

# REGULAR MEETING COTTAGE GROVE CITY COUNCIL

June 16, 2004

## OPEN FORUM – 7:15 p.m.

Open forum provides a person an opportunity to inform the Council of a problem or to request information related to City business not scheduled for Council action and on the Agenda. Mayor Shiely encouraged persons to limit their remarks to two (2) minutes per issue.

Present: Mayor Sandy Shiely  
Council Member Mark Grossklaus  
Council Member Cheryl Kohls  
Council Member Pat Rice  
Council Member Jim Wolcott

Also Present: Ryan Schroeder, City Administrator  
Ron Hedberg, Finance and Administrative Services Director  
Howard Blin, Community Development Director  
John Mickelson, Public Safety Director  
Les Burshten, Public Works Director  
Corrine Thomson, City Attorney

Mike Koshmarl, Attorney representing Mr. Dan Rehkamp, stated that they were able to work out an agreement that was satisfactory to all parties. He noted that both the City of Cottage Grove and Mr. Rehkamp would retain rights to defense in regard to potential future claims. He noted that both parties are happy with the outcome and glad to bring this to a close.

Dan Rehkamp stated that he wants the City Council to be aware that he truly appreciates both Fire Chief Bob Byerly and Public Safety Director John Mickelson. He stated that they both do a great job protecting the firefighters and officers noting that it is their responsibility to ensure the safety, health and welfare of the Firefighters and Officers in the field. He thanked everyone for their quick and timely response adding that he too appreciates that this situation was able to come to a conclusion. He stated that this has been very important to him and he is glad that it was addressed in a timely fashion.

Mayor Shiely referenced Agenda Item 5.A., stating that the City Council would be discussing other issues brought forward by this issue. She thanked Mr. Rehkamp for his kind words for Fire Chief Byerly and Public Safety Director Mickelson.

Pat Horst, 9493 Indian Boulevard South, stated that he is very glad that the City was able to come to a settlement with Mr. Rehkamp. He stated that he had several questions that came up due to this situation.

CALL TO ORDER

The City Council of the City of Cottage Grove, Washington County, Minnesota held a regular meeting on Wednesday, June 16, 2004, at the Cottage Grove City Hall, 7516 80<sup>th</sup> Street South. Mayor Sandy Shiely called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Mayor Sandy Shiely  
Council Member Mark Grossklaus  
Council Member Cheryl Kohls  
Council Member Pat Rice  
Council Member Jim Wolcott

Also Present: Ryan Schroeder, City Administrator  
Ron Hedberg, Finance and Administrative Services Director  
Howard Blin, Community Development Director  
John Mickelson, Public Safety Director  
Les Burshten, Public Works Director  
Corrine Thomson, City Attorney

Not Present: None.

ADOPTION OF AGENDA

Mayor Shiely stated that there is a change on the Agenda. She referenced Item 13.A., Closed Workshop, stating that the workshop would not be held tonight.

MOTION BY WOLCOTT, SECONDED BY RICE, TO APPROVE THE AGENDA AS AMENDED.  
MOTION CARRIED 5-0.

PRESENTATIONS

NONE

APPROVAL OF MINUTES

NONE

CONSENT CALENDAR

Council Member Wolcott stated he would like to pull Items 4.B. and 4.H. for discussion. He stated that the City has received donations for the Annual Youth Safety Camp from Hanson Auto Care, Koch Pipeline, and South Suburban Rental and thanked them for their donations.

Mayor Shiely stated that she would like to pull Item 4.D., National Night Out Proclamation. Council Member Rice read aloud the Proclamation announcing that the 2004 National Night Out would be held on August 3, 2004.

MOTION BY RICE, SECONDED BY WOLCOTT, TO:

