

**MINUTES  
OF THE REGULAR MEETING OF THE  
EDINA CITY COUNCIL  
HELD AT CITY HALL  
OCTOBER 16, 2001  
7:00 P.M.**

**ROLLCALL** Answering rollcall were Members Hovland, Masica and Mayor Maetzold. Absent were Members Housh and Kelly.

**CONSENT AGENDA ITEMS APPROVED** Motion made by Member Masica and seconded by Member Hovland approving the Council Consent Agenda as presented with the exception of Agenda Item V.A., Exterior Steel Siding for Arneson Acres Park Building; VI.E., Resolution Authorizing Agreement No. PW 44-11-01 Traffic Signal at CSAH 158 and Vernon Avenue with Hennepin County; and VI.F., Amendment and Restatement of City of Edina Flexible Benefits Plan.

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried.

**\*MINUTES OF REGULAR MEETING OF OCTOBER 2, 2001, APPROVED** Motion made by Member Masica and seconded by Member Hovland approving the Minutes of the Regular Meeting of the Edina City Council for October 2, 2001.

Motion carried on rollcall vote - three ayes.

**RESOLUTION NO. 2001-76 - APPROVING AMENDMENTS TO GRANDVIEW TAX INCREMENT FINANCING PLAN** Manager Hughes explained in August 2000, the City/HRA established a Hazardous Substance Subdistrict (HSS#1) comprised of the Grandview Square project. HSS#1 was established for the purpose of financing the removal of, 1) asbestos from the buildings acquired by the HRA, and 2) contaminated soil from the project area. HSS#1 was part of the Grandview area Tax Increment Financing District. Pursuant to state law, property taxes generated within a hazardous substance Subdistrict may be retained by the HRA for the purpose of environmental cleanup.

When HSS#1 was established, the HRA budgeted \$1,192,000 for environmental cleanup. Mr. Hughes reported the HRA has incurred approximately \$1,100,000 to date for such cleanup. A very small area of contaminated soil remains within the project area that will need to be removed before winter. He stated that bids were being solicited for award on November 5, 2001. Mr. Hughes added although staff believed the remaining work would be within the budget, they thought it prudent to formally amend the budget accommodating any potential overrun before awarding the bid.

Mr. Hughes noted that thirty-day notice of public hearing for the modification has been provided to the school district and county as required by state law. He provided a memo summarizing comments received from the county and noted no comments had been received from the school district.

**Member Hovland made a motion to close the public hearing.** Member Masica seconded the motion.

Ayes: Hovland, Masica, Maetzold  
Motion carried.

Member Hovland introduced the following resolution and moved its approval:

**RESOLUTION NO. 2001-76**

**A RESOLUTION APPROVING AMENDMENTS  
TO GRANDVIEW TAX INCREMENT FINANCING PLAN  
AND MAKING FINDINGS WITH RESPECT THERETO**

BE IT RESOLVED by the City Council of the City of Edina, Minnesota as follows:

1. The Housing and Redevelopment Authority in and for the City of Edina, Minnesota (the "HRA") and the City have approved a redevelopment plan, as defined in Minnesota Statutes, Section 469.002, subdivision 16, designated as the Grandview Area Redevelopment Plan (the "Redevelopment Plan"), and a redevelopment project to be undertaken pursuant thereto, as defined in Minnesota Statutes, Section 469.002, subdivision 14 designated as Grandview Redevelopment Project No. 1 (the "Redevelopment Project"), and that in order to finance the public redevelopment costs to be incurred by the HRA and City in connection with the Redevelopment Plan and the Redevelopment Project, the HRA and City have approved a tax increment financing plan, pursuant to the provisions of Minnesota Statutes, Section 469.175, designated as Grandview Tax Increment Financing Plan (the "Financing Plan"), which establishes a tax increment financing district, as defined in Minnesota Statutes, Section 469.174, subdivision 9, designated by the HRA as Grandview Tax Increment Financing District (Hennepin County No. 1202) (the "District"). On April 17, 1997, December 7, 1999, and August 15, 2000, the HRA and City approved amendments to the Redevelopment Plan, Redevelopment Project and Financing Plan (the "Amendments"). The Amendments approved on August 15, 2000, establishes Hazardous Substance Subdistrict No. 1 (the "HSS") within the District and authorizes the use of tax increment from the HSS to pay or reimburse costs of removal and remediation actions with respect to hazardous substances or pollutants or containments or petroleum releases affecting or which may affect property in the HSS and other related costs and expenses of such removal or remediation actions. It has been proposed that the HRA approve amendments to the financing Plan, as amended by the Amendments, which is entitled "Modification #1 of Tax Increment Financing Plan for Hazardous Substance Subdistrict No. 1" (the "2001 Amendment"). The 2001 Amendment increases the authorized amount of tax increment revenue from the HSS to pay costs of removal and remediation actions within the HSS and increases the authorized principal amount of bonds to be issued to finance remediation and removal actions within the HSS.
2. This Council on October 16, 2001, held a public hearing on the 2001 amendment after notice of the public hearing was published in the official newspaper of the City not less than ten (10) days prior to the date of the hearing. At such public hearing all persons desiring to be heard with respect to the 2001 Amendment were given an opportunity to express their views with respect thereto.
3. This Council has previously found that the District is a redevelopment district within the scope of Minnesota Statutes, Section 469.174, subdivision 10 and the HSS is a Hazardous Substance Subdistrict created under Minnesota Statutes, Section 469.175, subdivision 7, and the 2001 Amendment will not change such prior findings. The 2001 amendment further serves the original goals and objectives of the City and HRA in approving the Redevelopment Plan, the Redevelopment Project and the Financing Plan and the 2001 Amendment, by redeveloping property in the City in order to prevent or

reduce blight, blighting factors and the cause of blight, and by providing needed public facilities.

4. Pursuant to Minnesota Statutes, Section 469.175, subdivision 4, it is hereby found that:
  - A. The District, is a redevelopment district, as defined in Minnesota Statutes, Section 469.174, subdivision 10, and the HSS is a Hazardous Substance Subdistrict created under Minnesota Statutes, Section 469.175, subdivision 7, for the reasons set forth in previous findings by this Council, and the 2001 Amendment does not alter these previous findings.
  - B. The proposed development to be undertaken in accordance with the Redevelopment Plan, as amended by the Amendments and the 2001 Amendment, in the opinion of this Council would not occur solely through private investment within the reasonably foreseeable future and therefore the use of tax increment financing is deemed necessary.
  - C. The Financing Plan, as amended by the Amendments and the 2001 Amendment, conforms to the general plan for the development of the City as a whole.
  - D. The Financing Plan, as amended by the Amendments and the 2001 Amendment, will afford maximum opportunity consistent with the sound needs of the City as a whole for the development of the area subject to Redevelopment Plan by private enterprise.
  - E. The City confirms its election of the method of tax increment computation set forth in Minnesota Statutes, Section 469.177, subdivision 3, clause (a) with respect to the District.

Passed by the Council this 16<sup>th</sup> day of October 2001. Member Hovland seconded the motion.

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried.

**PUBLIC HEARING CONDUCTED ON SPECIAL ASSESSMENTS: ASSESSMENTS LEVIED**

Affidavits of Notice were presented, approved and ordered placed on file. Due notice having been given, public hearings were conducted and action taken as recorded on the following proposed assessments:

**1. STREET RECLAMATION IMPROVEMENT NO. A-189**

LOCATION: School Road, Ruth Drive And West 59<sup>th</sup> Street

Analysis of Assessment for Street Reclamation Improvement No. A-189 showed fifty-one assessable lots with a total assessment of \$114,671.02. The project consisted of reclaiming the roadway, replacing curb and gutter and aprons and repaving the roadway. The term of the special assessment would be ten years beginning in the year 2002.

Mr. Hoffman noted that comments had been received inquiring what the Edina School District would be contributing to this project. The entrance to Concord School is located on School Road therefore the School District would be assessed the total of \$56,256.65 for twenty-four assessable lots.

No public comment was heard.

Member Masica made a motion seconded by Member Hovland closing the public hearing on Improvement No. A-189.

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Ayes: Hovland, Masica, Maetzold  
Motion carried

**Motion made by Member Hovland and seconded by Member Masica approving the assessment of Improvement No. A-189, as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

**2. STREET RECLAMATION IMPROVEMENT NO. BA-304**

LOCATION: West 65<sup>th</sup> Street, Valley View Road To France Avenue

Analysis of Assessment for Street Reclamation Improvement No. BA-304 is \$64,885.56, based upon 961,778 square feet. The project included reclamation of the roadway and the addition of a sidewalk. The term of the special assessment would be ten years beginning in 2002.

No written or public comments were received.

**Member Hovland made a motion seconded by Member Masica closing the public hearing on Improvement No. BA-304.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

**Motion made by Member Masica and seconded by Member Hovland approving the assessment of Improvement No. BA-304, as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

**3. STREET RECLAMATION IMPROVEMENT NO. BA-322**

LOCATION: Drew Avenue

Analysis of Assessment for Street Reclamation Improvement No. BA-322, for Drew Avenue showed a total assessment of \$128,842.35 with 855,040 assessable square feet at \$0.15. The street improvement project included paving the road surface, curb and gutter, including a paved pathway and re-landscaping of the area. The term of the special assessment will be ten years beginning in the year 2002.

No written or public comments were heard.

**Member Masica made a motion seconded by Member Hovland closing the public hearing on Improvement No. BA-322.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

**Motion made by Member Hovland and seconded by Member Masica approving the assessment of Street Improvement No. BA-322, as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

**\* 4. MAINTENANCE IMPROVEMENT NO. MG-01 CONTINUED TO NOVEMBER 20, 2001 Motion made by Member Masica and seconded by Member Hovland continuing the public hearing for Maintenance Improvement No. M-01 - 50<sup>th</sup> & France Avenue Business District to November 20, 2001.**

Motion carried on rollcall vote - three ayes.

