Agenda
Minnetonka City Council
Regular Meeting, Monday, Jan. 8, 2018
6:30 P.M.
Council Chambers

Administer Oaths of Office to:
  Mayor – Brad Wiersum
  Council At-Large, Seat A – Deb Calvert
  Council At-Large, Seat B – Patty Acomb

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Wagner-Bergstedt-Calvert-Wiersum-Acomb-Ellingson
4. Approval of Agenda
5. Approval of Minutes: Dec. 4 and 18, 2017 regular council meetings
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Resolution designating an Acting Mayor and Alternate Acting Mayor for 2018
    B. Designation of the city’s official newspaper for 2018
    C. Joint Powers Agreement with I-494 Corridor
    D. Resolution correcting polling place information that was adopted in Resolution 2017-136
    E. Participation in the Government Alliance on Race and Equity
    F. Cooperative agreement with City of Bloomington regarding 2018 National Football League Super Bowl event
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances: None

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Replays of this meeting can be seen during the following days and times: Mondays, 6:30 p.m., Wednesdays, 6:30 p.m.,
Fridays, 12 p.m., Saturdays, 12 p.m. The city’s website also offers video streaming of the council meeting.
For more information, please call 952.939.8200 or visit eminnetonka.com
13. Public Hearings:
   A. On-sale intoxicating liquor license for Copper Cow, LLC, at 5445 Eden Prairie Rd.
      Recommendation: Open the public hearing and continue to Feb. 26, 2018

14. Other Business:
   A. Resolution declaring vacancy in the council seat for Ward 3
      Recommendation: Adopt the resolution (4 votes)
   B. Concept plan review for The Villas of Glen Lake at 5517 and 5525 Eden Prairie Road
      Recommendation: Discuss concept plan with the applicant. No formal action required.
   C. Concept plan review for Ridgedale Executive Apartments at 12501 Ridgedale Drive
      Recommendation: Discuss concept plan with the applicant. No formal action required.

15. Appointments and Reappointments:
   A. Appointment of representatives to various advisory boards, commissions and committees
      Recommendation: Approve the appointments (majority vote)

16. Adjournment
1. Call to Order

Mayor Terry Schneider called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Councilmembers Brad Wiersum, Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, and Terry Schneider were present.

4. Approval of Agenda

Acomb moved, Wiersum seconded a motion to accept the agenda, with an addenda to items 5, 14A and 14B. All voted “yes.” Motion carried.

5. Approval of Minutes: September 25, October 9, October 23, and November 13, 2017 regular council meetings

Bergstedt moved, Allendorf seconded a motion to approve the minutes of the September 25, 2017 regular council meeting, as corrected. All voted “yes.” Motion carried.

Bergstedt moved, Allendorf seconded a motion to approve the minutes of the October 9, 2017 regular council meeting, as presented. Wiersum, Bergstedt, Wagner, Ellingson, Acomb and Schneider voted “yes.” Allendorf abstained. Motion carried.

Bergstedt moved, Allendorf seconded a motion to approve the minutes of the October 23, 2017 regular council meeting, as corrected. Wiersum, Bergstedt, Ellingson, Allendorf, Acomb, and Schneider voted “yes.” Wagner abstained. Motion carried.

Bergstedt moved, Allendorf seconded a motion to approve the minutes of the November 13, 2017 regular council meeting, as presented. Bergstedt, Wagner, Ellingson, Allendorf, Acomb and Schneider voted “yes.” Wiersum abstained. Motion carried.
6. **Special Matters:**
   
   A. **Recognition of 9-1-1 dispatchers**
   
   Schneider read the recognition and presented plaques to the dispatchers.

7. **Reports from City Manager & Councilmembers**

   City Manager Geralyn Barone reported on upcoming city meetings and events. She noted Finance Director Merrill King was honored with a “Top Women in Finance” award at Finance & Commerce’s annual awards. King said local government finance was one of the most diverse, interesting and rewarding careers. Barone said last week the Sensible Land Use Coalition recognized Minnetonka as one of 2017’s Great Places. The award was for Minnetonka Mills Park.

   Schneider said he attended the Music Association of Minnetonka’s Coffee and Carols fundraising event. It was standing room only and a great event.