- A. ACCEPT AND PLACE ON FILE THE FOLLOWING MINUTES:
  - i. PUBLIC SAFETY, HEALTH AND WELFARE COMMISSION OF APRIL 13, 2004.
- B. ADOPT **RESOLUTION NO. 04-091** ACCEPTING A DONATION IN THE AMOUNT OF \$900.00 FROM HANSEN'S AUTO CARE, INC. ON BEHALF OF THE PUBLIC SAFETY, FIRE AND RECREATION DEPARTMENTS FOR THE 11<sup>TH</sup> ANNUAL YOUTH SAFETY CAMP.
- C. AUTHORIZE ENTRANCE INTO A LABOR AGREEMENT WITH LAW ENFORCEMENT LABOR SERVICES LOCAL NO. 79 FOR POLICE OFFICERS FOR 2004 - 2005.
- D. PROCLAIM TUESDAY, AUGUST 3, 2004 AS NATIONAL NIGHTOUT IN THE CITY OF COTTAGE GROVE AND INVITE ALL CITIZENS TO JOIN THE MEMBERS OF THE POLICE DEPARTMENT AT WOODRIDGE PARK.
- E. APPOINT ANGELA LY TO THE HUMAN SERVICES/HUMAN RIGHTS COMMISSION YOUTH SEAT.
- F. GRANT PERMISSION TO START A LOCAL CABLE TELEVISION PROGRAM ON HUMAN RIGHTS ISSUES FOR THE COTTAGE GROVE HUMAN SERVICES/HUMAN RIGHTS COMMISSION.
- G. AUTHORIZE ISSUANCE OF A SECONDHAND GOODS DEALER LICENSE TO SECOND TIME AROUND AT THE OAK PARK COMMONS RETAIL CENTER, 7430 – 80<sup>TH</sup> STREET SOUTH.
- H. ADOPT **RESOLUTION NO. 04-092** ACCEPTING DONATIONS IN THE AMOUNT OF \$600.00 ON BEHALF OF THE PUBLIC SAFETY, FIRE AND RECREATION DEPARTMENTS FOR THE 11<sup>TH</sup> ANNUAL YOUTH SAFETY CAMP.
- I. ADOPT **RESOLUTION NO. 04-093** APPROVING A SIMPLE LOT DIVISION TO SUBDIVIDE A 4.592-ACRE PARCEL OF LAND INTO TWO PARCELS OF 4.556-ACRES AND .036-ACRES AT 6483 – 85<sup>TH</sup> STREET SOUTH.
- J. ADOPT **RESOLUTION NO. 04-094** GRANTING A VARIANCE FROM TITLE 11-3-3E(3) TO ALLOW CONSTRUCTION OF A GARDEN SHED IN FRONT OF THE PRINCIPAL STRUCTURE AT 11801 LOCKRIDGE AVENUE SOUTH.
- K. APPOINT AARON ROLLOFF TO FULFILL AN UNEXPIRED TERM ENDING ON FEBRUARY 28, 2005 ON THE ADVISORY COMMITTEE ON HISTORIC PRESERVATION (ACHP).
- L. ADOPT **RESOLUTION NO. 04-095** APPROVING AN INTERIM CONDITIONAL USE PERMIT TO ALLOW TEMPORARY OUTDOOR SALES OF FIREWORKS AT THE JAMAICA BP FOOD AND FUEL STATION, 8490 EAST POINT DOUGLAS ROAD SOUTH.
- M. ADOPT **RESOLUTION NO. 04-096** AUTHORIZING ACCEPTANCE OF A \$25,000 TRAIL GRANT FOR THE EAST DRAW TRAILWAY CONNECTION (PROJECT NO. C034-03-3B) AND AUTHORIZING EXECUTION OF A GRANT AGREEMENT WITH THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES.
- N. APPROVE SUPPLEMENTAL AGREEMENT NO. 4 FOR THE HARDWOOD AVENUE PROJECT.

MOTION CARRIED 5-0.

Mayor Shiely stated that all items on the Consent Agenda have been approved.

### RESPONSE TO PREVIOUSLY RAISED OPEN FORUM ISSUES

#### A. Response Regarding Workers' Compensation Claims Administration

Mayor Shiely thanked everyone for coming out to show support for one of the City's employees. She stated that this has been a very emotional issue noting that there has been some misinformation regarding the issue that should be clarified. Sheily explained that the 6:00 p.m. TV news channels reported that the City of Cottage Grove had agreed to pay the medical expenses noting that it is the City's insurer, the League of Minnesota Cities, who agreed to pay Mr. Rehkamp's medical bills. She stated that this issue is actually in two parts, a response from Council regarding an issue brought forward during Open Forum and Mr. Rehkamp's medical bills. Sheily noted the Closed Workshop that had been scheduled for later in the meeting was going to be closed to the public due to State Law requirements when dealing with employee medical issues. She explained that these kinds of issues cannot be discussed publicly and assured everyone that the City was not trying to hide anything. She indicated that, prior to their decision, several documents had been provided to Council for their review adding that Council requested that Staff look into these issues further and update Council with their findings.

