

**CITY OF SHOREVIEW  
MINUTES  
REGULAR CITY COUNCIL MEETING  
August 20, 2012**

**CALL TO ORDER**

Mayor Martin called the regular meeting of the Shoreview City Council to order at 7:00 p.m. on August 20, 2012.

**PLEDGE OF ALLEGIANCE**

The meeting opened with the Pledge of Allegiance.

**ROLL CALL**

The following members were present: Mayor Martin; Councilmembers Quigley, Wickstrom and Withhart.

Councilmember Huffman was absent.

**APPROVAL OF AGENDA**

Mayor Martin requested a brief discussion about meeting dates in August and September under the *Special Order of Business* portion of the meeting.

Mayor Martin noted that the public hearing under item No. 11 will be delayed.

Councilmember Withhart requested an update on the garage built without City permission and some discussion on the cul-de-sac put in on County Road F during the *Special Order of Business* portion of the meeting.

As a number of people are present for item No. 13, Mayor Martin proposed that item No. 13 be moved for consideration ahead of No. 12.

MOTION: by Councilmember Wickstrom, seconded by Councilmember Withhart to approve the August 20, 2012 agenda with the changes indicated above.

VOTE:                   Ayes - 4                   Nays - 0

**PROCLAMATIONS AND RECOGNITIONS**

There were none.

**CITIZEN COMMENTS**

There were none

**COUNCIL COMMENTS****Mayor Martin:**

The last Friday Night Flix will be on Friday, August 24, 2012, at the pavilion. The movie is *Shrek Forever After*.

The pool will be shut down September 4<sup>th</sup> through September 21<sup>st</sup> for maintenance. The Fitness Center will be open.

Tuesday, August 21, is *Bike to Market Night*. Anyone who bikes to the Farmers' Market will get a free water bottle and tote bag.

**Councilmember Wickstrom:**

Thank you to everyone who hosted a *Night to Unite* party two weeks ago. It was good to see so many neighborhood parties.

**CONSENT AGENDA**

MOTION: by Councilmember Wickstrom, seconded by Councilmember Withhart to approve the Consent Agenda, for August 20, 2012, and all relevant resolutions for all item Nos. 1 through 10:

1. August 6, 2012 City Council Meeting Minutes
2. Monthly Reports:
  - Administration
  - Community Development
  - Finance
  - Public Works
  - Park and Recreation
3. Verified Claims in the Amount of \$2,607,733.94
4. Purchases
5. Acceptance of Gifts - Slice of Shoreview
6. Developer Escrow Reduction
7. Receive Assessment Roll and Order Public Hearing - Buffalo Lane Reconstruction, CP 11-09
8. Accept Quote for Concrete Pavement Rehabilitation
9. Approval of Application for Exempt Permit - Retrieve A Golden of Minnesota, Inc.
10. Acceptance of Vision Internet Proposal for Website Redesign and Hosting

Discussion:

Mayor Martin noted item No. 8 for approval, acceptance of the quote for the concrete pavement rehabilitation in the Hawes/Rustic Place/Demar neighborhood.

VOTE:           Ayes - 4                           Nays - 0

## **PUBLIC HEARING**

### **MODIFICATION OF MUNICIPAL DEVELOPMENT DISTRICT NO. 2 AND ESTABLISHMENT OF INCREMENT FINANCING DISTRICT NO. 8 (A REDEVELOPMENT DISTRICT), AND ADOPTION OF A TAX INCREMENT FINANCING PLAN - MIDLAND PLAZA REDEVELOPMENT /LAKEVIEW TERRACE APARTMENT PROJECT**

Mayor Martin stated that the Council has been asked to continue the public hearing until the Council meeting on Tuesday, September 4, 2012.

MOTION:       by Councilmember Wickstrom, seconded by Councilmember Withhart to continue the public hearing in consideration of the establishment of Increment District No. 8 relating to the Midland Plaza Redevelopment/Lakeview Terrace Apartment Project to the City Council meeting on Tuesday, September 4, 2012.