8. **Citizens Wishing to Discuss Matters not on the Agenda**

9. **Bids and Purchases:** None

10. **Consent Agenda – Items Requiring a Majority Vote:**

    A. **Resolution amending Council Policy 2.1 on investments**

    Allendorf moved, Acomb seconded a motion to adopt resolution 2017-130 amending Council Policy 2.1 and authorizing limited investment in equity funds through the Minnesota State Board of Investments. All voted “yes.” Motion carried.

    B. **2018 general liability insurance and workers’ compensation renewals**

    Allendorf moved, Acomb seconded a motion to renew the city’s insurance policies through LMCIT for package policies with the following options:

    - $25,000/$150,000 deductible for the package policies
    - 100% Open Meeting law coverage
    - No waiver of statutory limits

    and also authorizes renewal of the LMCIT workers’ compensation policy with a $10,000 deductible. All voted “yes.” Motion carried.
C. Resolution reaffirming the 2016 preliminary plat approval of TONKAWOOD FARMS FIRST ADDITION, with lot width at setback variances, at 15014 Highwood Drive

Allendorf moved, Acomb seconded a motion to adopt resolution 2017-131 reaffirming the preliminary plat approval. All voted “yes.” Motion carried.

D. Resolution to adjust 2018 non-union employee salaries and benefits

Allendorf moved, Acomb seconded a motion to adopt resolution 2017-132 authorizing the 2018 non-union employee salary and benefit adjustments. All voted “yes.” Motion carried.

E. Twelve-month time extension of site and building plan and conditional use permit approval for Bauer’s Custom Hitches at 13118 Excelsior Boulevard

Allendorf moved, Acomb seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Applications for renewed liquor licenses for 2018

Allendorf moved, Bergstedt seconded a motion to approve the renewals listed in the staff report for 2018 calendar year. All voted “yes.” Motion carried.

12. Introduction of Ordinances:

A. Ordinance authorizing sale of land for boundary line adjustment

City Attorney Corrine Heine gave the staff report.

Wagner moved, Allendorf seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.

13. Public Hearings: None

14. Other Business:

A. Resolution approving a conditional use permit for a 7 to 12 resident licensed residential care facility at 5022 Baker Road

City Planner Loren Gordon gave the staff report.
Bergstedt asked Gordon to provide information about how a conditional use permit (CUP) follows the property and not necessarily the business or organization that currently owns the property. Gordon said this particular CUP would run with the property. As long as the property use described in the CUP remains valid, the permit remains valid as well. If the use no longer complies with the CUP, the permit would no longer be valid.

Acomb asked if the city had the authority to include a provision in the CUP limiting the permit to this specific business. City Attorney Corrine Heine said what the statute says is that a CUP remains in place as long as the conditions agreed upon and approved are complied with. She believed there was a court decision that said a city could not approve a CUP provision that states the permit expires at a specific time or that when this specific business moves the next property owner had to come in for a new CUP. It might be possible to include conditions that are specific to the nature of the activity that will be conducted on the property, but not to the people conducting the activity.

Allendorf asked what would happen if the council approved a CUP and after a period of time the permit holder decided not to comply with a condition in the CUP. Gordon said the first remedy would be for staff to work with the permit holder to come into compliance. If that is not successful the CUP would come back to the council for action. The council could modify the CUP or revoke it. Heine noted other enforcement options would be for the city to bring a lawsuit against the permit holder or issue criminal citations for the violations.

Wagner noted there were some nuisance issues in his ward, and in those instances the burden of proof is on the city. He asked where the burden of proof lies in situation where a CUP holder isn’t in compliance with the CUP. Heine said once a property owner has an approved CUP they are entitled to notice and a hearing if the city believes they are out of compliance prior to revocation. The burden would be on the city to show the conditions imposed by the city were not being complied with.

Wagner said in listening to the planning commission hearing one of the issues that came up was about visitations. There was conflicting information presented about what was required. One of the key issues involved parking. He asked how he as a councilmember could understand what side was correct about the statutory visitation requirements. Heine said because the planning commission hearing had taken place just a few days before, she did not have the time to thoroughly inform herself about state licensing requirements to offer an opinion. She said there were a couple of approaches the council could take. One would be to require
verification from the licensing authority that what the applicant was proposing was allowed and had been approved. Another approach would be for the council to require as a condition of the CUP that if there was any change in operations relative to traffic, the permit holder would need to come back to the council.