**5. MAINTENANCE IMPROVEMENT NO. MG-01 - GRANDVIEW LANE BUSINESS DISTRICT**

LOCATION: Grandview Lane Business District

Analysis for Assessment for Maintenance Improvement No. MG-01 showed a total cost of \$17,628.38 against 311,344 square feet at \$0.0566 per square foot. One year assessment payable in 2002.

No written or public comments were received.

**Member Hovland made a motion seconded by Member Masica closing the public hearing on Improvement No. MG-01.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

**Motion made by Member Masica and seconded by Member Hovland approving the assessment of Maintenance Improvement No. MG-01, as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

**6. TREE REMOVAL IMPROVEMENT NO. TR-01**

LOCATION: 5904 Wooddale Avenue, 4229 Country Club Road, 4017 Morningside Road, 4302 Eton Place And 4301 Morningside Road

Analysis of Assessment for Tree Removal Improvement No. TR-01 showed five parcels assessed as follows for removal of diseased elm trees:

5904 Wooddale Avenue	\$1,033.05	3 year assessment
4229 Country Club Road	\$ 745.50	3 year assessment
4017 Morningside	\$ 426.00	3 year assessment
4302 Eton Place	\$ 426.00	3 year assessment
4301 Morningside Road	\$2,103.40	3 year assessment

No written or public comments were heard.

**Motion made by Member Hovland and seconded by Member Masica closing the public hearing for assessment of Improvement No. TR-01.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

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**Motion made by Member Hovland and seconded by Member Masica approving the assessment of Improvement No. TR-01, as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

**7. AQUATIC WEEDS IMPROVEMENT NO. AQ-01**

LOCATION: Arrowhead, Indianhead Lakes and Minnehaha Creek Millpond

The area proposed to be assessed for said improvement contains all lots riparian to Arrowhead Lake, Indianhead Lake and Minnehaha Creek Millpond.

ARROWHEAD LAKE ASSESSMENT

Analysis of Assessment for Aquatic Weeds Improvement No. AQ-01 for Arrowhead Lake chemical treatment showed a total of \$8,932.57 proposed to be assessed against 33 homes at \$270.68 per home. One year assessment payable in 2002.

Alan Cater, 6316 Post Lane, commented he lived on the west end of Arrowhead Lake. The east end of the lake looked great. He stated his belief that other methods of treatment would be more effective especially on the east end. Vince Cockriel, Park Superintendent explained the west end of Arrowhead Lake was deeper and traditional methods of weed treatment do not work. Mr. Cater noted other concerns with the pond. Mr. Cockriel said the DNR has control of the pond and the concerns would need to be directed to them.

No written comments were received.

**Motion made by Member Masica and seconded by Member Hovland closing the public hearing on Improvement No. AQ-01.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

**Motion made by Member Masica and seconded by Member Hovland approving the assessment of Improvement No. AQ-01, as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

INDIANHEAD LAKE

Analysis of Assessment for Aquatic Weeds Improvement No. AQ-01 for Indianhead Lake showed a total cost of \$12,527.97 against 33 homes at \$379.64 per home. One year assessment payable in 2002.

No written or public comments were received.

**Motion made by Member Masica and seconded by Member Hovland closing the public hearing on Improvement No. AQ-01.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

**Motion made by Member Masica and seconded by Member Hovland approving the assessment of Improvement No. AQ-01, as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

**MINNEHAHA CREEK MILLPOND**

Analysis of Assessment for Aquatic Weeds Improvement No. AQ-01 for Minnehaha Creek Millpond showed a total cost of \$6,442.58 against 63 homes at \$102.26 per home. One year assessment payable in 2002.

No written or public comments were received.

**Motion made by Member Masica and seconded by Member Hovland closing the public hearing on Improvement No. AQ-01.**

Ayes: Hovland, Masica Maetzold

Motion carried.

**Motion made by Member Masica and seconded by Member Hovland approving the assessment of Improvement No. AQ-01 as presented.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried. (Assessment levied by Resolution later in Minutes)

The proposed assessment rolls were now on file in the office of the City Clerk and open to public inspection.

Following the presentation of the analysis of assessments and approval, **Member Masica introduced the following resolution and moved its adoption:**

**RESOLUTION NO. 2001-77  
RESOLUTION LEVYING SPECIAL ASSESSMENTS  
FOR VARIOUS PUBLIC IMPROVEMENTS AND PROJECTS**

**WHEREAS, pursuant to proper notice duly given as required by law, the Edina City Council has met and heard and passed upon all written and oral objections to the proposed assessments for improvements listed below:**

- Street Improvement No. A-189**
- Street Improvement No. BA-304**
- Street Improvement No. BA-322**
- Maintenance Improvement No. MG-01**
- Tree Removal Improvement No. TR-01**
- Aquatic Weeds Improvement No. AQ-01**

**BE IT RESOLVED by the City Council of the City of Edina, Minnesota, as follows:**

1. Each assessment as set forth in the assessment rolls on file in the office of the City Clerk for each aforementioned improvement is hereby accepted and shall constitute the special assessment against the lands named therein, and each tract of land therein included is hereby found to be benefited by the improvement in the amount of the assessment levied against it.

2. The assessment shall be payable in equal installments, the first of said installments together with interest at a rate of seven and one-half percent (7½%) per annum, on the entire assessment from the date hereof to December 31, 2002, to be payable with the general taxes for the year 2002. To each subsequent installment shall be added interest at the above rate for one year on all unpaid installments. The number of such annual installments shall be as follows:

<u>NAME OF IMPROVEMENT</u>	<u>NO. OF INSTALLMENTS</u>
Street Improvement No. A-189, Levy No. 15228	10 years
Street Improvement No. BA-304, Levy No. 15229	10 years
Street Improvement No. BA-322, Levy No. 15230	10 years
Maintenance Improvement No. MG-01, Levy No. 15224	1 year
Tree Removal Improvement No. TR-01, Levy No. 15231	3 years
Aquatic Weeds Improvement No. AQ-01, Levy No. 15225	1 year

3. The owner of any property so assessed may, at any time prior to certification of assessment to the County Auditor, pay the whole of the assessment on such property, with interest accrued to the date of payment, to the City Treasurer, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of this resolution and they may, at any time thereafter, pay to the City Treasurer the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the next succeeding year.

4. The clerk shall forthwith transmit a certified duplicate of this assessment to the County Auditor to be extended on the property tax lists of the County. Such assessment shall be collected and paid over in the same manner as other municipal taxes.

Adopted this 16<sup>th</sup> day of October 2001.

Member Hovland seconded the motion.

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried.

RESOLUTION NO. 2001-78 APPROVING FINAL PLAT - OLDE VERNON THIRD ADDITION AND RESOLUTION NO. 2001-79 APPROVING THE PRELIMINARY PLAT FOR OLDE VERNON II, LEO EVANS, ET AL, (SOUTHEAST QUADRANT OF VERNON AVENUE AND OLINGER ROAD) Affidavits of Notice were presented, approved and ordered placed on file.

Presentation by Planner

Planner Larsen explained in 1997 the Council approved 26 units on the site. The City has received a request for the development of the two additional units on the westerly portion of the property bringing the total units requested to 28. The request also included Final Plat approval for Olde Vernon 3<sup>rd</sup> Addition for three building sites on the westerly part of the site that were part of the overall development plan. The Planning Commission considered the request at their September 26, 2001, meeting and recommended approval of the Final Plat of Olde Vernon 3<sup>rd</sup>

Addition and approval of the amendment to the overall development plan adding the two additional units. The Planning Commission conditioned their approval upon all of the units becoming part of the Olde Vernon Homeowners Association. Fred Richards, Attorney, represented the property owner, Leo Evans.

Fred Richards, Attorney, 7225 Fleetwood Drive, representing Leo Evans, asked why should a current Council depart from a decision made by a past Council. The proposal first came forward for 26 units and now two additional lots were being requested. Mr. Richards stated this was an attempt to complete the unfinished picture. He added the same builder would complete the last two units. The density would hardly be affected with the addition of the two units, which will enhance the area giving a finished look to the development. Mr. Richards pointed out that no variances would be needed and that the Homeowners Association of Olde Vernon, City staff, and the Planning Commission all have recommended approval of the proposal.

Council comment

Member Masica asked what had changed since the proposal was approved. Mr. Richards answered the project was built and the Homeowners Association does not want to maintain the open space. Member Masica asked why the association did not want the open space. Mr. Richards added the association was not troubled with the addition of two homes. Member Masica inquired whether a walking path had ever been included in the proposal. Mayor Maetzold recalled it was just an idea early in the development of the area, but had not been part of the final approval of the development.

Mayor Maetzold asked for more elaboration on the necessity of this type of development. Mr. Richards commented this type of home was in high demand by families wishing to stay in Edina in a single family home, but without outside work.

Member Masica asked if Leo Evans would be considering the purchase of the Wegner property. Mr. Richards said assuming the Preliminary Plat and Final Plat proposals receive approval, Mr. Evans sold all his property in Edina and has no intention of being further involved. Member Masica asked for more information on the walking path. Mr. Larsen said the original 1996 proposal depicted 34 units in two-unit buildings with a path down to a gazebo on Hawkes Lake. The proposal would not have been approved because buildings are not allowed to be built within 100 feet of a body of water

Member Hovland asked if the zoning requirements were met. Mr. Larsen answered the district was PCD-1, the lowest density, multi-family zone, and with the addition of the two units the proposal would meet zoning requirements. Mr. Hovland inquired whether any variances were required. Mr. Larsen answered no.. Member Hovland asked if the current landscaping complies. Mr. Larsen stated the City believes this to be an uncompleted project. Member Hovland said correspondence has been received requesting that Outlot A be kept as open space. Does the City have any jurisdiction over keeping the open space. Attorney Gilligan said no. Member Hovland asked if another development plan could come forward. Mr. Gilligan said yes.