Discussion:

Councilmember Quigley asked for an update on this matter. Mr. Simonson stated that finance people and attorneys for both the City and the developer have been working hard to finalize the details of the agreement. The City was notified today that a few items remain to be worked out. Therefore, it was felt that this item should be held over until the September 4<sup>th</sup> meeting.

City Manager Schwerm stated that the basic framework of the financing agreement is still in place. There are some language details to work out.

ROLL CALL:       Ayes: Quigley, Wickstrom, Withhart, Martin  
                      Nays: None

## **GENERAL BUSINESS**

### **PROPOSED NAME CHANGE OF COUNTY ROAD F WEST OF HODGSON ROAD**

#### **Presentation by Public Works Director Mark Maloney**

The Lake Johanna Fire Chief has asked the City to consider renaming County Road F West to distinguish it from County Road F that runs east of Hodgson Road. This will also help the emergency response services to determine the most direct route to the street. With the recent

construction of the cul-de-sac on County Road F West, there is no longer interaction with Hodgson Road.

A letter was sent to affected residents on July 3, 2012. Two names were proposed: Demar Court or Virginia Court. Three responses were received with no consensus for or against the name change. One response supported Virginia Court.

A second letter was sent August 1, 2012, informing residents that the name change would be considered at the Council's August 20<sup>th</sup> meeting. To date, no responses have been received. All relevant government agencies and emergency response services would be notified once the name change is formally adopted.

Proposed Ordinance 896 would change the name of County Road F West from Demar Avenue east to the cul-de-sac to Virginia Court or Demar Court. The name change would become effective upon recording the ordinance with Ramsey County.

Mayor Martin opened the discussion to public comment.

**Mr. Ken Bergh**, 259 County Road F, stated that the wetland between Grass Lake and Snail Lake was named Hanska, which is the neighborhood preference for the new street name. Demar does not make sense, as there already is a Demar to the north. Also, there is no strong connection to Virginia. This is the only road that ends at the water way that was called Hanska Slough. Another possibility would be Walter Court in honor of Walter Sloan who was a Dean at Concordia for many years and the longest resident on the street. He would encourage Hanska Court and effort to rename the slough wetland Hanska to honor the history of the area.

Councilmember Withhart stated that he favors the name Hanska. The slough follows an old trail route to Snail Lake. He likes the connection to the history of the area.

Councilmember Quigley stated that the location of Virginia is a known north/south street, which would make it easy to locate.

Councilmember Withhart responded that Virginia is not a through street, which would make adding Virginia Court confusing.

Councilmember Wickstrom stated that she would support either Virginia or Hanska. She agreed it does not make sense to choose Demar.

**MOTION:** by Councilmember Withhart, seconded by Councilmember Wickstrom to adopt Ordinance No. 896 changing the name of the segment of County Road F West between Demar Avenue east and the cul-de-sac to Hanska Court.

Discussion:

Councilmember Withhart asked how long the street has been under jurisdiction of the city. Mr. Maloney answered almost 20 years.

Councilmember Wickstrom noted that any question regarding credit rating due to this address change should be easily documented and explained.

ROLL CALL: Ayes: Wickstrom, Withhart, Quigley, Martin  
Nays: None

**PRELIMINARY PLAT/COMPREHENSIVE PLAN AMENDMENT/REZONING/  
PLANNED UNIT DEVELOPMENT - DEVELOPMENT STAGE - LAKEVIEW  
TERRACE, 3588 OWASSO STREET**

**Presentation by City Planner Kathleen Nordine**

This project would demolish the existing 13,000 square foot retail center in order to build a high density apartment complex of 104 units on this site. There are two parts to the project. One is the public road improvement and one is the private development of the apartment complex. The public road includes Owasso Street relocated north and realigned with County Road E to the west of Victoria Street. The realignment design considers existing and proposed land uses as well as peak traffic demand. The intersection would be signalized with turning lanes on Owasso and County Road E with sidewalk/trail improvements for pedestrians. The City has contracted with SEH for the road design.