City Administrator Schroeder referenced Agenda Item 5.A. noting that copies are available for anyone interested in reviewing the materials. He stated that Mr. Rehkamp raised issues that were appropriately addressed by the City Council through a review of the policies. He explained that it became clear, after discussions with both parties that an effort had been made by the League of Minnesota Cities and Mr. Rehkamp to come to the same conclusion. He noted that this issue brought forward broader issues that required further review. He provided the Council with a brief background history of the insurance process noting that in the 1970's and 1980's the carriers that represented the local cities left the market. He explained that as a result, the League of Minnesota Cities, an association representing all Cities in the State of Minnesota, decided to enter the insurance field forming an insurance trust that represents approximately 900 cities in the State. He stated that coverage includes Workers' Compensation, Property and Health.

City Administrator Schroeder stated that Council requested information regarding the City of Cottage Grove's claim history noting that the information requested was included in the Council packet for their review. He provided the Council with an overview of the Workers' Compensation claims that have been filed noting that out of the 124 claims filed, all but 12 were accepted for coverage by the Trust. He stated that there were 16 claims filed relative to the Fire Department noting that all 16 were accepted for coverage by the Trust. He reviewed the overall findings with Council noting that at the last meeting it was suggested that eight of the City's firefighters were not adequately covered by Workers' Compensation. He stated that the City received information from the League of Minnesota Cities that shows there is no difference in the handling of the claims based on work status or what city they are working for. He noted that there are also presumptions under the law applying to severe disease that is enhanced for the fire service in comparison to the general public base and he reviewed these with Council.

City Administrator Schroeder stated that Council also requested clarification on whether there is differentiation on how a claim is handled if a Supervisor directs an Employee to receive medical attention and what would happen in disputed cases. He stated that a draft, provided by the Public Safety Department, has been provided for Council review that attempts to begin exploring this issue. He stated that Staff is currently exploring this issue further. He noted that the City does attempt to provide a period of time to allow the Insurance Trust and the Employee to resolve any issues. He stated that in this particular case the City was informed of a dispute on May 2, 2004 when Public Safety Director Mickelson notified him of the disputed case. He stated that at that time the City had directed that there be no further billing until the issues were resolved. He stated that despite this direction the billing continued adding that they plan to review the current process to try and determine how they can stop this from happening again. He stated that Staff is suggesting that Council review the information provided noting that Staff is recommending a procedure that would include informing the Council of the denied status immediately.

Council Member Kohls stated that she does have concerns that she would prefer to discuss this evening noting that she is willing to wait to review the information provided by Staff. She stated that she would like to know why, when she requested information two weeks ago from the League of Minnesota Cities, that the information was not received until a press statement had been released. She asked why the City Council had been blindsided by this issue noting that she was not aware that the City had this many claims until after this issue came forward. She stated that Council should be aware of the situation prior to the point of denial. She stated that she would like a process in place that would notify Council when the accident occurs, not when the claim has been denied. She stated that she would like specific details on the City's history with respect to Workers' Compensation claims including the amounts for bills paid by the insurance and by the employee. She stated that she would also like to discuss, with Staff, the policies and procedures for when an employee is injured on the job. She referenced the ambulance bill stating that an employee who has been ordered to take an ambulance should never see a bill. She stated that she would like to know what side of the fence Staff is sitting on noting that she is aware, that by contract with the insurance company, that Staff cannot legally be involved with payment issues. She explained that her issue is the bureaucracy. She asked if Staff is there to explain to and assist an employee through the claims process, and wanted to know if this process was happening.

She stated that one issue she does not want to discuss is setting policy regarding the direction of an injured employee. She stated that the City Council has no business setting policy regarding who should direct an injured or ill employee as to what kind of transportation they take or if they go to a hospital or not. She stated that the City has exceptional people on staff that are on the scene and understand the situation and does not see a reason to discuss this any further. She stated that if the Chief determines the need for an employee to go to the hospital, she would not question his assessment of the situation.

Dan Rehkamp, 9818 74<sup>th</sup> Street Circle South, stated that one of the issues that failed and actually made the situation worse, is the investigation process required by law. He stated that he does not believe the appropriate people were involved from the beginning or that all of the information was gathered prior to denying the claim. He stated that in the past they would pull together all involved parties to discuss what actually happened. He stated that he has high respect for Chief Byerly and the paramedic who made the decision. He stated that they made a good call noting that their professional experience indicated that there could have been something medically

wrong. He explained that the firefighters look to their Chief for this kind of knowledge and support and assured the Council that the Chief made the right decision at the scene. He expressed concerns stating that this kind of decision cannot be procedurally covered as it is based on experience and knowledge of a situation. He stated that the firefighters have to be able to rely on the Chief and the paramedics. He referenced the investigation stating that it is his belief that if the League of Minnesota Cities would have met with the Chief, the Captain and himself, to discuss the issues he is sure they could have come to a very different decision. He expressed concerns that the decision to deny the claim was made too quickly and without appropriate investigation noting that OSHA requires an investigation process be initiated within 72 hours of the incident. He stated that this was not done and believes that this is one of the reasons why this situation snowballed.