Mayor Maetzold questioned whether the original plan with 34 units exited onto Olinger. Mr. Larsen said yes.

Member Masica inquired whether there was a legal definition of an outlot. Mr. Larsen said it was historically not a buildable lot. Member Masica commented about a letter in the packet from a

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resident who was not informed of the Planning Commission meeting. Mr. Larsen said there was no requirement to notify residents of a Planning Commission meeting, only a public hearing before the Council.

Resident comment

Tom Seifert, 5901 Merold Drive, said a proposal came forward in 1982 for the 9.8 acres with 26 lots and in 1996 a proposal was presented for 34 units. Originally, the area was zoned R-1 and the developer asked that the property be rezoned to PCD-1. The plan for 34 units was deemed too dense and ultimately 26 units were approved. In 1998, the corner parcel was the subject of discussion of how many units could be allowed on the property. Mr. Seifert stated the number of units had been determined to be 26 in 1982, 1996 and 1998. He asked the Council to deny the request for a change in the number of units and maintain the 26 as previously approved.

Dennis Wegner, 5705 Olinger Road, said he would also like this development finished. Comments have been made that the rear part of his property was perceived, both from the air and from the contractor's, to be part of Olde Vernon. He reiterated that in the future, a request would be forthcoming asking to subdivide his property.

Rick Solum, Olde Vernon resident and president of the association, said residents of Olde Vernon would like this plat approved. He stated the Old Vernon Association believes the best use of the parcel would be for five lots.

**Member Masica made a motion, seconded by Member Hovland to close the public hearing.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

Mayor Maetzold said he agreed that 28 units fit the area. He noted this type of development was very desirable for Edina. He stated he sees no reason not to approve this request.

Member Hovland explained the reason he voted in 1998 for no expansion was that only two units had been constructed and the type of development was a new concept. Now that the construction can be viewed he would approve the plan as proposed for Olde Vernon 3<sup>rd</sup> addition and change the number of units from 26 to 28. Member Hovland noted the request met all the Edina Code requirements.

Member Masica indicated she saw no compelling reason why this parcel should not be developed as presented. She added the tax base would increase, as well as finishing up an unfinished piece of property. She would like a tree line as a buffer between the two areas, and consistency, uniformity and quality of construction to be maintained on the two additional lots. Mr. Larsen explained a landscape plan was in place for the first two phases and staff will re-verify the plan.

**Member Masica introduced the following resolution approving the final plat for Olde Vernon 3<sup>rd</sup> Addition; conditioned upon its inclusion into the Olde Vernon Homeowners Association and moved its adoption:**

**RESOLUTION NO. 2001-78  
A RESOLUTION APPROVING  
FINAL PLAT FOR OLDE VERNON 3<sup>rd</sup> ADDITION**

**BE IT RESOLVED** by the City Council of the City of Edina, Minnesota that that certain plat entitled, "Olde Vernon 3rd", platted by Leo Evans, et al, and presented at the regular meeting of the City Council on October 16, 2001, be and is hereby granted final plat approval.

**BE IT FURTHER RESOLVED** that the approval of the Final Plat of Old Vernon 3<sup>rd</sup> is conditioned upon the lots being made a part of the Olde Vernon Homeowners Association.

**Passed and adopted this 16<sup>th</sup> day of October 2001.**

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried.

**Member Hovland introduced the following resolution and moved its adoption:**

**RESOLUTION NO. 2001-79**

**A RESOLUTION APPROVING**

**PRELIMINARY PLAT FOR**

**OLDE VERNON II, LEO EVANS, ET AL**

**BE IT RESOLVED** by the City Council of the City of Edina, Minnesota, that that certain plat entitled, "OLDE VERNON II", platted by LEO EVANS, ET AL, and presented at the regular meeting of the City Council on October 16, 2001, be and is hereby granted preliminary plat approval conditioned upon inclusion of Olde Vernon II in the Olde Vernon Homeowners Association.

**Passed and adopted by the Edina City Council on the 16<sup>th</sup> day of October 2001.**

Member Masica seconded the motion.

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried.

**VARIANCE APPEAL FRONT YARD SETBACK VARIANCE FOR 5705 EWING AVENUE SOUTH STREET** Affidavits of Notice were presented, approved and ordered placed on file.

Presentation by Assistant Planner

Assistant Planner Aaker explained that the Zoning Board of Appeals heard the request from Judi and Brent Gray of 5705 Ewing Avenue for a 4-foot front yard setback variance to allow a tuck-under garage with a first and second floor expansion on September 6, 2001. Two members voted to allow the setback variance and two voted against the request. The Board decided to continue action on the item to allow the homeowner to amend their request. The Grays came back before the September 20, 2001 Zoning Board having moved their addition back four feet, but still asking for a variance to construct a front entry overhang supported by columns that would encroach into the front yard setback by four feet. The Zoning Board unanimously approved the variance for the modified plan.

Ms. Aaker reported that Steven and Amy Friedrichs of 5701 Ewing Avenue (north of the subject property) appealed the variance on September 28, 2001, stating their objection was the addition would result in an obstruction of views from the Friedrichs home. Ms. Aaker noted receipt of an e-mail from David Standberg, 3708 West 57<sup>th</sup> Street, opposing the variance. The Planning Department also received e-mails from Del Steckler of 5709 Ewing Avenue and Greg Peters of 5700 Ewing Avenue supporting the variance request.

Member Hovland asked if this type of variance has become common for the Zoning Board to approve. Ms. Aaker replied that the Board has previously granted several variances where an

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overhanging entry was allowed to encroach into the setback as long as it was only supported by posts.

### Resident Comments

Brent Gray, 5705 Ewing Avenue, proponent presented data he had compiled of his contacts and attempted contacts with the Friedrichs regarding the proposed addition, variance and the subsequent appeal of the variance. Mr. Gray stated he did not agree that the Friedrichs sight line would be compromised because:

- An arborvitae currently in the Gray's front yard on the north side next to the house is six feet in front of the house and ten feet tall.
- The Friedrichs have bushes on either side of their front stoop that extend approximately four feet from the front of their house.
- The southerly neighbor, Del Steckler has a hedge that is six and one half feet tall and runs from the back of the property all the way to Ewing Avenue.
- The proposed entry will be an overhand only supported by pillars and not solid walls.

Steve Friedrichs, 5701 Ewing Avenue, appellant, stated that he objected to not being notified of the second zoning board meetings. Mr. Friedrichs explained that his objections to the variance included:

- The height of the proposed entryway canopy and pillars;
- Railings on the steps will also be intrusive;
- Overall objection to the addition height; and
- Criteria for variance was not met - no undue hardship demonstrated.

Mr. Friedrichs went on to say that the addition will have three exposed floors. He felt that a huge shadow would be cast on his home by the large addition. Mayor Maetzold and Member Hovland both explained that the only thing under consideration was the entry overhang, which caused the variance. The addition was not an issue at this hearing.

James Whitter, Architect for proponent, stated the Grays have been before the Zoning Board two times. They met with the Friedrichs after the first meeting and showed them the proposed plans. The only way to create a proper entry on the Grays home is to use the overhang. Mr. Whitter stated he felt the addition was an improvement to the house design.

Member Hovland noted that the hardship as he understood it in this case was the existing home's entry was at the setback and if the owners were to meet the Code requirement with the addition the entire existing house would need to be moved back four feet.

Member Masica agreed and added that she thought a compromise has already been offered since the original design had been pushed back.

**Member Masica made a motion closing the public hearing seconded by Member Hovland.**

Ayes: Hovland, Masica, Maetzold

Motion carried.

**Member Hovland introduced the following resolution and moved its adoption:**

**RESOLUTION NO. 2001-80  
GRANTING VARIANCE FROM  
FRONT YARD SETBACK FOR  
5705 EWING AVENUE SOUTH**

WHEREAS, the Edina Zoning Board of Appeals met and unanimously approved the request for a four-foot front yard setback variance from Brent and Judi Gray of 5705 Ewing Avenue South; and

WHEREAS, Steve and Amy Friedrichs, 5701 Ewing Avenue appealed the aforementioned variance on September 28, 2001; and

WHEREAS, the Edina City Council heard the objections at a public hearing on October 16, 2001.

NOW, THEREFORE BE IT RESOLVED by the Edina City Council that the four-foot front yard set back variance to allow the construction of a front entry overhang supported by posts is hereby granted and approved.

Passed and adopted this 16<sup>th</sup> day of October 2001.

Member Masica seconded the motion.

Ayes: Hovland, Masica, Maetzold

Motion carried.

\*PRELIMINARY PLAT CONTINUED TO NOVEMBER 5, 2001, FOR PARKWOOD KNOLLS 26<sup>TH</sup> ADDITION, REPLAT OF OUTLOT A PARKWOOD KNOLLS 25<sup>TH</sup> ADDITION - PARKWOOD KNOLLS CONSTRUCTION COMPANY Motion made by Member Masica and seconded by Member Hovland to continue the Preliminary Plat for Parkwood Knolls 26<sup>th</sup> Addition, Replat of Outlot A Parkwood Knolls 25<sup>th</sup> Addition for Parkwood Knolls Construction Company to November 5, 2001.

Motion carried on rollcall vote - three ayes.

\*ORDINANCE NO. 2001-8 CONTINUED TO NOVEMBER 5, 2001 - AMENDING SECTION 900 LIQUOR OF THE CITY OF EDINA CODE OF ORDINANCES Motion made by Member Masica and seconded by Member Hovland to continue Ordinance No. 2001-8, Amending Section 900 Liquor of the City of Edina Code of Ordinances to November 5, 2001.