One of the main benefits of the street realignment is improved traffic flow and safety. New infrastructure will manage volume of storm water and water quality entering Lake Shoreview.

The developer has submitted a number of applications for the redevelopment:

- A Comprehensive Plan Amendment to rezone the site from C, Commercial to RH, High Density Residential.
- A Preliminary Plat to create parcels for development and plat the roadway.
- Request to rezone the site from C1, Retail Service/R3, Multi-family Residential to PUD, Planned Unit Development.
- PUD Development Stage for the 104 unit apartment building.

The developer is seeking flexibility from setback requirements for the apartment building, parking garage and surface parking from Owasso Street. Flexibility is also requested for the building height, which is six stories at 78.5 feet tall. Flexibility is allowed in the PUD process.

The existing land use is Commercial and High Density Residential. The rezoning would be to only High Density Residential, consistent with the adjacent Midland Terrace property. High Density Residential allows 8 to 20 units per acre. Redevelopment would replace an underutilized property with housing that supports the City's housing goals. Housing options in the City would increase for rental and life-cycle housing. Redevelopment is a reinvestment in a current apartment complex that is located near employment areas and the regional transportation system.

The Preliminary Plat would subdivide the property into two parcels. Lot 1 would be the proposed apartment building. It does comply with minimum lot requirements for the R3 District. Outlot 2 would be parking for the adjacent apartment building. The plat includes dedication of right-of-way from Owasso Street that is being relocated to the north.

The rezoning request to PUD is consistent with Comprehensive Plan policies, and staff finds that the development will not have a significant impact on surrounding land uses. The developer is willing to enter into a Development Agreement with the City.

The City approved the Concept Stage Review of the PUD at its March 5<sup>th</sup> meeting. At that meeting, concerns were expressed about the proposed height of the apartment building and visual impact on the adjoining single-family residential neighborhood to the south. There was concern about proximity of the apartment building to Victoria Street. The building setback has been increased, but placement of the building is determined by road needs, wetland and parking needs. Lake Shoreview, a wetland, requires a minimum setback of 16.5 feet; the developer proposes 23.2 feet. This lake is not part of the City's Shoreland Management Ordinance but is a DNR protected wetland.

The maximum building height is 35 feet. The proposal is 78.5 feet. The City's regulations allow increased height as long as it does not exceed firefighting capability of the Lake Johanna Fire Department. No concerns have been expressed by the Fire Department. Also, the City requires an additional foot of setback for every foot of height exceeding the maximum of 35 feet. The Developer is seeking flexibility from this requirement for the building and parking.

The main concern is the visual impact to the single-family residential neighborhood to the south. Staff believes this is mitigated by the wetland/pond separation. Any reduction in height would not have a significant effect. Also, the high quality design of the structure will mitigate the impact.

City Code requires 260 parking stalls, or 2.5 stalls per unit. The proposal is for 180 stalls, which is 1.7 stalls per unit. A reduction in parking stalls is permitted if there is shared parking or the developer can show proof of parking. The adjacent Midland Terrace will provide overflow parking if it is needed. A minimum setback for parking is 20 feet from Owasso and Victoria Streets. The proposal is for a 5.1 foot setback from Owasso and 16 feet from Victoria.

Storm water management will include an underground treatment chamber before water is discharged into the wetland/pond area. Two filtration basins are proposed at the southeast and southwest corner of the building to address storm water quality. There is a shoreland vegetative buffer on the south side. Roof drainage would be direct to the wetland. Tycon is working with a consultant to further address water quality issues. The Environmental Quality Committee supports the storm water management plan but did ask the Developer to consider collecting roof runoff for reuse.

The Planning Commission reviewed the proposal at its April meeting and recommended approval on a 5 to 1 vote. The primary concern expressed related to the height of the building.