Council Member Rice asked Mr. Rehkamp where he feels they dropped the ball. Mr. Rehkamp stated that he believes that the League of Minnesota Cities dropped the ball with respect to how they approached their investigation. He expressed concerns and questioned how they could reach a decision to deny the claim without talking to any of the individuals at the scene. He stated that a procedure cannot dictate what occurs at a scene noting that they depend on the knowledge of the Chief in this kind of situation

Pat Horst, 9493 Indian Boulevard, stated that he has never seen any kind of information from the League of Minnesota Cities regarding coverage, the amount of coverage, when it starts or stops. He stated that he has been a part of the Fire Department for 19 years noting that on the day Dan got hurt he was one of the Safety Officers on that call. He stated that he was not questioned about what happened by the League of Minnesota Cities or anyone else. He stated that many of his questions have been answered through this discussion and thanked Council for their time.

Mike Koshral, Attorney, League of Minnesota Cities, stated that he would not comment directly on Mr. Rehkamp's situation, as it is not appropriate to discuss individual Workers' Compensation cases publicly. He explained that they cannot receive files without a release from the patient. He explained that the Workers' Compensation process and the investigative process is governed by the Workers' Compensation Statute and he reviewed this with Council. He explained that they have a 14-day window to review each case noting that in most circumstances it is pretty cut and dried. He stated that the situation involving Mr. Rehkamp is a bit more complicated than most situations. He referenced Mr. Horst's comments regarding coverage information stating that every Employer should have information posted in the workplace that outlines what they should do. He reviewed the claims process with Council stating that the investigator for the claim did the best job possible with the short timeframe they have to work with. He stated that the Investigator did interview Mr. Rehkamp in addition to talking with the Chief regarding Mr. Rehkamp's medical condition. He explained that the claim was denied based on the information gathered. He agreed that it would be very helpful to gather all parties to discuss the situation. He noted that in many circumstances this is not possible as the investigators are under tight time constraints.

Mayor Shiely stated that it is her hope that he would take some of their concerns back to the League of Minnesota Cities. She noted the concerns regarding the length of an investigation, the claims process adding that the more educating the League can do regarding their coverage would be very helpful. Mr. Koshral stated that he would take these concerns back to the League.

Dan Rehkamp stated that Council Member Kohl's question regarding the number claims that have been approved or denied is unique noting that he too would be interested to know if another employee has also experienced similar problems with a claim. He stated that he would be interested to know how many cases were initially denied. He explained that when this first began he was told that if he chose to pursue the denial of his case that he would have to do it alone, that he would have no help or support. He expressed his concerns and frustration with the process stating that it is his hope that his wife would never have to go through this kind of a fight should he ever die in a fire.

Council Member Kohls stated that she sent an email to the City of Cottage Grove and the League of Minnesota Cities requesting information on all employee claims. She explained that she would like to compare Cottage Grove's statistics with other metro areas that would include the type of injury, whether it was approved or denied and the resulting action. She indicated that she had not received a response noting that she is hearing from several that there are a lot of real issues that should be addressed.

Mr. Rehkamp expressed his surprise at the numbers noting that he does not believe the number of approved claims is as high as what is being reported. He indicated that many of the individuals he spoke with were initially denied and had to fight the same battle. He expressed concerns stating that the insurance companies are not responsible or supportive adding that they make it very difficult on the individual throughout the process. He stated that he would like to know how many others have had to go through this situation.

Mayor Shiely asked if this information is available from the League of Minnesota Cities. Mr. Koshral stated that he did not know adding that he would follow up.

City Administrator Schroeder stated that they did ask the League of Minnesota Cities for the numbers. He stated that they were told that they do not track the data in a way that would allow them to easily pull the information together. He explained that they only track the existing status. He stated that based on the information tracked by the City only two or three claims were actually denied by the League of Minnesota Cities.

Mr. Rehkamp indicated that the Department of Labor and Industry does track this kind of information. He stated that the data is available and could provide a better picture of the process. He stated that he would provide Staff and Council with the contact information.

Mayor Shiely shared her concerns with Council and asked Staff to address the concerns and requests for information. She stated that the cost of the ambulance is a legitimate claim to the City's carrier and this should be included when making a claim to the League of Minnesota Cities. She stated that problems arise when a claim is rejected and the City is placed in a collection situation with their portion of the bill. She stated that if the claim is rejected the City should then consider, at that time, whether they should be willing to pay the ambulance bill.

