope would be within the jurisdictional boundaries of Bowe's property lines. These were some of the central features of the permit that was issued. We are going back a bit in time regarding alternatives such as the spruce that would go across the property line with the consent of the property owner, but the record does not have that discussion documented as much the discussion and review that tried to keep the buffer within the property lines of the Bowes. To clarify the record as to why there is a difference of the dates in some of the documents, the permit was formerly applied for at one point, but there were obvious extensive previous conversations. We are also missing in the record any previous conversations individual Councilmembers had with either of the property owners and obviously those did occur and there was site inspections as well. We have not detailed those, but would be able to if asked.

Mayor Doak stated that he would like to proceed by considering each item.

The first issue was one of due process and whether the Hornig's concerns and suggestions had been considered. Mayor Doak stated that the City Attorney detailed the extensive background of this matter. Mayor Doak stated that he was aware that the Council has all visited the site. The City has received numerous phone calls and responded to them. Mayor Doak stated, in his opinion, staff has made every effort to be responsive to both parties.

Council had no other comments on the matter of due process violation.

Mayor Doak noted the other issues that Council must consider are whether the Zoning Administrator properly considered the criteria in granting the permit. The criteria to be considered include:

- (a) the activity will not adversely affect the ecological systems or increase the potential for soil erosion.
- (b) the activity is in conformance with accepted tree management practices.
- (c) the activity will not adversely impact property values of surrounding properties or the aesthetics of the neighborhood in which such activity is proposed to occur.

Mayor Doak asked the Council to address each of the criteria. Mayor Doak did not believe that the landscape plan would increase the potential for soil erosion. Mayor Doak noted that the plan replaces fairly random natural growth with pedigree trees. The plan respects the City's desire to maintain a natural appearance from the lake and the City has long regarded other cities' policies that permit building along the lake with a "glass-front" to be an undesirable. Mayor Doak stated that he believes the Bowes have been sensitive to this concept and are retaining the young maples along the slope by removing the competition from the buckthorn and honeysuckle. Mayor Doak stated that he believes the aesthetics are adequately addressed. Mayor Doak paused for comment from the Council. There was none.

Mayor Doak noted the issue of property value is in the eye-of the beholder. The property the property that the Bowes purchased was relatively unmaintained and rundown, full of random growth and a house that has not been properly maintained. Mayor Doak stated that the property has been improved significantly. This does not address the fact that the relative solitude that the Hornigs have enjoyed for many years is now gone and that they must now deal with a house that is set next door to them. Whether their property value has been diminished by building a superior house next door is a debatable issue

Councilmember Jilek stated that he agrees with Mayor Doak's comments and in his opinion, after reviewing the plan and visiting the property is fair and equitable.

Councilmember Newberry stated that he agrees that the actions by the Zoning Administrator were fair and equitable, in light of the facts available to him.

Councilmember Dowds stated that he is an advocate of removing unhealthy growth to allow the desirable trees to grow. Councilmember Dowds stated that he agrees the plan was adequately reviewed and agrees with the proposal.

City Attorney Jannik stated the Council should make a motion in light of the Council's conclusions, direct staff to document the finding and the Council's decision to bring both to the next meeting for final ratification.

City Attorney Jannik stated that the motion should be made to either, uphold the issuance of the permit, reverse the issuance of the permit or amend the term and conditions of which the permit was issued.

*Mayor Doak moved that Council uphold the permit as issued by the Zoning Coordinator. Councilmember Jilek seconded the motion. Motion carried 4-0.*

City Attorney Jannik stated that staff will provide the formal finding for the Council at the next Council meeting.

### **PUBLIC HEARING**

**a) 2660 and 2700 Stone Arch Road, Jim and Lori Brown and Steve and Tamela Schroll, request a Variance and Special Use Permit to construct a holding pond and water fall feature that will overlap the shared property line.**

Mayor Doak opened the public hearing.

Zoning Administrator Karpas provided a staff report summarizing the request for variance and special use permit by adjoining property owners to construct a 3,300 square foot holding pond and waterfall feature that would overlap the shared property boundary. The proposal is necessary to alleviate issues associated with standing water. The pond location is the natural low spot on the properties which floods during the spring thaw and heavy rains. The plan has been reviewed by the City Engineer and the City Attorney. The applicants have obtained a permit by the Minnehaha Creek Watershed District. The grade alteration would be 4-feet at the deepest point in the pond to accommodate the pump mechanism.

Zoning Administrator Karpas stated that he recommends approval, finding no negative impact on the character or development of the neighborhood, conditioned upon a maintenance agreement to be completed by the property owners and reviewed by the City Attorney.

Mr. Mike Schroeder, project manager with John Kramer and Sons, and representing both property owners stated that the area in question is the lowest spot of all the surrounding lots and is the natural drainage area for water runoff. The area routinely has standing water in the spring and following heavy rains. The proposed pond will make the area more visually appealing and contain the water in a designated area.

Mr. Schroeder stated that there is no water fountain that elevates the water. There will only be a water fall over the edge of the rocks and the noise should be minimal. There should be no noise from the mechanical aspects of the pumps. All the lighting will be in the pond, pointed at the falls. There will be no exterior lighting. The maintenance level of water will be 1-foot below the rock boundary so there is additional room to take on more water. The water will leave the pond through

evaporation and percolation. Mr. Schroeder stated that if an intense rain caused the pond to overflow, the water would drain to the same area as it currently goes.

In answer to Councilmember Jilek's question regarding the shared feature, Mr. Schroeder stated that the property line is down the middle of the pond and each property owner will have a separate pump and filter and their own water fall. Both property owners will run their own power and lights.

Mayor Doak asked if one pump went out whether a single pump could maintain the water quality in the pond.