Motion carried on rollcall vote - three ayes.

AWARD OF BID CONTINUED TO NOVEMBER 5, 2001, FOR EXTERIOR STEEL SIDING FOR ARNESON ACRES PARK BUILDING Member Hovland asked the award of bid for exterior steel siding for the Arneson Acres Park Building be removed from the consent agenda for further information. Mr. Hughes noted that the project would be completed this fall with steel siding. Steel siding was chosen because it would be maintenance free and would match the greenhouse on the Arneson Acres grounds. If another siding material were considered, the project would need to be completed in the spring.

Member Hovland asked the award of bid be continued until the November 2, 2001 meeting allowing further examination of the building to see if another product might work better.

**Member Hovland made a motion to continue the award of bid for exterior steel siding for the Arneson Acres Park Building to November 5, 2001.** Member Masica seconded the motion.

Ayes: Hovland, Masica, Maetzold

Motion carried.

**TRAFFIC SAFETY STAFF REVIEW FOR OCTOBER 1, 2001, APPROVED** Coordinator Bongaarts shared information regarding traffic counts in the Parkwood Knolls area. The area consisted of approximately 547 homes in 1999. Parkwood Knolls has several entrances.

1. Dovre Drive receives a high volume of traffic from 4-6 P.M. Monday through Friday. The count taken during that time was 1746.
2. Malibu Drive takes the brunt of the Dovre Drive traffic.
3. Interlachen Boulevard empties onto Blake Road (northeast entrance).
4. Idylwood - carries local traffic (128 cars/day).
5. Knoll Drive - carries local traffic (62 cars/day).
6. View Lane - traffic counts are less today than in 1999.
7. Schaefer Road - traffic counts are less today than in 1999.
8. Sauder Circle - traffic counts are less today than in 1999.

Mr. Bongaarts explained these figures were not out of line. He reported results of one license plate check he completed; of the 71 vehicles he checked, 52 were licensed to Edina; 15 were outside of Edina and four were unknown. Comparing the speed surveys with 1999 resulted in a drop of speed of up to three miles per hour. Mr. Bongaarts presented a breakdown of the 6,801 cars surveyed on each street operating ten miles per hour over the speed limit.

Member Hovland asked what conclusion could be drawn for speed control in the area. Mr. Bongaarts said what would probably be the best thing would be speed humps.

Member Masica asked if this area was suffering more than other areas in Edina. Mr. Bongaarts said Mn/DOT has taken traffic counts of State Aid streets and the traffic numbers were amazing. He added that numbers would be examined following the installation of the Vernon/Gleason signals. He suggested that sidewalks need to be installed in the area.

Mr. Hughes noted the traffic consultant had talked about traffic calming options, but not about when they were warranted. He encouraged waiting until the signals were installed to see what the impact was on the area.

**Member Masica made a motion approving the October 1, 2001, Traffic Safety Staff Review, Section A:**

- 1. Installation of fluorescent yellow-green 'school advance' signs on Doncaster Way to serve as reminders of the school and the possibility of children in the immediate area;**
- 2. Installation of 'left turn only' arrow for traffic turning left to westbound Vernon in the left northbound Interlachen Lane. The right northbound Interlachen Lane to be designated for straight ahead traffic and traffic making right turns to eastbound Vernon. Staff recommends installation of no parking signs from Vernon to Brookside on east side of Interlachen Boulevard and complies with the City's on-street parking policy for commercial areas;**

**Section B and C.** Member Hovland seconded the motion.

Ayes: Hovland, Masica, Maetzold

Motion carried.

**ON-SALE INTOXICATING LIQUOR LICENSE APPROVED - P.F.CHANG'S CHINA BISTRO, INC.** Mr. Hughes said P.F.Chang's China Bistro, Inc., has applied for an on-sale intoxicating liquor license and on-sale Sunday license for period October 17, 2001 until March 31, 2002. They will occupy space in the new addition at Southdale Shopping Center. Mr. Hughes explained the Planning Department, Health Department and Police Department have investigated the application and recommend approval.

**Member Masica made a motion to close the public hearing on the on-sale intoxicating liquor license and on-sale Sunday license to P.F. Chang's.** Member Hovland seconded the motion.

Ayes: Hovland, Masica, Maetzold  
Motion carried.

**Member Hovland made a motion approving the on-sale intoxicating liquor license and on-sale Sunday license to P.F. Chang's China Bistro, Inc., dba/P.F.Chang's located in the Southdale Center for period October 17, 2001, until March 31, 2002.** Member Masica seconded the motion.

Ayes: Hovland, Masica, Maetzold  
Motion carried.

**\*RESOLUTION NO. 2001-81 SETTING HEARING DATE OF NOVEMBER 20, 2001, FOR VACATION OF PORTION OF SPRUCE ROAD** Motion made by Member Masica and seconded by Member Hovland introducing the following resolution and moving its adoption:

**RESOLUTION NO. 2001-81  
CALLING FOR PUBLIC HEARING  
ON VACATION OF PUBLIC STREET RIGHT-OF-WAY  
FOR PORTION OF SPRUCE ROAD**

**BE IT RESOLVED** by the City Council of the City of Edina as follows:

1. It is hereby found and determined that the following described property should be considered for vacation in accordance with the provisions of Minnesota Statutes, Section 160.29 and 462.348, Subd. 7:
2. This Council shall meet at 7:00 P.M. on the 20<sup>th</sup> day of November, for the purpose of holding a public hearing on whether such vacation shall be made in the interest of the public.
3. The City Clerk is authorized and directed to cause notice of said hearing to be published once a week for two weeks in the Edina Sun-Current, the official newspaper of the City, to post such notice, in at least three public and conspicuous places, as provided in Minnesota Statutes. Such notice shall be in substantially the following form:

**(Official Publication)  
CITY OF EDINA  
4801 WEST 50<sup>TH</sup> STREET  
EDINA, MINNESOTA 55424  
NOTICE OF PUBLIC HEARING ON VACATION OF PORTION  
OF PUBLIC STREET RIGHT-OF-WAY  
(SPRUCE ROAD) IN THE CITY OF EDINA,  
HENNEPIN COUNTY, MINNESOTA**

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Edina, Minnesota will meet on November 20<sup>th</sup>, 2001, at 7:00 P.M. in the Council Chambers at 4801 West 50<sup>th</sup> Street for a public hearing for the proposed vacation of the following described portion of spruce Road street right-of-way:

**PROPOSED SPRUCE ROAD VACATION DESCRIPTION:**

That part of Spruce Road lying west of the northerly extension of the east line of Block 3, Mendelssohn, according to the recorded plat thereof, Hennepin County, Minnesota, and east of the northerly extension of the west line of said Block 3; and

**PROPOSED ALLEY VACATION DESCRIPTION:**

That part of the Alley through Block 3, Mendelssohn, according to the recorded plat thereof, Hennepin County, Minnesota, lying north of the easterly extension of Lot 2, said Block 3, and lying south of the north line of said Block 3.

**PROPOSED ARTHUR STREET VACATION DESCRIPTION:**

That part of Arthur Street lying south of the southerly line of Spruce Road and northerly of a circle with a radius of 45.00 feet, the center of said circle is described as follows:

Commencing at the southwest corner of Lot 2, Block 3, MENDELSSOHN, according to the recorded plat thereof, Hennepin County, Minnesota: thence North 00 degrees 07 minutes 48 seconds West along the west line of said Block 3, assumed bearing, a distance of 78.40 feet; thence South 89 degrees 52 minutes 12 seconds West a distance of 20.00 feet to the center of said circle

All persons who desire to be heard with respect to the question of whether or not the above proposed street right-of-way and utility and drainage vacation is in the public interest and should be made, shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of such easement, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue.

Adopted this 16<sup>th</sup> day of October 2001.

Motion carried on rollcall vote - three ayes.

**\*D'AMICO APPEAL OF LIQUOR ADMINISTRATIVE PENALTY CONTINUED TO NOVEMBER 5, 2001** Motion made by Member Masica and seconded by Member Hovland approving continuing the appeal by D'Amico of a liquor administrative penalty to November 5, 2001.

Motion carried on rollcall vote - three ayes.

**RESOLUTION NO. 2001-69 AUTHORIZING AGREEMENT NO. PW 44-11-01 TRAFFIC SIGNAL AT CSAH 158 AND VERNON AVENUE WITH HENNEPIN COUNTY** Member Hovland asked removal of the Traffic Signal at CSAH 158 and Vernon Avenue with Hennepin County (PW 44-11-01) from the consent agenda for additional information. Mr. Hughes explained on September 4, 2001, the Hennepin County Board approved a City request to have a traffic signal installed at Vernon Avenue and Gleason Road intersection. The County sent an administrative agreement to the City for execution with five major points. Following review City staff recommended the Mayor and Manager be authorized to sign the Cooperative Agreement. He said staff concluded we would proceed with the installation with the understanding that no funds would be contributed from the County.

Assistant Engineer Houle indicated the cost of the signal was \$138,000.00 and will be paid for out of State Aid Funds. The County will provide \$15,000.00 for cabinet controllers, etc.

**Member Hovland introduced the following resolution and moved its adoption and authorizing the Mayor and Manager to sign the cooperative agreement for the Vernon/Gleason traffic signal:**

**RESOLUTION NO. 2001-69  
A RESOLUTION APPROVING  
CONSTRUCTION COOPERATIVE AGREEMENT  
FOR VERNON AVENUE (CSAH 158) AND GLEASON ROAD  
AGREEMENT NO. PW 44-11-01**

**WHEREAS, the City of Edina and Hennepin County have been working on a traffic signal control system at Vernon Avenue (CSAH 158) and Gleason Road; and**

**WHEREAS, the City of Edina desires to install said traffic signal and Hennepin County has provided a construction agreement to allow for such installation; and**

**NOW THEREFORE, BE IT RESOLVED, that the City of Edina recommends that a traffic signal be installed at the Vernon Avenue and Gleason Road intersection by the City of Edina and authorize the Mayor and Manager to sign said agreement No. PW 44-11-01.**

**Passed and adopted this 16<sup>th</sup> day of October 2001.**

Member Masica seconded the motion.