She referenced the second issue, the Chief ordering an employee to take an ambulance, stating that she listened very carefully to everyone and is concerned at the use of the word 'ordered'. She stated that she would like to review the issue of ordering noting that one cannot order another to take an ambulance. She indicated that Public Safety Director Mickelson covered this issue in his memo adding that it does need further discussion.

Mayor Shiely stated that Staff has requested that they be allowed to meet with the supervisors for further input to the City Council. She stated that she is ok with waiting until Staff has had the opportunity to meet and discuss this issue with the supervisors. She stated that she is very concerned about the ambulance billing. She stated that she also wants Staff to know that the City Council as whole is not happy when they are blindsided on issue noting that no one on the Council was aware of the situation until the night of their last meeting. She stated that Council has requested that all rejected claims are sent to City Council for review so that the Council is aware at the time of denial. She asked Staff to be sure this does not happen again.

Council Member Wolcott stated that a procedure should be in place to assist employees through the process. He stated that it is the City's obligation to help and support their employees through the process adding that if this is not available it should be done. City Administrator Schroeder agreed and reviewed the current process with Council.

Mayor Shiely asked City Administrator Schroeder for a reasonable timeframe for Staff to have their discussions. City Administrator Schroeder stated that they could be done in time for the second meeting in July.

Council Member Kohls stated that she would like clarification on the Workers' Compensation premiums and the annual dollars paid. She stated that she would like to know at what point the rates go up and at what point do they go down noting that if claims are down there is a rebate. She stated that she would also like to know if the City benefits from a denied claim.

Council Member Grossklaus expressed concerns regarding the entire situation and the process. He stated that he is having a hard time understanding why an employee would have to worry about ambulance service or the bill. He stated that he does not want any supervisors questioned in the field adding that the employees have to be able to depend on their ability and skills to assess the situation. He stated that he is very concerned that the Council knew nothing about this situation adding that he does not want this to happen again. He stated that City Council should be kept informed.

## PUBLIC HEARINGS

- A. Conduct a Public Hearing and Consider: 1. Authorizing Issuance of a Home Occupation Permit to Wendy Alfveby/DBA Bodywork by Wendy to Operate a Home Business at 7751-110<sup>th</sup> Street South. 2. Authorizing Issuance of a Massage Business License to Ms. Alfveby to Conduct a Massage Business on the Property. 3. Authorizing Issuance of a Massage Therapist License to Ms. Alfveby.

City Clerk Stransky provided the Council with an overview of the request noting that the Council packet includes the onsite inspection reports. She stated that the reports do not indicate that any major issues were identified during the inspection. She stated that Staff is recommending approval noting that the request is subject to an annual renewal process for both the business license and the massage therapist license.

Council Member Rice referenced the letters received regarding the completion of an examination for the knowledge of massage and asked if this is the same as the exam for a massage therapist

license. City Clerk Stransky explained that three licenses are required and reviewed the requirements for each license with Council.

Mayor Shiely opened the Public Hearing at 8:42 p.m.

Mayor Shiely closed the Public Hearing at 8:43 p.m.

Council Member Wolcott stated that the Chief Building Inspector indicated that there are a few items in the homes that should be addressed. He asked Community Development Director Blin if completion of these items would be included in the approval as a contingency. Community Development Director Blin agreed that the license should be contingent on completing all items including the driveway.

MOTION BY RICE, SECONDED BY WOLCOTT, TO AUTHORIZE ISSUANCE OF A HOME OCCUPATION PERMIT ALLOWING THE OPERATION OF A HOME BUSINESS AT 7751-110<sup>TH</sup> STREET SOUTH; AUTHORIZE ISSUANCE OF A MASSAGE BUSINESS LICENSE TO CONDUCT A MASSAGE BUSINESS ON THE PROPERTY; AND AUTHORIZE ISSUANCE OF A MASSAGE THERAPIST LICENSE TO WENDY ALFVEBY/DBA BODYWORK BY WENDY CONTINGENT UPON THE COMPLETION OF ALL ITEMS IDENTIFIED IN THE INSPECTION REPORT AND WITH THE CONDITION THAT THE ASPHALT DRIVEWAY IS INSTALLED PRIOR TO THE OPENING OF THE BUSINESS. MOTION CARRIED 5-0.

- B. Conduct a Public Hearing and Consider: 1. Authorizing Issuance of a Home Occupation Permit to Jerry Yang/DBA Massage King to Operate a Home Business at 8924 Indahl Avenue South. 2. Authorizing Issuance of a Massage Business License to Mr. Yang to Conduct a Massage Business on the Property; 3. Authorizing Issuance of a Massage Therapist License to Mr. Yang.