Wagner said it seemed to him that prior to 2013, the council had the ability to approve a CUP for a group home for up to a certain number of people. The question became as the council thought about the carve out for parking if there was an ability for the council to establish a reduced number of residents in the facility or some condition to address parking. Heine said state law allows the council to impose conditions on facilities that have more than six residents. State law and court decisions around the law require the conditions to be related to the health and safety of the residents. The city can impose health and safety standards that are appropriate to the characteristics of the site. She said the council could impose restrictions on occupancy to the extent it was dictated by site characteristics and the operation of the business. Wagner noted the number of parking spots was dictated by the R1 ordinance.

Wiersum said based on his personal experience, he thought parking was going to be an issue and a challenge for this site. The R1 limitation was a maximum of four cars parked in the driveway. This residence has a three car garage. He noted he owns a “mini-group home” that his daughters with disabilities live in. The home has a two car garage. When he and his wife visit they park in the garage. He has never seen the staff park in the garage because it was inconvenient. If staff parked in the garage and there was a visitor who parked in the driveway, they would have to ask the person to move their vehicle when the staff person’s shift was over. He could see in a situation with more residents and staff, where parking challenges would arise. There would be times, like holidays, when more parking will be needed. He asked if the city could put a restriction on how frequent more than four cars would be allowed to be parked in the driveway. Heine said the ordinance allowed that type of condition.

Wagner said during the planning commission hearing and information in the staff report included a lot of dialogue questioning the size of the home. Gordon said the actual size of the home was questioned during the planning commission hearing. He said the plans the applicant submitted showed the dimensions of rooms. The combined total of the rooms showed approximately 3,900 square feet. There were a couple of ways to measure interior space. The common method used by the city assessors was to measure the amount of space within the interior side of all the exterior walls. That number was larger than what was shown in the applicant’s plans. The plan includes all the interior space minus the walls.
Wagner asked if the applicant’s plan met all the criteria for 3,600 square feet. Gordon confirmed it did. Wischnack noted the application also had to meet all the building code standards. Schneider said when he reviewed the plan he came to the same conclusion as to why there was a question about the square footage and it involved including or excluding the walls in determining the size.

Fartun Ahmed, 14528 Moonlight Road, said she recently completed her coursework to become a licensed alcohol and drug counselor. Once she received the license she will become the first Somali American fully licensed alcohol and drug counselor in the country. She said the proposal was to operate a 7-12 person residential care facility for Counter Point Recovery. She currently operates a six person facility on Moonlight Hill Road. That facility has been in operation since October 2016. The proposal was to move the clients at the Moonlight Hill Road facility to this new location. The Moonlight Hill location would close. Counter Point Recovery was a Rule 31 licensed care facility. The facility was licensed by the Minnesota Department of Health and the Minnesota Department of Human Services. It served adult men specializing in East African clients battling addiction. She said she currently works at a detoxification facility in south Minneapolis where she has been training to do clinical assessments for clients. Once fully licensed she will be able to work one on one with her clients.

Ahmed said all the clients at the Moonlight Hill Road facility take advantage of city amenities including memberships to the Williston Fitness Center and volunteering at the ICA Food Shelf. The facility partners with ResourceWest on helping the clients with developing resumes, searching for housing, and applying for jobs. The facility provides a high intensity treatment requiring 30 hours or more of clinical counseling per week. She said in order to qualify to increase capacity, there was a rigorous process with Hennepin County and the state of Minnesota. Counter Point had to prove there was a need for more beds. She noted she provided letters of support from Hennepin County and the Minnesota Department of Human Services. She said the city’s building official had signed off on the application. The state fire marshal also had signed off on the application but was requiring the building be equipped with sprinklers. This had to be completed by May 2018. The city’s environmental health supervisor was requiring minor changes to the bathrooms before he signed off. Ahmed said she worked with multiple staff from the city to find an appropriate location and Baker Road was the one that met the requirements. After hearing the comments at the planning commission hearing, she submitted a landscaping plan.
Stephen Ling, an attorney with the Dougherty, Molenda, Solfest, Hills & Bauer law firm in Apple Valley, said the CUP process didn’t mean all the Minnesota Department of Human Services standards had been met. He said the CUP process was the first process allowing Ahmed to finalize her application with the state. If the CUP was approved, it didn’t necessarily mean there would be 12 clients residing at the site. The state needed to approve that number. He said the conditional use was the permitted use of a property as long as the conditions of the city code were met. He said the focus of the conversation should be on the four general conditions as well as the 11 specific conditions outlined in the staff report. He said Ahmed had worked diligently with city staff to show the proposal satisfied all the conditions. She was open to additional conditions like submitting a landscaping plan and agreeing to put in additional buffering after hearing the comments at the planning commission hearing. He reminded the council that the conditions had to be related to the health and safety standards for the particular site. Concerns about the operations and clientele of the facility did not necessarily fit with the particular site. He said what the council should be looking at was if the site satisfied the conditions in the ordinance.