The Planning Commission approved the building based on the location adjacent to High Density Residential and proximity to employment, retail services and the transportation system.

Residents within 350 feet of the property were notified of the public hearing at the Planning Commission meeting and for this City Council meeting. There is support for the road realignment. However, there is opposition to the building height due to density, visual impact, neighborhood compatibility and traffic.

Staff believes the proposal supports City policies and goals regarding housing redevelopment and that the rezoning will not significantly impact adjacent land uses. The visual impact is mitigated by the wetland, the distance from the single-family neighborhood and architectural design. Realignment of the roadway will improve traffic flow and safety. Staff recommends approval of all requests subject to the conditions and findings in the staff report.

Mayor Martin stated that information from concerned residents has been received by all Councilmembers. Some have asked how many variances are associated with this development. She explained that a Planned Unit Development allows flexibility from requirements because a benefit is being received in exchange for that flexibility.

Planning Commissioner Deb Ferrington stated that the scale of the building is an issue, but the positives outweighed the negatives. These included redevelopment of a blighted property, the improved roadway, and increasing rental options in Shoreview. The one Commissioner who opposed the project felt there is not sufficient parking.

Mayor Martin opened the meeting to public comment.

**Ms. Sharon Coombs**, 3400 Owasso Street, stated that she expects to sell her house in the next five years. A new buyer will have the same interests she had when she came to Shoreview-- proximity to both Minneapolis and St. Paul, natural environment and the quality of the school district. Her concern is that impact to the quality of the school district was not mentioned. If this development brings more children to Island Lake School, she believes the quality of the school will be compromised. She questioned that people will pay high rent for a luxury apartment in this location near a railroad and fire station.

It seems the City is supporting this project rather than having a detached, impartial view. Island Lake School is an important stakeholder. She appreciates the fact that the City holds firm on its ordinances with respect to residential development. There are too many exceptions with this project. It is not true that roof runoff directly entering Lake Shoreview will not impact water quality. Roof material will be in the water and she is concerned that a City professional would make that statement.

**Ms. Murt Seltz**, 3328 Owasso Heights Road, expressed her concern about the amount of flexibility in this project. There are tremendous traffic problems during peak dropoff times at Island Lake School. The school is very crowded. The idea of a building with 104 units is a great concern. She asked if the School Superintendent has been consulted. The DNR defines a lake by its name and whether or not there is sustained vegetation growing in the water. To her

knowledge, there is not vegetation in Lake Shoreview. If the height is reduced, it will reduce revenue but it would be a positive impact on the community in terms of compatibility. The setback provides green space to approach the building. This will be needed for a high end rental building. Even parking islands are being eliminated. She is also concerned about the impact of the increased size of the intersection for children going to school. This project pushes the limits to excess. Her question is why this project is so large on a small parcel of property.

**Mr. Don Greenheck**, 3333 Owasso Heights Road, stated that he has never received information about the project, although he lives a mile away. His concern is the height and raising of the grade. He would like to find out what the cost-benefit analysis shows, as well as any traffic study and potential crime. The size of the building and issuing a number of variances is questionable. Shoreview is such a nice community with a responsive, protective government. It is his hope that the quality of life standards will not be relaxed to facilitate this project.

**Mr. Jeb Babbini**, 716 Harriet Avenue, stated that he agrees with the road realignment which will be safer. He objects to the new big complex. He anticipates traffic jams. On a Sunday afternoon he counted 50 cars in a 15-minute period. The project is too big for the area. He agreed with all previous comments in opposition.

**Ms. Cheryl Symonik**, 3588 Tiffany Lane, stated she did not receive any information on this project. Six stories will be the highest building in Shoreview. She cannot imagine luxury apartments on a railroad track. She agreed that an increase of students at Island Lake School would be a problem for the school.