City Clerk Stransky reviewed the request with Council. She stated that Staff has recommended that Mr. Yang complete work on his dwelling noting that the Building Inspector has indicated that items A through E have been completed as requested. She stated that the City received a letter last Monday from a resident opposing the application. She reviewed the letter with Council and provided a copy for their review.

Mayor Shiely opened the Public Hearing at 8:46 p.m.

Tom Schwartz, 8985 Indahl Avenue, stated that his only concern is with the parking. He explained that the applicant currently has five vehicles parked on the property and asked where the clients would park. He stated that often there are several cars parked in the church parking lot across the street and expressed concerns regarding the potential increase in traffic. He asked if Mr. Yang's client base was large or small stating that if the client base increases it could become a real problem with parking and traffic, which could become a safety hazard for the children in the neighborhood.

Mr. Yang, 8924 Indahl Avenue, stated that he understands Mr. Schwartz's concern for the safety of the children noting that he has eight children of his own. He explained that he would be eliminating three of the five vehicles noting that he has a true love for cars. He stated that he

does not plan to work out of his home forever adding that if his client base grows to five or more he would move into a regular place of business.

Mayor Shiely asked if Mr. Yang had removed all inoperable vehicles from view. Mr. Yang acknowledged that he does have a van and assured Council that it would be moved from sight.

Mayor Shiely closed the Public Hearing at 8:50 p.m.

MOTION BY KOHLS, SECONDED BY WOLCOTT, TO AUTHORIZE ISSUANCE OF A HOME OCCUPATION PERMIT ALLOWING THE OPERATION OF A HOME BUSINESS AT 8924 INDAHL AVENUE SOUTH; AUTHORIZE ISSUANCE OF A MASSAGE BUSINESS LICENSES TO CONDUCT A MASSAGE BUSINESS ON THE PROPERTY; AND AUTHORIZE ISSUANCE OF A MASSAGE THERAPIST LICENSE TO JERRY YANG/DBA MASSAGE KING WITH STIPULATION THAT INOPERABLE VEHICLES ARE REMOVED AND ALL SEVEN ITEMS IDENTIFIED ARE ADDRESSED. MOTION CARRIED 5-0.

#### BID AWARDS

- A. Pass a Motion Awarding the Bid for an Outdoor Warning Siren with a DC Rotating Siren to Federal Warning Systems, Inc., in the amount of \$15,952.23.

MOTION BY WOLCOTT, SECONDED BY RICE, TO AWARD THE BID FOR AN OUTDOOR WARNING SIREN WITH A DC ROTATING SIREN TO FEDERAL WARNING SYSTEMS, INC., IN THE AMOUNT OF \$15,952.23. MOTION CARRIED 5-0.

- B. Consider Awarding a Three-Year Towing Contract to Southeast Towing, Inc.

MOTION BY WOLCOTT, SECONDED BY KOHLS, TO AWARD THE BID FOR A THREE-YEAR TOWING CONTRACT TO SOUTHEAST TOWING, INC. MOTION CARRIED 5-0.

#### UNFINISHED AND NEW BUSINESS

- A. Consider Approving Variances to Allow an Existing Sport Court to Remain Three Feet from the Rear Property when 10 Feet is Required and to Encroach Within a 10-Foot Drainage and Utility Easement at 8450 Jody Court South.

Community Development Director Blin stated that the applicant is requesting two accessory structure setback variances at 8450 Jody Court South. He provided the Council with an overview of the requests for a rear-yard setback that would allow the existing Sport Court to remain three feet from the property line when 10 feet are required and a variance to allow the sport court to encroach within a 10-foot drainage/utility easement. He provided Council with an overview of the area noting that there are no discernable impacts on drainage to the property or surrounding properties. He stated that Staff recommends approval.

Council Member Rice asked if applicants are aware that because it is an easement that the City would need access to the area. Community Development Director Blin confirmed that the applicants are aware adding that currently there are no City utilities located in the area.

Council Member Grossklaus referenced the discussions from the last City Council meeting regarding items and structures encroaching on drainage areas and asked if this could be a future problem. Community Development Director Blin stated that since the sport court was installed the drainage has actually improved in the area.