Schneider said the council had watched the planning commission hearing and had reviewed emails and letters that were submitted. He suggested the council use a different process than it normally does given there were specific issues that had to be dealt with including some technical CUP issues, and also because of the emotion surrounding the proposal. He said he had thought about what would be the best outcome for the city, the applicant, and the neighbors. He thought it would be best to focus on a particular direction instead of hearing a lot of feedback resulting in an unfocused and labored discussion. It was clear as a right, a six person facility could be moved from the Moonlight Hill Road location to the Baker Road location. He said the issues raised at the planning commission hearing could not be addressed if that happened. He complimented the planning commission and the people who spoke at the meeting for having a civil discussion. He felt the debate was a little short on discussing the mitigation for the conditions. This typically was the focus of reviewing a CUP. He suggested coming up with a resolution for approval for a number probably less than 12, and specific site related conditions that could be agreed upon by a majority of the council. He also thought when the CUP was drafted it made it clear the permit was for an adult chemical dependent treatment facility not for any other type of group home.

Wiersum said Schneider’s suggestion had merit. He noted the application was for 7-12 people but the plan didn’t show the number of bedrooms. If 12 was the actual number, there must be a plan to double up residents. He asked for more information about that as the council considered the
item. He said when he looked at group homes, whatever their nature, as the number of residents increased, the impact on the neighborhood was greater and the less single family-like the residence becomes. He had quite a bit of discomfort approving a 12 person residence because there were not a lot of families with 12 people living in one home anymore. The average family household in the city was well below 12 and even below 6. Working out a compromise made sense given the current ordinance standard.

Acomb said she liked the idea of a compromise. In general terms she was uncomfortable allowing group homes with more than six residents in R1 neighborhoods. While this proposal was on a busy road, it still was in an R1 neighborhood. The other 12 person group home the council approved was in a commercial district so the situations were very different. She was concerned with the impacts on the neighborhood with increasing numbers and the impact on traffic. The council denied a request from Gianna Homes to add one more person because of the impact on the single family neighborhood. Her concerns had nothing to do with the use or the people living there, but instead had to do with the number of people residing in the home. She was open to taking the approach of trying to find a compromise.

Allendorf said he also was concerned with the number of residents living in the group home. He agreed with Wiersum’s comments. He said he didn’t think it could be denied that if a family moved in next door with six people that is was different from a family with ten or twelve people. The whole nature of the property changes. The services needed like garbage collection are different. He was very concerned about allowing a number greater than six. His condition for approval, for whatever number was decided upon, had to do with security on the property and in the home. This was a safety and health concern. The number of parking spaces and overnight parking was also a concern. He didn’t know how he could distinguish something that was a concern with 12 people not being a concern with eight people. He said the Gianna property went from seven to 10 residents and there were issues when the number increased. These issues were addressed when the council denied the request for 11 residents. He was not concerned about what was going on in the facility because the issue was a land use issue. He said he was concerned that the issue had been demonized on both sides to get away from the land use issue.

Wagner said since the policy change there was one 7-12 person facility and it was located on Minnetonka Boulevard. There were 15 parking spots and the building used to be an office building. He thought the mayor’s suggested approach was fine but it would be helpful to think about how
the discussion about the conditions would be structured. He agreed the issue was a land use issue. He thought the landscaping was improved but he was still struggling with the parking issue as well as safety concerns.

Acomb said there was such a quick turnaround from the planning commission hearing to this meeting. She noted the city attorney indicated she didn’t have all of the background on some of the licensing requirements. She suggested it might make sense to hold off on making a decision until the information was available to make an informed, educated decision. She said things felt rush. Schneider agreed it was a short turnaround time but he didn’t think anything significant would change between now and the next council meeting. He thought focusing on the number of residents and what conditions would be imposed would be helpful. He suggested the council take public input, have a discussion and then direct staff to draft a resolution for approval that would be voted on at the next meeting. This would allow the applicant time to digest the information and decide what she wanted to do next.