Ayes: Hovland, Masica, Maetzold

Motion carried.

**RESOLUTION NO. 2001-61, APPROVED, AMENDING AND RESTATING THE CITY OF EDINA'S FLEXIBLE BENEFITS PLAN** Member Masica asked removal of the Amendment and Restatement of City of Edina Flexible Benefits Plan from the Consent Agenda for further information.

Mr. Hughes explained the purpose of the resolution was to comply with ERISA (Employment Retirement Insurance Security Act) and the DOL (Department of Labor) which require every ten years that a Flexible Benefits Plan was in effect, the local entity restate and distribute the plan to participating employees.

**Member Masica introduced the following resolution and moved its adoption.**

**RESOLUTION NO. 2001-61  
A RESOLUTION AMENDING/RESTATING  
THE CITY OF EDINA'S FLEXIBLE BENEFIT PLAN**

**WHEREAS, the City of Edina previously adopted the City of Edina Flexible Benefit Plan on March 1, 1990; and**

**WHEREAS, the City of Edina desires to amend and restate such Plan as presented to the Board of Directors; and**

**NOW, THEREFORE, BE IT RESOLVED, that the City of Edina Flexible Benefit Plan be and the same is amended, restated and adopted in the form presented to the Board of Directors, effective as of January 1, 2002; and**

**BE IT FURTHER RESOLVED, that any authorized persons of the City are hereby authorized to make such contributions from the funds of the City as are necessary to carry out the provisions of said plan at any time; and**

**BE IT FURTHER RESOLVED, that in the event any conflict arises between the provisions of said Plan and the Employee Retirement Income Security Act of 1974 (ERISA) or**

any other applicable law or regulation (as such law or regulation may be interpreted or amended), the Company shall resolve such conflict in a manner which complies with ERISA or such law or regulation.

Adopted this 16<sup>th</sup> day of October 2001.

Member Hovland seconded the motion.

Ayes: Hovland, Masica, Maetzold

Motion carried.

**FIREARMS PERMIT REQUEST DENIED** Chief Siitari stated the resident at 6504 Aspen Road requested a permit to allow use of a pellet gun or .22 caliber rifle to shoot raccoons or opossums trapped in his yard. Section 1000.03 of the City Code prohibits the discharge of weapons in any part of the City without a permit from the Council.

Mr. Siitari said raccoons were a protected animal under MN State Statute, Section 97B.655, but the statute would allow property owners to take raccoons or opossums that were causing damage. If an opossum was killed, a conservation officer must be notified within 24 hours. The resident stated in his October 4, 2001, letter that he feeds birds, which has attracted the animals. Mr. Siitari stated he recommended the requester remove the birdseed or trap and release the animals.

**Member Masica made a motion denying the request by a resident at 6504 Aspen Road to shoot nuisance animals with a pellet gun or .22 caliber rifle.** Member Hovland seconded the motion.

Ayes: Hovland, Masica, Maetzold

Motion carried.

**\*RESOLUTION NO. 2001-82 APPROVING SIDEWALK IMPROVEMENT PROJECT S-082, (5615 WOODCREST DRIVE)** Member Masica introduced the following resolution seconded by Member Hovland:

**RESOLUTION NO. 2001-82  
ORDERING SIDEWALK IMPROVEMENT NO.S-082  
5615 WOODCREST DRIVE**

WHEREAS, Mr. and Mrs. Charles Hann, 5615 Woodcrest Drive petitioned by letter dated July 26, 2001, to the Mayor and City Council, requesting sidewalk replacement at 5615 Woodcrest Drive due to settling of the panels; and

WHEREAS, the letter dated July 26, 2001, stated their waiver of rights for a public hearing to assess the sidewalk replacement costs under Minnesota State Statute, Chapter 429; and

WHEREAS, the letter dated July 26, 2001, further states their waiver of rights to a Final Assessment Hearing and agree to pay a sum not to exceed \$2,400.00.

NOW, THEREFORE BE IT RESOLVED that the Council has been fully advised of the pertinent facts, and does hereby determine to proceed with the construction of said replacement, including all proceedings which may be necessary in eminent domain for the acquisition of necessary easements and rights hereby designated and shall be referred to in all subsequent proceedings as Improvement No. S-082, replacement of sidewalk at 5615 Woodcrest Drive.

BE IT FURTHER RESOLVED THAT Improvement No. S-082 replacement of sidewalk at 5615 Woodcrest Drive is hereby ordered to proceed as proposed.

Adopted this 16<sup>th</sup> day of October 2001.

Motion carried on rollcall vote - three ayes.

**\*RESOLUTION NO. 2001-83 SETTING HEARING DATE OF NOVEMBER 20, 2001, FOR IMPROVEMENT NO. SA-1 AND SA-2, WEED TRIMMING** Motion made by Member Masica and seconded by Member Hovland introducing the following resolution and moving its adoption:

**RESOLUTION NO. 2001-83  
A RESOLUTION SETTING  
PUBLIC HEARING DATE OF  
NOVEMBER 20, 2001, FOR  
IMPROVEMENT NO. SA-1 AND SA-2  
WEED TRIMMING**

**BE IT RESOLVED BY THE CITY COUNCIL OF EDINA, MINNESOTA that a public hearing shall be held on the 20<sup>th</sup> of November 2001, in the Council Chambers at City Hall at 7:00 P.M. to consider Improvement No. SA-1 and SA-2 for weed trimming in the area of McCauley Trail and Indian Hills Road in the City of Edina; and**

**BE IT FURTHER RESOLVED, that the City Clerk shall give mailed and published notice of such hearing and improvement as required by law.**

**Adopted this 16<sup>th</sup> day of October 2001.**

Motion carried on rollcall vote – three ayes.

**CONCERN OF RESIDENT** Jean Calott, 6505 McCauley Circle, explained she rides the MTC bus approximately four times a week to work. The Park and Ride lot at the Community Center was located on the south side and had about 15-20 cars daily using the lot. In the spring, the Community Center said they would not allow parking in their lot. The Park and Ride was then moved to Concord Avenue, and then to a cul-de-sac on 59<sup>th</sup> Street. Ms. Calott questioned why the Community Center does not serve the community. Mr. Hughes said this was a controversial issue. The School District, owner of the Community Center, decided their lots could not accommodate the added burden of Park and Ride parking. When Park and Ride was re-located to a City street, the City objected because of City ordinances. Today the Southdale lot and the Colonial Church lot serve Edina with Park and Ride. Mr. Hughes added that the MTC does not need the City's permission to designate a Park and Ride lot.

**RESOLUTION NO. 2001-75 - A RESOLUTION RELATING TO THE SALE OF GENERAL OBLIGATION RECREATIONAL FACILITY BONDS, SERIES 2001A** Rusty Fifield of Ehler's & Associates, explained three bids were received for the \$4,620,000 General Obligation Recreational Facility Bonds, Series 2001A. Things that would be accomplished with this sale would be refunding the outstanding maturities of the 1992C Recreational Facility Bonds and providing new money for improvements to the golf course clubhouse and Aquatic Center. Mr. Fifield reported the low bidder was Dain Rauscher, Inc. at 3.6919%. The results of sale allowed the total savings to go from a projected \$200,000 to a near \$280,000. Mr. Fifield stated this was a very successful bond sale.

Mr. Fifield noted the City has received confirmation of the existing bond ratings as: Aaa from Moody's and AA+ from Standard and Poors.

Staff recommends approval of the sale of the General Obligation Recreational Facility Bonds, Series 2001A in the amount of \$4,620,000.

**Member Hovland introduced the following resolution and moved its adoption:**

RESOLUTION NO. 2001-75

A RESOLUTION RELATING TO \$4,620,000 GENERAL OBLIGATION  
TAX INCREMENT BONDS, SERIES 2001A; AUTHORIZING THE SALE,  
FIXING THE FORM AND DETAILS, AND PROVIDING FOR THE EXECUTION  
AND DELIVERY THEREOF AND THE SECURITY THEREFOR

Issuer: City of Edina, Minnesota

Governing Body: City Council

Kind, date, time and place of meeting: A regular meeting held Tuesday,  
October 16, 2001 at 7:00 o'clock p.m., at the City Hall, Edina, Minnesota.

Members present: Hovland, Masica and Mayor Maetzold

Members absent: Housh and Kelly

Documents Attached:

Minutes of said meeting (including):

I, the undersigned, being the duly qualified and acting recording officer of the public corporation issuing the bonds referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of said corporation in my legal custody, from which they have been transcribed; that said documents are a correct and complete transcript of the minutes of a meeting of the governing body of said corporation, and correct and complete copies of all resolutions and other actions taken and of all documents approved by the governing body at said meeting, so far as they relate to said bonds; and that said meeting was duly held by the governing body at the time and place and was attended throughout by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such recording officer this 16th day of October 2001.