**Mr. Paul Christianson**, 638 Harriet Avenue, stated that his main concern is the size of the development. The height is twice the amount allowed in the City's ordinance. The density and number of parking spaces will be crowded. The number of exceptions to City regulations is a problem.

### **Response to Resident Comments**

City Manager Schwerm stated that there have been conversations with the School Superintendent. With respect to the population of the school, there is no open enrollment. However, historically, these types of apartment projects do not bring a lot of new students to the school. The Superintendent is not concerned about an influx of new students. If 12 students were added, that would mean perhaps 2 per grade. Further on another question, market studies have been done on the market for this type of high end housing. The developer does not take this lightly with a \$20 million investment.

**Mr. Noah Bly**, Project Architect, Urban Works Architecture, stated that the plan is that this will be a luxury building. A market study done by Marquette Advisors indicates that this will be unique for Shoreview and will do very well. The developer knows from management of Lakeview Terrace, that there is demand for upscale units. Lakeview Terrace is being upgraded, but there is a limit to what can be done to existing buildings.

Mayor Martin asked about the factors that impacted the design of the proposed building. **Mr. Bly** responded that the parcel is tight between the new larger Owasso Street and the shoreland setback. The Developer has been working many months to find the best location for the building. Outside parking is required and has to be 60 feet wide, which leaves a tight space for the building. There were concerns about the original setback from Victoria, which has been increased. The building has also been reduced from 120 units to 104 units.

City Manager Schwerm noted that residents are supportive of the roadway realignment, which is critical to this project. Owasso Street is wider to align with County Road E across the street, and the intersection will have a traffic signal, which will increase safety. The cost of the road project started at \$1.2 million and has increased to \$2.9 million due to county standards and railroad improvements that have to be absorbed by the City. Without this project, the road realignment cannot be done because of the cost. Over time the cost will only increase.

**Mr. Bly** further stated that water quality will definitely be improved with the new infrastructure and a rain garden. The roof proposed is flat and water will be drained from a membrane that is deemed clean by the DNR.

Mayor Martin added that the school district has also been working with the City for a trail along County Road E up to Theissen Park. That is one of the tradeoff benefits. She added that trains run through The Summit development in North Oaks and through neighborhoods with high value homes in White Bear and Dellwood. People do not mind if they have the type of housing they are looking for. The height is a stretch for Shoreview. One thing that matters is that the proposed construction method eliminates big spaces between floors. Although it is six stories, it is not as tall as it might be because of the concrete construction being used between floors. This project is a balancing act. The benefits to Shoreview include a safer intersection, redevelopment of an empty strip mall and a style of housing not now available in Shoreview. It is close to Deluxe, Cummings, and PaR Systems, which is in the process of expanding. It is an area between residential and industry. The City is not reducing standards but offers flexibility for the project to happen. The financing is very complex and is structured so that tax dollars will be returned.

Councilmember Withhart noted that the Planning Commission and the Economic Development Authority have all reviewed this plan. He noted that the height is half that of a water tower. The project has been in process for a long time with a lot of thought about quality. He agreed that more green space around the parking space is needed. There are empty parking spaces at Lakeview Terrace and he would not want to see overdeveloped parking. Mr. Maloney added that the policies and rules adopted by Grass Lake Water Management Organization will be followed.

Mayor Martin stated that she, too, would like to see more green space, but the proximity to Island Lake Park and good walking areas provides green space.

Councilmember Wickstrom asked if this is an area where pervious surface could be used for the parking area to absorb water. Mr. Maloney stated that the public road analysis indicates that the soil is not amenable to a pervious surface.

Councilmember Wickstrom asked how the number of parking spaces was determined. **Mr. Bly** stated that there is enclosed and outside parking. The ratio of 1.7 is based on demand that will come from this building and a compromise with City regulations.

Councilmember Wickstrom asked for further explanation on the height. **Mr. Bly** explained that in a usual wood truss construction there is two feet between floors, and nine feet will be allowed in each unit. With the concrete construction proposed, there will be eight inches between floors. Often wood frame buildings have a pitched roof, which makes it even taller. The proposed building has a lower roof profile.