Bergstedt said the city attorney had informed the council they had some discretion on approving or not approving a CUP, and placing conditions related to land use, but there were some limits on how far those conditions could go. He said Schneider suggested approach was a good one because the council members had watched the planning commission hearing. Having two hours of the same comments wouldn’t be useful. Focusing the discussion on what type of stipulations were important, appropriate, and what the comfort level was for the number of residents would be beneficial.

Schneider said he created a list of possible conditions he felt were important. The first condition was additional landscaping and screening. Ideally the applicant would submit a formal plan before the next council meeting. Another condition related to understanding how the facility would operate, specifically when residents leave the site without the staff necessarily knowing. At the same time he thought it was critical for the residents to be able to go outside. His suggestion was installing fencing between the home and the back sound wall. This would create a fenced in backyard providing for both semi-security and the health and well-being of the residents. He said the third condition would be to install the electronic security devices that were talked about. The fourth condition would be to tie the parking spaces to an annual review of what the actual activity was. This has been done with other CUPs. This would require the property owner to demonstrate each year that there was adequate parking for the site.
Wagner said the parking condition gets into the number of residents. He didn’t see the council approving a variance for more parking spaces in an R1 neighborhood if parking became a problem on the site. The message should be there shouldn’t be more than four cars parked in the driveway on a regular basis. Schneider said there were options available without actually adding parking spaces like making the driveway wider.

Schneider said the final condition he came up with would be to limit the number of residents to a number the council agreed with. Once the applicant demonstrated that with the other conditions in place, and with adequate staffing and supervision to support an increase to the number of residents, she could reapply for an amendment to the CUP.

Allendorf said he thought the correct number of residents was seven. Going beyond that, there had to be some proof it would actually work both in terms of safety and security of the residents as well as the neighbors.

Wiersum said there were a lot of issues being raised that had little sway with his consideration. He personally was very supportive of group homes. He thought they provided services that were absolutely needed in the community. Because he supports group homes, he believed the state law limiting them to six residents was exceedingly wise. Any decision to allow more than six residents was very difficult for him because he felt group homes need the support of the neighborhood. The likelihood of maintaining that support diminishes as issues arise. He said the number of residents will have an impact on the number of issues in the neighborhood. He really liked sticking with six residents because it took the discretion out of the council’s hands and because it also was more family-like.

Schneider asked Ahmed her thoughts about his proposed process. Ahmed said she was not opposed to it, but noted any condition would add to the cost of running the home. Ling said Ahmed did not have any interest in limiting the number of residents to six because that already was permitted by law. He said he didn’t believe there could be a limit on the total number of residents in connection with the conditions. It was not in any of the city’s ordinances. The council would be going well past the scope of the city’s ordinance if it wanted to limit the number of residents.

Schneider said historically seven to 12 residents was the established range.

Randy Anderson, a resident of Golden Valley, said he considered himself to be an expert in the field of addiction recovery. He was a long time recovery, drug and alcohol counselor at a large residential facility in
Minneapolis. He also served on the board of directors for the Minnesota Second Chance Coalition. He noted recently the United States Surgeon General released a report on alcohol, drugs and health. It provided information about combating this healthcare issue that has reached epidemic proportions. The report indicated there was a substantial economic cost due to substance abuse. He said the city would save significant money by having a facility like the proposed one.

Matt Wilkus, 4837 Hamilton Lane, said he was a licensed architect. He interpreted the building code and city ordinances on a daily basis. He strongly believed residential care facilities are critical and necessary to the community. He supported the six person facilities in residential areas. He also supported 7-12 resident facilities if they met the specific general standards in the city ordinance. He said the detailed standards indicate the known potential detriment larger facilities can have on neighborhood character. He advised the council to affirm the planning commission’s denial of the CUP request because it did not meet the general standards in many ways. One way was it didn’t meet the comprehensive plan’s goals to preserve the unique character of the city’s existing neighborhoods and to retain existing families and attract new families. He said despite being on Baker Road, the neighborhood has the feel of a typical R1 neighborhood. A 12 person facility would be incompatible with the adjacent development. Another general standard the proposal does not meet was that it will have an undue adverse impact on government facilities, utilities, and services. The 12 person home would increase public services at a minimum of 611 percent. Another general standard not being met was the requirement for a turnaround area. He said the three CUP’s referenced in the staff report were very different than this application.