MOTION BY RICE, SECONDED BY SHIELY, TO ADOPT **RESOLUTION NO. 04-097** GRANTING A VARIANCE FROM TITLE 11-3-3C, ACCESSORY STRUCTURE SETBACKS, TO ALLOW AN EXISTING SPORT COURT STRUCTURE TO REMAIN THREE FEET FROM THE REAR PROPERTY LINE AND TO TITLE 11-3-4E, ENCROACHMENT OVER EASEMENTS, TO ALLOW THE SPORT COURT TO ENCROACH WITHIN A 10-FOOT EASEMENT AT 8450 JODY COURT SOUTH. MOTION CARRIED 5-0.

- B. 1. Consider Approving a Variance to Allow a Home to be Built Closer to the Bluff Line than the required 100-Foot Setback and Denying a Side-Yard Setback Variance for Property at Lot 1 of Hale's River Bluff Acres.

Community Development Director Blin reviewed the requests and provided Council with a brief overview of the location. He stated that the applicant had originally requested to reduce a 100-foot minimum bluff line setback requirement to 20 feet. He stated that the Planning Commission approved the application for the bluff-line setback variance and denied the side-yard setback variance. He stated that since the Planning Commission review the applicant has also requested a third variance to allow for the construction of a driveway over a portion of the 10-foot-wide public drainage and utility easement located along the southern portion of the parcel. He indicated that Xcel Power crews have been out on the property clearing trees of the line. He stated that Staff has visited the site and concurs with the proposed request. He explained that the basis for this request is to preserve the trees on the property. He noted that the Planning Commission has not had an opportunity to review the third variance request. He stated that approval is subject to certain conditions that have been incorporated in the draft resolution for consideration.

Council Member Kohls asked if the request for a revised plan was due to distance or with height. Community Development Director Blin explained that the Planning Commission did discuss the distance and height issues. He further explained that the Planning Commission wanted to be sure that the house was not viewable from the river.

Council Member Kohls asked if the 20 feet outlined would be the height limit. Community Development Director Blin confirmed that the height of the house is to be no more than 20 feet.

Council Member Kohls asked if the City has ever allowed a driveway to run the length of an easement. Community Development Director Blin stated that he could not provide an example noting that the power company is currently in the area cutting trees in order to prevent any interference with the power lines. He noted that this work is being done outside of this variance request. He stated that the driveway could meet the two-foot setback adding that to be in the easement requires a variance.

Bill Christopherson, 1179 Grey Cloud Trail, referenced the process they had to go through 20 years ago to establish the 100-foot requirement that was approved by Council and expressed

concerns that they are now approving variance requests without a true understanding of the area and without much research. He stated that there are several core issues here that should be reviewed and suggested that Council review the entire situation and impact.

Ryan Maloney, 689 Green Avenue, Oakdale, the applicant, reviewed his application requests with the Council. He provided Council with an overview of the bluff-line setback noting that you cannot see any of the homes along that area from the water's edge. He reviewed the backwater areas as it relates to his property with Council noting that his comments are based on conversations he has had with Rod Hale, a resident of the area. He reviewed the 100-foot setback requirements and his request with Council and expressed concerns that if he is pushed further back he would have to remove more trees than what he would prefer. He explained that he is trying to maintain the area and remove as little vegetation as possible. He stated that the one issue with the Planning Commission is that the deck would be included as a part of the primary structure noting that in reviewing the code a deck is clearly not part of the primary structure. He stated that it is considered a secondary structure.

Mr. Maloney assured Council that the integrity of the river has not been and would not be compromised. He stated that the area is heavily wooded with mature trees of over 50 feet noting that the maximum height of the house can only be 35 feet. He stated that he understands that height could be an issue if the home was up over the trees. He reviewed the proposed design and location of the home with Council. He referenced the side-yard variance request and explained that when he applied for the two variances he was not aware of the 20-foot setback requirement for secondary structures. He stated that he no longer needs or wants the side-yard setback. He stated that Xcel Energy contacted him to request access to his property in order to get a vehicle down into the area to trim trees and make their lines more accessible. He noted that while reviewing the property with his architect that he noticed an area that would work well for his driveway and reviewed the location with Council. He clarified that it was his choice to contact the City to notify them of what is going on and acknowledged the concerns of the current neighbors in the area.

Mr. Christopherson stated that he has had a 35-foot boat and 25-foot boat docked in the area and has had no access issues. He clarified that he is not against the home being built, he is against changing the 100-foot setback requirements. He stated that the setbacks should remain uniform throughout the area.

Council Member Kohls asked Mr. Christopherson if there is a dense woods between the two properties. Mr. Christopherson confirmed that there is.

Council Member Kohls noted the tree removal and asked if it is close to his property. Mr. Christopherson stated that the easement is the property line noting that he is in favor of what Mr. Maloney is proposing for the driveway.