Councilmember Wickstrom stated that when she first heard the height, she was shocked. However, if this is not allowed, the impact of another development could be even more. Another shopping area would have impacts and the road work would not be done. The road cannot be done without the project. There is a grant from the Metropolitan Council to help with the road realignment. The project would not be eligible for this grant without at least 100 units. She further stated that she has learned from the League of Minnesota Cities, younger people are not going into home ownership. People ready to sell their single-family homes are being advised to not buy another home. These two factors provide a demand for higher end apartments. Although there are negatives with this project, she believes the benefits outweigh them.

Councilmember Quigley stated that the project has been thoroughly reviewed. The nature of PUD is flexibility and variance. The reason for PUDs is to work with difficult sites. There are a significant number of mitigating factors regarding the size of the development that have helped him to support this project.

Mayor Martin emphasized that the changes made are a result of the concerns expressed. She thanked residents for their input that identified the difficult issues.

**MOTION:** by Councilmember Quigley, seconded by Councilmember Withhart to adopt Resolution No. 12-34 amending the Comprehensive Plan and Ordinance No. 894 changing the zoning and approve the preliminary plat and PUD Development Stage requests submitted by Lakeview Terrace/Tycon Co. for the redevelopment of Midland Plaza, 3588 Owasso Street with a 104 unit apartment building subject to the following conditions:

### **Comprehensive Plan Amendment**

1. The planned land use of the property changing the existing C, Commercial land use designation to RH, High Density Residential.
2. Review and approval of the amendment by the Metropolitan Council.
3. The amendment will not be effective until the City grants approval of the Final Plat and PUD - Final Stage requests and the development agreements are executed.

**Rezoning**

1. This approval rezones the property from C1, Retail Service and R3, Multi-Dwelling Residential to PUD, Planned Unit Development.
2. The underlying zoning district for this PUD is R3, Multi-Dwelling Residential.
3. Rezoning is not effective until approvals are received for the Final Plat, PUD - Final Stage and development agreements executed.

**Preliminary Plat**

1. A public use dedication fee shall be submitted as required by ordinance prior to release of the final plat by the City.
2. The final plat shall include drainage and utility easements along the property lines. Drainage and utility easements along the roadways shall be 10 feet wide and along the side lot lines these easements shall be 5 feet wide and as required by the Public Works Director.
3. Private agreements shall be secured between the parcels in the subdivision and the adjoining Midland Terrace Apartment complex regarding joining driveway, parking and maintenance agreements. Said agreements shall be submitted to the City Attorney for review and approval prior to the City's release of the Final Plat.
4. The developer shall submit as application to vacate Owasso Street with the Final Plat application.
5. The Final Plat shall be submitted to the City for approval with the Final Stage PUD application.

**Planned Unit Development - Development Stage**

1. This approval permits the redevelopment of 3588 Owasso Street parcels with a 104 unit 6-story tall apartment building as depicted in the plans submitted as part of this application.
2. Private agreements shall be secured between the parcels in the subdivision and the adjoining Midland Terrace Apartment complex regarding joining driveway, parking and maintenance agreements. Said agreements shall be submitted to the City Attorney for review and approval prior to the City's release of the Final Plat.
3. Access to the proposed development is prohibited from Victoria Street. Access to the site shall be provided via the driveways off of Owasso Street as indicated in the approved plan.
4. Revisions may be required to the tree preservation plan that addresses the replacement of trees along the existing Owasso Street. A revised plan, if required, shall be submitted with the Final Stage PUD and Final Plat applications. Replacement trees shall be planted in accordance with the City's Woodlands and Vegetation Ordinance.
5. Approval of the final grading, drainage, utility, and erosion control plans by the Public Works Director is required, prior to submittal to the City of applications for Final Plat and PUD - Final Stage. Final plans shall identify site construction limits and the treatment of work (i.e., driveways, parking areas, grading, etc.) at the periphery of these construction limits.
6. The proposed apartment housing structure shall be of a 6-story design as depicted on the plans submitted with this application. Said building shall include the architectural enhancements and high-quality building materials as identified. The structure shall not