\_\_\_\_\_  
Debra Mangen  
City Clerk

It was reported that 3 sealed bids for the bonds had been received at the time and place designated in the Terms of Proposal approved by resolution of the Council at the meeting held on October 16, 2001, and included in the Official Statement circulated by the Issuer's financial advisor on behalf of the Issuer. The bids received were as follows:

<u>Name of Bidder</u>	<u>Bid for Principal</u>	<u>Interest Rate</u>	<u>Net Interest Cost</u>
(see attached bid tabulation)			

Member James Hovland then introduced the following resolution and moved its adoption:

RESOLUTION RELATING TO \$4,620,000 GENERAL OBLIGATION  
RECREATIONAL FACILITY BONDS, SERIES 2001A; AWARDED  
THE SALE, FIXING THE FORM AND DETAILS, PROVIDING FOR  
THE EXECUTION THEREOF AND THE SECURITY THEREFOR

BE IT RESOLVED by the City Council of the City of Edina, Minnesota  
(the "Issuer"), as follows:

Section 1. Authorization and Sale.

1.01. Authorization and Outstanding Bonds. The Issuer has presently outstanding its General Obligation Recreational Facility Refunding Bonds, Series 1992C, initially dated as of November 1, 1992 (the "Prior Bonds"). This Council, by a resolution

adopted on September 19, 2001, authorized the sale of \$4,620,000 General Obligation Recreational Facility Bonds, Series 2001A (the "Bonds") of the Issuer, pursuant to Minnesota Laws 1961, Chapter 655 (the "Act"), and Minnesota Statutes, Chapter 475, in order to currently refund on January 1, 2002 the Prior Bonds maturing in the years 2003 through 2009 which aggregate \$3,035,000 in principal amount (the "Refunded Bonds") and to finance improvements to the municipal golf and swimming facilities of the Issuer. The Bonds shall be payable primarily out of the net revenues (the "Net Revenues") to be derived from the municipal golf courses, ice arena, swimming pool and liquor stores of the Issuer. There is currently payable out of all or a portion of the Net Revenues the Prior Bonds, the General Obligation Recreational Facility Bonds, Series 1992A of the Issuer, initially dated as of November 1, 1992 (the "1992A Bonds") and the General Obligation Refunding Bonds, Series 1999B of the Issuer, initially dated as of May 1, 1999 (the "1999 Bonds").

1.02. Findings. It is hereby found, determined and declared that the Net Revenues in the fiscal year ended December 31, 2000 totalled \$2,702,200, which amount exceeds the maximum amount of principal and interest to become due in any future fiscal year on the Bonds, the Prior Bonds, the 1992A Bonds and the 1999 Bonds as adjusted to reflect the redemption of the Refunded Bonds from the proceeds of the Bonds and the payment of interest on the Bonds from proceeds of the Bonds until applied to refund the Prior Bonds. It is determined that the estimated Net Revenues will be sufficient, together with other sources pledged to the payment thereof, to pay the principal of and interest on the Bonds, the Prior Bonds, the 1992A Bonds and the 1999 Bonds when due.

1.03. Sale of Bonds. The Issuer has retained Ehlers & Associates, Inc., as independent financial advisors in connection with the sale of the Bonds. Pursuant to Minnesota Statutes, Section 475.60, subdivision 2, paragraph (9), the requirements as to public sale do not apply to the issuance of the Bonds. Bids have been received in accordance with the Terms of Proposal approved by the resolution adopted by this Council on September 19, 2001 authorizing the sale of the Bonds, and the Council has publicly considered all sealed bids presented in conformity with the Terms of Proposal. The most favorable of such bids is ascertained to be that of Dain Rauscher Inc., of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a price of \$4,592,121.25 plus accrued interest on all Bonds to the day of delivery and payment, on the further terms and conditions hereinafter set forth.

1.04 Award of Bonds. The sale of the Bonds is hereby awarded to the Purchaser and the Mayor and Manager are hereby authorized and directed on behalf of the Issuer to execute a contract for the sale of the Bonds in accordance with the terms of the bid. The good faith deposit of the Purchaser shall be retained and deposited by the Issuer until the Bonds have been delivered and shall be deducted from the purchase price paid at settlement. The good faith checks of other bidders shall be returned to them forthwith.

1.05. Issuance of Bonds. The Issuer is authorized by the Act to secure the Bonds by the covenants and agreements hereinafter set forth. All acts, conditions and things which are required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of the Bonds having been done, existing, having happened and having been performed, it is now necessary for the Council to establish the form and terms of the Bonds, to provide security therefor and to issue the Bonds forthwith.

Section 2. Form of Bonds. The Bonds shall be prepared in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF EDINA

GENERAL OBLIGATION RECREATIONAL FACILITY BOND,  
SERIES 2001A

<u>Interest Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
_____%	January 1, ____	November 1, 2001	

REGISTERED OWNER: CEDE & CO.  
PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

THE CITY OF EDINA, Hennepin County, Minnesota (the "Issuer"), acknowledges itself to be indebted and, for value received, hereby promises to pay to the registered owner named above, or registered assigns, the principal amount specified above, on the maturity date specified above, with interest thereon from the date of original issue specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at the annual rate specified above. Interest hereon is payable on January 1 and July 1 in each year, commencing July 1, 2002, to the person in whose name this Bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. The interest hereon and, upon presentation and surrender hereof at the office of the Finance Director, in Edina, Minnesota, as Registrar, Transfer Agent and Paying Agent (the "Bond Registrar"), or its successor designated under the Resolution described herein, the principal hereof, are payable in lawful money of the United States of America by check or draft of the Issuer or the Bond Registrar if a successor to the Finance Director as Bond Registrar has been designated under the Resolution described herein.

This Bond is one of an issue in the aggregate principal amount of \$4,620,000 (the "Bonds") all of like date and tenor except as to serial number, interest rate, redemption privilege and maturity date, issued pursuant to a resolution adopted by the City Council on October 16, 2001 (the "Resolution"), for the purpose of financing improvements to the Issuer's golf and swimming facilities and to refund certain of the Issuer's outstanding general obligation bonds previously issued to finance improvements to the Issuer's recreational facilities and is issued pursuant to and in full conformity with the provisions of the Constitution and laws of the State of Minnesota thereunto enabling, including Minnesota Laws 1961, Chapter 655, and Minnesota Statutes, Chapter 475. This Bond is payable primarily from the net revenues of the golf courses, ice arena, swimming pool and liquor stores of the Issuer pledged to the payment of the Bonds by the Resolution, but the Issuer is required by law to pay maturing principal hereof and interest thereon out of any funds of the Issuer if net revenues are insufficient therefor. The Bonds are issuable only as fully registered bonds in denominations of \$5,000 or any multiple thereof, of single maturities.

Bonds maturing in the years 2003 through 2008 are payable on their respective stated maturity dates without option of prior payment, but Bonds having stated maturity dates in the years 2009 through 2017 are each subject to redemption and prepayment, at the option of the Issuer and in whole or in part, and if in part, in the maturities selected by the Issuer and, within any maturity, in \$5,000 principal amounts selected by lot, on January 1, 2008 and on any date thereafter, at a price equal to the principal amount thereof to be redeemed plus accrued interest to the date of redemption.

At least thirty days prior to the date set for redemption of any Bond, notice of the call for redemption will be mailed to the Bond Registrar and to the registered owner of each Bond to be redeemed at his address appearing in the Bond Register, but no defect in or failure to give such mailed notice of redemption shall affect the validity of the proceedings for the redemption of any Bond not affected by such defect or failure. Official notice of redemption

having been given as aforesaid, the Bonds or portions of the Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price herein specified and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bond or portions of Bonds shall cease to bear interest. Upon the partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the Issuer at the principal office of the Bond Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the Issuer will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The Issuer and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the issuance of this Bond in order to make this Bond a valid and binding general obligation of the Issuer according to its terms, have been done, do exist, have happened and have been performed in regular and due form as so required; that in and by the Resolution, the Issuer has pledged to the payment of the principal of and interest on the Bonds so much of the net revenues of the Issuer's golf courses, ice arena and liquor stores as shall be required to pay such principal and interest and on a parity with the pledge of such net revenues to the payment of other outstanding bonds of the Issuer; if needed to pay the principal and interest on this Bond, ad valorem taxes will be levied upon all taxable property in the Issuer without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the Issuer to exceed any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by the manual signature of the Bond Registrar, or in the event the Finance Director is no longer acting as Bond Registrar, one of the authorized representatives of the Bond Registrar.

IN WITNESS WHEREOF, the City of Edina, Hennepin County, Minnesota, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor and the Manager and has caused this Bond to be dated as of the date set forth below that all  
Date of Authentication:

CITY OF EDINA

---

City Manager

---

Mayor

---

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds delivered pursuant to the Resolution mentioned within.

By \_\_\_\_\_  
City Finance Director, as Bond Registrar

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -- as tenants UNIF TRANS MIN ACT. .... Custodian. . .  
in common (Cust) (Minor)

TEN ENT -- as tenants under Uniform Transfers to Minors  
by the entireties Act. ....  
(State)

JT TEN -- as joint tenants  
with right of  
survivorship and  
not as tenants in  
common

Additional abbreviations may also be used.

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

PLEASE INSERT SOCIAL SECURITY  
OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE:

NOTICE: The signature(s) to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.

\_\_\_\_\_  
Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar, which requirements include membership or participation in the Securities Transfer Association Medallion Program (STAMP) or such other "signature guaranty program" as may be determined by the Bond

Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**Section 3. Bond Terms; Registration; Executive and Delivery.**

**3.01. Maturities, Interest Rates, Denominations, Payment, Dating of Bonds.** The Issuer shall forthwith issue and deliver the Bonds, which shall be denominated "General Obligation Recreational Facility Bonds, Series 2001A." The Bonds shall be dated as of November 1, 2001, shall be issuable in the denominations of \$5,000 or any integral multiple thereof, shall mature on January 1 in the years and amounts set forth below, and Bonds maturing in such years and amounts shall bear interest from date of issue until paid or duly called for redemption at the rates per annum set forth opposite such years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Rate</u>
2003	\$525,000	2.25%	2011	\$70,000	3.90%
2004	565,000	2.60	2012	75,000	4.05
2005	585,000	2.85	2013	75,000	4.15
2006	610,000	3.10	2014	80,000	4.30
2007	615,000	3.35	2015	80,000	4.45
2008	550,000	3.55	2016	85,000	4.55
2009	550,000	3.70	2017	90,000	4.65
2010	65,000	3.80			

The Bonds shall be issuable only in fully registered form, of single maturities. The interest thereon and, upon surrender of each Bond at the principal office of the Registrar described herein, the principal amount thereof, shall be payable by check or draft issued by the Registrar. Each Bond shall be dated by the Registrar as of the date of its authentication.