Patrice Wehner, 5030 Baker Road, said she was happy the applicant was considering additional landscape and buffering. She would like to see a fence going all the way from the 494 fence to Baker Road. If a resident was on medication or having a hallucination, they may never find their way back to the home without this additional fencing. She would like to see bushes taller than 10 feet. She would like to see alarms installed. She said she had a daughter with a disability who wasn’t always able to judge how safe or unsafe an encounter might be. The driveway was another concern. If someone was leaving and another car was trying to enter, there wasn’t enough room for the two cars to pass.

Jen Westmoreland-Bouchard, 4640 Caribou Drive, said a lot of the council discussion was about having discomfort for a number over six residents because it wasn’t normative. She said it felt a little like the goal posts were being changed. The applicant had gone above and beyond to meet what
was in the ordinance. All the financials had been based on the requirements in the ordinance.

Jim Swigart, 5211 Baker Road, noted the city’s guide plan indicates that “city practices have been and will continue to be oriented toward protection and support of established residential neighborhoods.” The neighborhood had a petition supporting the denial of the CUP. The purpose of the CUP was not to ensure a business was profitable.

Hilal Ibrahim said she was a Muslim woman of African descent who wrote for the Huffington Post, and was a local business owner. She was also a student and a former Minnetonka Police Explorer. After hearing the concerns and reading emails about the application, she said there was a much bigger issue involved. If it was just about the approval of the CUP, the applicant would not have been questioned in the manner she was at the planning commission hearing. Ibrahim said she couldn’t help but wonder if Ahmed’s integrity was being questioned because of her multi-cultural background. Schneider said he had asked both sides not to discuss the application in terms of race issues. It was a land use issue in front of the council. Ibrahim said she hoped the council would justly, and in a fair manner, factor in the reality of the situation.

Derrick Banks, 5135 Baker Road, said the city ordinance stated that no external building improvements undertaken in R1 and R2 districts alter the original character of the home unless approved by the city council. In R1 and R2 districts there must not be any exterior evidence of any use or activity that was not customary for a typical residential use including no external storage, signs, garbage and recycling containers. He said the average household size in Minnetonka was 2.25 people. The average home had one garbage can and one recycling container. Having a residential home with 12 residents and five staff would exceed the average household size by over seven times. The number of garbage and recycling cans needed to accommodate the increased number of people would also need to increase. This would violate the typical residential use language of the ordinance. He noted another section of the city code stated that vehicles, watercraft and other articles stored outside on residential property must be owned by a person who resides on the property. He questioned the definition of “resides” and if the staff met that definition.

Jacob Davis, 13020 Maywood Road, noted a discrepancy around the square footage. This was important because it was needed for determining if an application met the CUP guidelines. He said this portion of Baker Road was a collector street and should be thought of that way. It
was used as a bypass to I494. Consideration should be given to how much traffic would be generated by the group home.

Jeff Wehner, 5030 Baker Road, noted in the plan, the driveway is 14 feet long. Because it is narrow, there could be situations where a car cannot enter at the same time another car is trying to exit. This could cause a backup onto Baker Road.

Maurine Burke, 5014 Baker Road, said she had lived at her address for nearly 50 years. She's enjoyed having Neighborhood Night Out for the past eight years. She said it's a very proud neighborhood. She's never had to worry about security but now she was. The seven foot high fence from I494 to Baker Road was essential. Her property was important to her.

Aaron Mielke, 5326 Rogers Drive, said safety was a concern for many of the neighbors. In terms of land use, this was a Rule 31 adult facility for chemical dependent and mental health issues. He said facts show that compared with other residential uses, residents of these facilities become violent, manic, combative, aggressive, out of control, agitated and volatile. These words came from 911 calls and police reports. His background was in environmental review and permitting, and when he's reviewing something for possible negative impact, he looked for sensitive receptors. In this case there were several. Notre Dame Academy was less than 1,000 feet away. Glen Lake Elementary School was approximately 2,500 feet from the home. There are several school bus stops in the area. The police reports indicated several instances of clients running away from a facility. He said the proposed use would have adverse effect on human health and safety and this should be taken into consideration.

Charlie Greenman, 11421 Live Oak Drive, said he was a recovered alcoholic. He lived near an adolescent chemical dependency/mental health facility. He worked in the profession of addiction and mental health counseling. He supported the proposal and the opportunity for the men to experience recovery in the environment that existed in the city. To see people recovering from their addictions and mental health issues was a beautiful thing.