- exceed the height, 78.5 feet as identified in this report and on the submitted plans. The applicant is encouraged to explore options that will reduce the building height, provided the architectural quality and appearance of the building is not compromised.
7. Additional landscaping may be required along the south side of the building to soften the structure's appearance when viewed from the adjacent single-family residential neighborhood.
  8. The applicant is required to enter into a Site Development Agreement and Erosion Control Agreement with the City. Said agreements shall be executed prior to the issuance of any permits for this project. The Development Agreement shall address:
    - a. Construction management and nuisances that may occur during the construction process, including parking for contractors. No parking is permitted on Victoria Street.
    - b. Best Management Practices for Water Quality improvement.
    - c. Landscape maintenance.
    - d. Maintenance of storm water management facilities, including the filtration basins.
  9. This approval shall expire after two months if the Planned Unit Development - Final Stage application has not been submitted for City review and approval, as per Section 203.060 (C)(6).

**This approval is based on the following findings:**

1. The proposed redevelopment plan supports the policies stated in the Comprehensive Plan related to land use, housing and redevelopment.
2. The proposed redevelopment plan carries out the recommendations as set forth in the Housing Action Plan.
3. The proposed redevelopment plan will not adversely impact the planned land use of the surrounding property.
4. The proposed deviations permit this site to be redeveloped with a use that expands life-cycle and affordable housing, including housing choice in the City. The plan also results in a public road improvement project that will improve traffic flow and safety.
5. Sustainable design features will be incorporated into the building and site design.

Discussion:

Councilmember Withhart noted that the rezoning is not from apartment to something else. He looks forward to Tycon redeveloping the existing buildings. This is a good first step. The rezoning to PUD allows flexibility.

ROLL CALL:           Ayes: Withhart, Quigley, Wickstrom, Martin  
                               Nays: None

**SPECIAL ORDER OF BUSINESS**

**Meeting Dates**

As Mayor Martin will be out of town on September 10th, it is suggested that the workshop meeting for September be moved to September 24th. This would eliminate the workshop on October 8th, when City Manager Schwerm will be out of town.

Councilmember Withhart asked if the EDA meeting could also be moved to September 24th also. Mr. Simonson stated that items going to the Council on September 17 would make it necessary for the EDA to meet on September 10th.

It was the consensus of the Council to hold the September/October workshop meeting on September 24th.

### **Update on Morse Litigation**

City Attorney Filla reported that Mr. Morse was to appear at a deposition last Friday but failed to appear. The deposition date will not be continued. He has failed to appear on three dates. A Motion to Compel Discovery was filed today. Fees will also be requested.

City Manager Schwerm stated that the trial date is in March. Discovery will occur through the fall. Summary Judgment will be requested because of the lack of cooperation on the part of the plaintiff. The City is aware of the neighborhood's concerns, but the process is slow because of the court system.

### **County Road F/Demar**

Councilmember Withhart asked about accommodation for a trail access across the cul-de-sac toward the east. Mr. Maloney stated that the delay is due to the redesign of Highway 49. The City will not undertake work that is expensive to undo with the reconstruction of Highway 49. That project has been pushed out to 2016 due to a MnDOT I-35E project that will push traffic to use Highway 49 as an alternate. Staff will look into creating a trail connection to this area.

### **ADJOURNMENT**

MOTION: by Councilmember Withhart, seconded by Councilmember Wickstrom to adjourn the meeting at 9:32 p.m.

VOTE:                      Ayes - 4                      Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 4TH DAY OF SEPTEMBER, 2012.

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Terry C. Schwerm  
City Manager