**3.02. Interest Payment Dates.** Interest on the Bonds shall be payable on January 1 and July 1 in each year, commencing July 1, 2002, to the owners thereof as such appear of record in the bond register as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day. Interest on the Bonds will be computed on the basis of a 360-day year consisting of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board.

**3.03. Registration.** The Issuer shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent (the Registrar). The effect of registration and the rights and duties of the Issuer and the Registrar with respect thereto shall be as follows:

(a) **Register.** The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) **Transfer of Bonds.** Upon surrender to the Registrar for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for

registration of any transfer after the fifteenth day of the month preceding each interest payment date and until such interest payment date.

(c) Exchange of Bonds. Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Issuer.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The Issuer and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Issuer upon such Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Bonds (except for an exchange upon a partial redemption of a Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be lost, stolen or destroyed, the Registrar shall deliver a new Bond of like amount, number, interest rate, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond lost, stolen or destroyed, upon receipt by the Registrar of evidence satisfactory to it that such Bond was lost, stolen or destroyed, and of the ownership thereof, and upon receipt by the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the Issuer and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Issuer. If the mutilated, lost, stolen or destroyed Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

3.04. Appointment of Initial Registrar. The Issuer hereby appoints the Finance Director, as the initial Registrar. In the event that the Issuer determines to discontinue the book entry-only system for the Bonds as described in paragraph (c) of Section 2.07, or DTC, as defined in Section 3.07, determines to discontinue providing its services with respect to the Bonds and a new securities depository is not appointed for the Bonds, the Issuer will designate a suitable bank or trust company to act as successor Registrar if the Finance Director is then acting as Registrar. The Issuer reserves the right to remove any Registrar upon thirty (30) days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar.

3.05. Redemption. Bonds maturing in the years 2003 through 2008 are payable on their respective stated maturity dates without option of prior payment, but Bonds maturing in 2009 through 2017 are each subject to redemption, at the option of the Issuer and in whole or in part, and if in part, in the maturities selected by the Issuer and, within any maturity, in \$5,000 principal amounts selected by the Registrar by lot, on January 1, 2008 and on any date thereafter, at a redemption price equal to the principal amount thereof to be redeemed plus accrued interest to the date of redemption.

At least thirty days prior to the date set for redemption of any Bond, the Issuer shall cause notice of the call for redemption to be mailed to the Registrar and to the registered owner of each Bond to be redeemed, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. The notice of redemption shall specify the redemption date, redemption price, the numbers, interest rates and CUSIP numbers of the Bonds to be redeemed and the place at which the Bonds are to be surrendered for payment, which is the principal office of the Registrar. Official notice of redemption having been given as aforesaid, the Bonds or portions thereof so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions thereof shall cease to bear interest.

Bonds in a denomination larger than \$5,000 may be redeemed in part in any integral multiple of \$5,000. The owner of any Bond redeemed in part shall receive without charge, upon surrender of such Bond to the Registrar, one or more new Bonds in authorized denominations equal in principal amount to be unredeemed portion of the Bond so surrendered.

3.06. Preparation and Delivery. The Bonds shall be prepared under the direction of the Manager and shall be executed on behalf of the Issuer by the signatures of the Mayor and the Manager; provided that said signatures may be printed, engraved, or lithographed facsimiles thereof. In case any officer whose signature, or a facsimile of whose signature, shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of the Registrar, or in the event the Finance Director is no longer acting as Registrar, an authorized representative of the Registrar. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Bonds have been so executed and authenticated, they shall be delivered by the Manager to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Purchaser shall not be obligated to see to the application of the purchase price.

3.07. Securities Depository. (a) For purposes of this Section the following terms shall have the following meanings:

"Beneficial Owner" shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person's subrogee.

"Cede & Co." shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

"DTC" shall mean The Depository Trust Company of New York, New York.

**“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds Bonds as securities depository.**

**“Representation Letter” shall mean the Representation Letter from the Issuer to DTC previously executed by the Issuer and on file with DTC.**

**(b) The Bonds shall be initially issued as separately authenticated fully registered bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the Issuer may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the Issuer shall be affected by any notice to the contrary. Neither the Registrar nor the Issuer shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the Issuer to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (d) hereof.**

**(c) In the event the Issuer determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of bond certificates, the Issuer may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (d) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Issuer and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (d) hereof.**

**(d) In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of bond**

certificates and the method of payment of principal of and interest on such Bonds in the form of bond certificates.

**Section 4. Use of Proceeds and General Obligation Recreational Facility Bond Construction Fund.** Proceeds of the Bonds in the amount of \$3,035,000, are irrevocably appropriated to pay and redeem the principal amount of the Refunded Bonds on or before January 1, 2002. Any accrued interest on the Bonds shall be deposited in the Sinking Fund created pursuant to Section 5 hereof. All other proceeds of the Bonds shall be deposited in a separate Series 2001A General Obligation Recreational Facility Bond Construction Fund (the "Construction Fund") which shall be created and maintained on the books of the Issuer as a separate account. The Construction Fund shall be used solely to defray expenses of the Improvements and of costs of issuance of the Bonds. Upon completion and payment of all costs of the Improvements, any amounts remaining in the Construction Fund shall be credited and paid to the Sinking Fund created pursuant to Section 5 hereof. The remaining proceeds of the Bonds shall be deposited in the Sinking Fund created pursuant to Section 4 hereof.

**Section 5. General Obligation Recreational Facility Bond Sinking Fund.** The Bonds shall be payable from a separate Series 2001A General Obligation Recreational Facility Bond Sinking Fund (the Sinking Fund) which shall be created and maintained on the books of the Issuer as a separate debt redemption fund until the Bonds, and all interest thereon, are fully paid. There shall be credited to the Sinking Fund the following:

(a) Any amount initially deposited therein pursuant to Section 4 hereof.

(b) All taxes levied and all other money which may at any time be received for or appropriated to the payment of the principal of or interest on the Bonds, including the Net Revenues herein pledged and appropriated to the Sinking Fund and all collections of any ad valorem taxes levied for the payment of the Bonds.

(c) The sum of \$2,896.54 from Net Revenues, which amount shall be credited to a separate subaccount in the Sinking Fund as a reserve for the Bonds as required by the Act, and which amounts equal the average annual amount of principal and interest to become due on the Bonds and is required to be deposited therein pursuant to the Act.

(d) Any other funds appropriated by the Council for the payment of the Bonds.

**Section 6. Pledge of Net Revenues.** The Net Revenues are hereby irrevocably pledged and appropriated to the payment of the Bonds and interest thereon when due and the maintenance of the reserve account required by the Act. The pledge of the Net Revenues to the payment of the Bonds and maintenance of the reserve account on a parity with the pledge of such net revenues to the payment of the Prior Bonds, the 1992A Bonds and the 1999 Bonds. Nothing herein shall preclude the Issuer from hereafter making further pledges and appropriations of the Net Revenues for payment of additional obligations of the Issuer hereafter authorized if the Council determines before the authorization of such additional obligations that the estimated Net Revenues will be sufficient, together with any other sources pledged to the payment of the outstanding and additional obligations, for payment of the outstanding bonds and such additional obligations. Such further pledges and appropriations of Net Revenues may be made superior or subordinate to, or on a parity with, the pledge and appropriation herein made.

**Section 7. Pledge of Taxing Powers.** For the prompt and full payment of the principal of and interest on the Bonds as such payments respectively become due, the full faith, credit and unlimited taxing powers of the Issuer shall be and are hereby irrevocably pledged. It is, however, presently estimated that the funds appropriated pursuant to Section 5 hereof will provide sums not less than 5% in excess of principal and interest on the Bonds when due, and therefore no tax levy is presently required.

**Section 8. Defeasance.** When all of the Bonds have been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution to the

registered owners of the Bonds shall cease. The Issuer may discharge its obligations with respect to any Bonds which are due on any date by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full; or, if any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The Issuer may also discharge its obligations with respect to any prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Registrar on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due, provided that notice of such redemption has been duly given as provided herein. The Issuer may also at any time discharge its obligations with respect to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such time and at such rates and maturing or callable at the holder's option on such dates as shall be required to pay all principal, interest and redemption premiums to become due thereon to maturity or said redemption date.

Section 9. County Auditor Registration, Certification of Proceedings, Investment of Money, Arbitrage, Official Statement and Fees.

9.01. County Auditor Registration. The Manager is hereby authorized and directed to file a certified copy of this Resolution with the County Auditor of Hennepin County, together with such other information as the County Auditor shall require, and to obtain from said County Auditor a certificate that the Bonds have been entered on his bond register as required by law.

9.02. Certification of Proceedings. The officers of the Issuer and the County Auditor of Hennepin County are hereby authorized and directed to prepare and furnish to the Purchaser and to Dorsey & Whitney LLP, Bond Counsel to the Issuer, certified copies of all proceedings and records of the Issuer, and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Bonds as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the Issuer as to the facts recited therein.