Council Member Kohls asked if Mr. Christopherson would be able to see the proposed home from his home. Mr. Christopherson stated that he would not be able to see the home during the spring, summer or fall seasons adding that it would be visible during the winter season.

Council Member Kohls asked how many new homes are in the area. Mr. Christopherson stated that there could be hundreds more in the future and asked how many more variances would

Council have to consider. He stated that the residents are trying to determine if the Council is giving variances for hardships or just giving them away. Council Member Kohls clarified that Mr. Christopherson's issue is with the broader picture and if fifty homes go in would Council allow all of the homes to be built twenty feet from the bluff line. Mr. Christopherson stated that he would prefer to see the original requirements continue to be honored and applied to everyone.

Council Member Grossklaus asked if any of the existing homes were to burn or be destroyed would they have to come back to request a variance when they rebuild. Community Development Director Blin confirmed that they would.

Council Member Grossklaus stated that he would remain consistent and vote no. Mayor Shiely agreed stating that she too wants to maintain consistency and would vote no.

Council Member Kohls acknowledged the consideration to save trees and asked if this would be a hardship. Community Development Director Blin clarified that the question was if it was out of character with homes in area adding that Staff has determined that it was not out of character with other homes in the area.

Council Member Kohls stated that she too is leaning towards voting no due to the number of variances needed. She stated that she is all for preserving trees adding that they would preserve even more trees along the bluff line if they moved the home back further. She stated that she would like to give the applicant an opportunity to come back with another plan and suggested tabling the discussion. She explained that if the applicant's request is denied they would have to re-file with a new plan, which would incur additional cost. Community Development Director Blin confirmed that if the request is denied the applicant would incur additional fees and the request would have to be reviewed again by the Planning Commission.

Community Development Director Blin stated that given his experience, there are two standards, rural and urban. He explained that the urban setback standard is 100 feet and the rural setback standard is 40 feet. He indicated that Inver Grove Heights uses the 40-foot setback standard and suggested that Council should consider what would be an appropriate setback for this setting.

Council Member Wolcott acknowledged their concerns and reviewed the previous requests with Council. He stated that he would vote in favor of the request, as he believes it is a good plan. He stated he has no issues as the property is not on a regular channel and there is an island between the property and the backwater.

Council Member Kohls asked Mr. Maloney what kind of structure they plan to build. Mr. Maloney stated that he does not have a schematic available yet to review adding that the structure would be a modified story and a half. He stated that the maximum height, based on code, is 35 feet noting that it would approach 35 feet from the river's side. Council Member Kohls clarified that the northeast point of the structure would be approximately 35 feet back at this point and the house itself would be another 10 feet. Community Development Director Blin confirmed.

Council Member Kohls stated that she has not been able to view the site and is having hard time picturing where the house would be built. She stated that she would like to move to table the discussion for two weeks to allow more time to investigate further, visit with neighbors and view the site.

Community Development Director Blin asked Mr. Maloney if he would agree to an extension. Mr. Maloney agreed.

MOTION BY KOHLS, SECONDED BY RICE, TO TABLE DISCUSSION FOR TWO WEEKS TO THE FIRST REGULAR CITY COUNCIL MEETING IN JULY 2004. MOTION CARRIED 3-2 (SHIELY/GROSSKLAUS – NAY)

City Attorney Thomson asked the applicant, Mr. Maloney, to provide his consent for the extension in writing. She stated that the extension would be to July 7, 2004.

RESPONSE TO PREVIOUSLY RAISED COUNCIL COMMENTS AND REQUESTS

NONE

COUNCIL COMMENTS AND REQUESTS

Mayor Shiely thanked the Strawberry Fest Committee for doing an excellent job on the event. She reviewed the event briefly with Council noting that she is going to attend the Grey Cloud Town Board meeting to present them with their trophy for the Golf Tournament.

PAY BILLS

MOTION BY WOLCOTT, SECONDED BY RICE, TO APPROVE PAYMENT OF CHECK NUMBERS 134955 THROUGH 135181 TOTALING \$477,990.30. (CHECKS 134955 – 134980 IN THE AMOUNT OF \$94,265.21 ISSUED PRIOR TO COUNCIL APPROVAL.) MOTION CARRIED 5-0.

WORKSHOP SESSION – OPEN

NONE

WORKSHOP SESSION – CLOSED

ADJOURNMENT

MOTION BY KOHLS, SECONDED BY GROSSKLAUS, TO ADJOURN THE MEETING AT 9:45 P.M. MOTION CARRIED 5-0.

Respectfully submitted,

Bonita Sullivan  
TimeSaver Off Site Secretarial, Inc.