Mr. Schroeder responded that either of the pumps could adequately maintain the pond on its own.

Councilmember Dowds confirmed that there would be no concrete fill in the pond.

Mr. Schroeder stated that a fabric filter will be placed along the back wall [falls area] and will extend out into the pond about 6-feet. Mr. Schroeder noted that the center depth of the pond will be 4-feet and then slope gradually upward with a shallow perimeter. Mr. Schroeder also stated that in the event of low water they may fill the pond with lake water.

Mayor Doak asked City Attorney Jamnik to address the condition regarding maintenance.

City Attorney Jamnik stated that it has been his experience that property owners who have joint ownership over a shared facility would be short-sighted to enter into a project with only a current shared vision without having a formal legal agreement, recorded on the property, that provides for the long-term maintenance, upkeep, replacement and possible removal. He stated that such a document could be prepared by a real-estate attorney in detail that addresses these issues so that in the future when the property is no longer owned by the current owners, questions can be answered by reference to the document. If it is not drafted now, it is likely that at the time the property is conveyed a mortgage company will require the issue to be addressed. Attorney Jamnik stated that the document should be detailed and would recommend that the document be completed, prior to construction of the pond.

Mr. Schroeder asked that due to the time limit for construction of the pond, that they be allowed to start construction, subject to all the conditions being met on final inspection of the pond.

City Attorney Jamnik stated that he would recommend the permit not be released from the City without the agreement having been reviewed and approved by him.

Mayor Doak asked for clarification on the matter of the variance request and hardship finding.

City Attorney Jamnik stated that the hardship standard, per State Statute, is not a constitutional taking analysis where a hardship must be shown and that no practical or reasonable use of the property can be made without this. It is a practical difficulties test allowing reasonable use of the property that would otherwise be prohibited by the standards of the Ordinance, if the property owners show unique circumstances. There could not be a joint pond without straddling the property line and the location of where the water pools and topography of the site is such that it is a logical

location and an amenity that is well within a reasonable use. If the Council determines that it is not reasonable and advisable given the long-term maintenance issues or appearance in dry seasons, then it would be within the Council's discretion to determine that it is not reasonable and could be denied. Council is not applying the hardship test in a rigid fashion, it is a balance of interest test and the Council has substantial discretion of latitude to make a determination as to whether to grant the variance or deny the variance.

Mayor Doak closed the hearing.

*Mayor Doak moved to approve the Variance and Special Use Permit conditioned on the preparation of a maintenance agreement acceptable to the City Attorney and subject to staff's recommendations. Councilmember Newberry seconded the motion. Motion carried 4-0.*

### **NEW BUSINESS**

#### **A) Ordinance No. 3-13; Amending certain fees in Chapter 3 of the Ordinances.**

Council reviewed Ordinance No. 3-13 with amendments to several zoning fees. The amendment proposes a fee increase to cover the costs associated with zoning applications for variance, special use permits and land alteration permits and adds a new fee for extensions of zoning applications.

*Councilmember Jilek moved to adopt Ordinance No. 03-13. Councilmember Newberry seconded the motion. Motion carried 4-0.*

*Mayor Doak moved to waive second reading of Ordinance No. 03-13. Councilmember Jilek seconded the motion. Motion carried 4-0.*

#### **B) Adopt New Policies – Travel Policy and Red Flag Policy**

Mayor Doak stated that the City Auditor has recommended the City adopt a policy to address travel and conference attendance and a policy (Red Flag Policy) to safeguard against identity theft, because the City administers a utility billing program.

*Councilmember Jilek moved to adopt the Travel Policy and the Red Flag Policy as presented. Councilmember Dowds seconded the motion. Motion carried 4-0.*

### **MAYORS REPORT**

Mayor Doak reported that he will be attending a meeting regarding the federal stimulus for the state.

Mayor Doak encouraged Council to attend the Board of Review Training scheduled on March 25 in Maple Grove.

Mayor Doak reported that the Lake Minnetonka Conservation District (LMCD) is currently considering their authority to issue permits to entities that want to provide alcoholic beverages at events held on the ice.

Mayor Doak stated that Councilmember Carlson attended a meeting where Social Host Ordinances were discussed. Councilmember Carlson will provide more detail on this issue at an upcoming

meeting. The Ordinance holds parents criminally responsible for serving alcohol to under age minors.

Mayor Doak reported that the engineers are continuing work on the Surface Water Management Plan (SWMP). Mayor Doak stated that he, along with the engineers and staff met with the staff from the Minnehaha Creek Watershed District regarding the plan. The key points are a targeted reduction in phosphorous levels and a maintenance plan for all stormwater facilities.

Mayor Doak stated that the City may want to consider a separate fund for future maintenance of stormwater facilities.

## **COUNCIL REPORTS**

### **Finance**

No report.

### **Roads and signs**

Councilmember Dowds reported that several signs were hit with a paint ball gun, but the paint should wash off.

### **Deer Management and Website**

Councilmember Jilek reported that all deer traps have been removed for the season. The Fire Chief will attend the Council meeting in March to provide a department update.

### **Police Report**

Chief Johnson reported that all squad cars will have Woodland identified on the sides.

### **Ordinances**

No report.

## **TREASURER'S REPORT**

*Councilmember Jilek moved approval of the Treasurer's Report as submitted. Councilmember Newberry seconded the motion. Motion carried 4-0.*

## **ACCOUNTS PAYABLE**

*Council unanimously approved the accounts payables for February. Motion carried 4-0.*

## **ADJOURNMENT**

*Council unanimously moved to adjourn the regular meeting at 8:44 P.M.*

## **ATTEST:**

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Shelley J. Souers, City Clerk

\_\_\_\_\_  
James S. Doak, Mayor