9.03. Covenant. The Issuer covenants and agrees with the holders from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and Regulations promulgated thereunder (the Regulations), as such are enacted or promulgated and in effect on the date of issue of the Bonds, and covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become subject to taxation under such Code and Regulations. The improvements financed by the Prior Bonds and the improvements to be financed by the Bonds are public recreational facilities available for use by members of the general public on a substantially equal basis. The Issuer will not enter into any lease, use agreement or other contract respecting the improvements financed by the Prior Bonds or the Bonds or security for the payment of the Bonds which would cause the Bonds to be considered "private activity bonds" or "private loan bonds" pursuant to Section 141 of the Code.

9.04. Arbitrage Rebate. The Issuer shall take such actions as are required to comply with the arbitrage rebate requirements of paragraphs (2) and (3) of Section 148(f) of the Code.

9.05. Arbitrage Certification. The Mayor and the Manager, being the officers of the Issuer charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certification in accordance with the provisions of Section 148 of the Code, and the Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds which make it reasonable to expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be arbitrage bonds within the meaning of the Code and Regulations.

9.06. Official Statement. The Official Statement relating to the Bonds, dated October 5, 2001, prepared and distributed on behalf of the Issuer by Ehlers & Associates, Inc., is hereby approved. Ehlers & Associates, Inc. is hereby authorized on behalf of the Issuer to prepare and distribute to the Purchaser a supplement to the Official Statement listing the offering price, the interest rates, selling compensation, delivery date, the underwriters and such other information relating to the Certificates required to be included in the Official Statement by Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934. Within seven business days from the date hereof, the Issuer shall deliver to the Purchaser a reasonable number of copies of the Official Statement and such supplement. The officers of the Issuer are hereby authorized and directed to execute such certificates, as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

Section 10. Continuing Disclosure.

(a) Purpose and Beneficiaries. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the original purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the "Rule"), which will enhance the marketability of the Bonds, the Issuer hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds. The Issuer is the only "obligated person" in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made.

If the Issuer fails to comply with any provisions of this Section 10, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 10, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder to the extent permitted by law. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 10 constitute a default under the Bonds or under any other provision of this resolution.

As used in this Section 10, "Owner" or "Bondowner" means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any "Beneficial Owner" (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, "Beneficial Owner" means, in respect of a Bond, any person or entity which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of the Bond for federal income tax purposes. As used herein,

“Outstanding” when used as of any particular time with reference to Bonds means all Bonds theretofore, or thereupon being, authenticated and delivered by the Registrar under this Resolution except (i) Bonds theretofore canceled by the Registrar or surrendered to the Registrar for cancellation; (ii) Bonds with respect to which the liability of the Issuer has been discharged in accordance with Section 8 hereof; and (iii) Bonds for the transfer or exchange or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Registrar pursuant to this Resolution.

(b) Information To Be Disclosed. The Issuer will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the Issuer, the following information at the following times:

(1) on or before 365 days after the end of each fiscal year of the Issuer, commencing with the fiscal year ending December 31, 2001 the following financial information and operating data in respect of the Issuer (the “Disclosure Information”):

(A) the audited financial statements of the Issuer for such fiscal year, accompanied by the audit report and opinion of the accountant or government auditor relating thereto, as permitted or required by the laws of the State of Minnesota, containing balance sheets as of the end of such fiscal year and a statement of operations, changes in fund balances and cash flows for the fiscal year then ended, showing in comparative form such figures for the preceding fiscal year of the Issuer, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Minnesota law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the Issuer, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the fiscal officer of the Issuer; and

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information for such fiscal year or for the period most recently available of the type set forth below, which information may be unaudited, but is to be certified as to accuracy and completeness in all material respects by the Issuer’s financial officer to the best of his or her knowledge, which certification may be based on the reliability of information obtained from governmental or third party sources:

Current Property Valuations; Larger Taxpayers; Direct Debt;  
Overlapping Debt; Debt Ratios; Tax Levies and Collections; Net  
Tax Capacity Rates; Population Trend;  
Employment/Unemployment

Notwithstanding the foregoing paragraph, if the audited financial statements are not available by the date specified, the Issuer shall provide on or before such date unaudited financial statements in the format required for the audited financial statements as part of the Disclosure Information and, within 10 days after the receipt thereof, the Issuer shall provide the audited financial statements.

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each of the repositories hereinafter referred to under subsection (b) or the SEC. If the document incorporated by reference is a final official statement, it must be

available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify in the Disclosure Information each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the Issuer have materially changed or been discontinued, such Disclosure Information need no longer be provided if the Issuer includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other Issuer operations in respect of which data is not included in the Disclosure Information and the Issuer determines that certain specified data regarding such replacement operations would be a Material Fact (as defined in paragraph (2) hereof), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 10 is amended as permitted by this paragraph (b)(1) or subsection (d), then the Issuer shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

(2) In a timely manner, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities; and
- (K) Rating changes.

As used herein, a "Material Fact" is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a "Material Fact" is also an event that would be deemed "material" for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

- (A) the failure of the Issuer to provide the Disclosure Information required under paragraph (b)(1) at the time specified thereunder;
- (B) the amendment or supplementing of this Section 10 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the Issuer under subsection (d)(2);
- (C) the termination of the obligations of the Issuer under this Section 10 pursuant to subsection (d);

(D) any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information are prepared; and

(E) any change in the fiscal year of the Issuer.

(c) Manner of Disclosure. The Issuer agrees to make available the information described in subsection (b) to the following entities by telecopy, overnight delivery, mail or other means, as appropriate:

(1) the information described in paragraph (1) of subsection (b), to each then nationally recognized municipal securities information repository under the Rule and to any state information depository then designated or operated by the State of Minnesota as contemplated by the Rule (the "State Depository"), if any;

(2) the information described in paragraphs (2) and (3) of subsection (b), to the Municipal Securities Rulemaking Board and to the State Depository, if any; and

(3) the information described in subsection (b), to any rating agency then maintaining a rating of the Bonds and, at the expense of such Bondowner, to any Bondowner who requests in writing such information, at the time of transmission under paragraphs (1) or (2) of this subsection (c), as the case may be, or, if such information is transmitted with a subsequent time of release, at the time such information is to be released.

(d) Term; Amendments; Interpretation.

(1) The covenants of the Issuer in this Section 10 shall remain in effect so long as any Bonds are Outstanding. Notwithstanding the preceding sentence, however, the obligations of the Issuer under this Section 10 shall terminate and be without further effect as of any date on which the Issuer delivers to the Registrar an opinion of Bond Counsel to the effect that, because of legislative action or final judicial or administrative actions or proceedings, the failure of the Issuer to comply with the requirements of this Section 10 will not cause participating underwriters in the primary offering of the Bonds to be in violation of the Rule or other applicable requirements of the Securities Exchange Act of 1934, as amended, or any statutes or laws successory thereto or amendatory thereof.

(2) This Section 10 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the Issuer from time to time, without notice to (except as provided in paragraph (c)(3) hereof) or the consent of the Owners of any Bonds, by a resolution of the City Council filed in the office of the Clerk of the Issuer accompanied by an opinion of Bond Counsel, who may rely on certificates of the Issuer and others and the opinion may be subject to customary qualifications, to the effect that: (i) such amendment or supplement (a) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the Issuer or the type of operations conducted by the Issuer, or (b) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule; (ii) this Section 10 as so amended or supplemented would have complied with the requirements of paragraph (b)(5) of the Rule at the time of the primary offering of the Bonds, giving effect to any change in circumstances applicable under clause (i)(a) and assuming that the Rule as in effect and interpreted at the time of the amendment or supplement was in effect at the time of the primary offering; and (iii) such amendment or supplement does not materially impair the interests of the Bondowners under the Rule.

If the Disclosure Information is so amended, the Issuer agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

Section 11. No Designation of Qualified Tax-Exempt Obligations. The Bonds shall not be designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

Section 12. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section 13. Headings. Headings in this resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Section 14. Authorization of Payment of Certain Costs of Issuance of the Bonds. The Issuer authorizes the Purchaser to forward the amount of Bond proceeds allocable to the payment of issuance expenses to U.S. Trust Company, Minneapolis, Minnesota, on the closing date for further distribution as directed by the Issuer's financial advisor, Ehlers & Associates, Inc.

Adopted this 16th day of October, 2001.

Member Masica seconded the motion.

Rollcall:

Ayes: Hovland, Masica, Maetzold

Motion carried.

\*CLAIMS PAID Member Masica made a motion and Member Hovland seconded the motion approving payment of the following claims as shown in detail on the Check Register dated October 4, 2001 and consisting of 31 pages: General Fund \$282,555.11; Communications Fund \$2,073.11; Working Capital Fund \$6,787.53; Construction Fund \$35,098.50; Art Center Fund \$3,315.12; Aquatic Center Fund \$1,453.59; Golf Course Fund \$6,462.61; Ice Arena Fund \$630.72; Edinborough/Centennial Lakes Fund \$4,249.80; Liquor Fund \$156,678.64; Utility Fund \$44,780.78; Storm Sewer Fund \$4,780.60; HRA Fund \$450,000.00; Payroll Fund \$425,000.00; TOTAL \$1,423,866.11; and the following claims as shown in detail on the Check Register dated October 10, 2001, and consisting of 34 pages: \$592,655.41; CDBG Fund \$7,708.00; Communications Fund \$7,683.98; Working Capital Fund \$86,406.06; Construction Fund \$456,429.38; Art Center Fund \$501.15; Golf Dome Fund \$743.61; Aquatic Center Fund \$1,761.02; Golf Course Fund \$16,294.64; Ice Arena Fund \$5,862.83; Edinborough/Centennial Lakes Fund \$8,957.31; Liquor Fund \$147,633.75; Utility Fund \$3,546.03; Storm Sewer Fund \$2,393.94; Recycling Fund \$29,743.50; TOTAL \$1,368,320.61.

Motion carried on rollcall vote - three ayes.

There being no further business on the Council Agenda, Mayor Maetzold declared the meeting adjourned at 10:30 P.M.

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City Clerk