Hassanen Mohamed, 6589 Douglas Drive, Brooklyn Park, said he supported the project. He had worked the past 11 years for nonprofits, the past 10 for Lutheran Social Service. He had lived in an area with three different treatment homes and never noticed any issues. He urged the council not to play politics but to make the difficult decision to approve the application. Staff had reviewed the application and determined it met all the city’s regulations. He said the applicant was putting in extra money to add things that were not required just to address concerns.
Wiersum asked staff for information comparing Minnetonka’s CUP’s involving group homes with neighboring community’s CUP’s. Gordon said staff surveyed 11 cities and it was mixed on how group homes with 7-12 residents were regulated. He said Minnetonka had more stipulations on allowing 7-12 residents before approving a CUP. Some communities do not allow them at all.

Wagner said he thought a reasonable condition related to the buffer and screening. Schneider said he was sensitive to Ahmed’s comments about the costs associated with any conditions added to the CUP. Wagner said that buckthorn was not acceptable screening.

Wagner said another condition he thought would be valuable related to documenting the operations of the property. The city attorney had included some potential language in a memo to the council. Schneider said the conditions he listed included requiring adequate staffing to properly manage the number of clients. Monitoring the residents both inside and outside was critical. Wagner said his concern was about managing the flow of the property in terms of parking and traffic.

Allendorf said the applicant indicated there would be four staff people. He thought this was appropriate to add as a condition. He said he also thought requiring the fence go all the way back to I494 was reasonable. He liked Schneider’s suggestion to have a fenced in backyard area with a picnic table for outdoor activities. If this was put in place the fence would not have to go all the way back to I494. He said in terms of security requiring that the security system notify the police department if a resident runs away from the property was a reasonable condition.

Wiersum said he liked the idea of a security camera at each entrance but it would likely mean having video of activities rather than someone monitoring things in real time. Schneider said he was not thinking about cameras at all. Instead he was suggesting that each entrance have an alarm. Wiersum said that made sense.

Wiersum said given the conditions discussed, and given the way the ordinance was written, he would be comfortable approving eight residents. He thought that if the applicant wanted 12 residents, the chances were high the council would not approve the application.

Bergstedt said the site was an excellent location for a group home. He noted the applicant would not need city approval for six residents so the tradeoff were the conditions that had been discussed to allow more than six. He said he was comfortable approving eight residents. If things went
well with eight residents he could see the applicant coming back in a year requesting additional residents.

Wagner said the council discussed buffering, security, and the parking spaces. He wasn’t that concerned about the backyard fencing. He thought the conditions addressed the concerns.

Acomb said she was supportive of group homes. There was one in her neighborhood and it had been a very good neighbor. She noted the previous night she was at the hospice group home where her mother passed away. She attended a celebration at the home. Group homes inherently have celebrations and gatherings. She was comfortable with the conditions that had been discussed. She said substance abuse issues were a big concern within the culture and community. She was comfortable approving eight residents although she still liked six better. She thought this was a good compromise. She really hoped relationships between the residents, staff, the owners, and neighbors could be developed.

Allendorf said the entire council recognized the benefit of group homes. He remembered when he was a brand new council member in 1992 there was a group home on Caribou Drive. The neighbors were up in arms because of the fear of the unknown and worries about the character of the neighborhood. Today, the group home was integral to the neighborhood. He said he could compromise with eight residents.

Ellingson said he appreciated the effort to come to a compromise but was concerned because the applicant’s attorney indicated he didn’t believe the council had the authority to limit the number of residents if the conditions had been met. He questioned if the applicant needed to submit a new application for eight residents. Schneider said the council had limited the number in the past. The approval had to be based on sound concepts that related to the impact to the site.

Allendorf moved, Wagner seconded a motion directing the city attorney to draft findings of fact and a resolution with revised conditions approving the conditional use permit for an eight person facility. Wiersum, Bergstedt, Wagner, Allendorf, Acomb and Schneider voted “yes.” Ellingson voted “no.” Motion carried.

Schneider called a recess at 8:57 p.m. He called the meeting back to order at 9:11 p.m.
B. Concept plan review for Ridgedale Executive Apartments at 12501 Ridgedale Drive

Gordon and Wischnack gave the staff report.

Wagner noted the close proximity to Ridgedale Drive. He said he understood this was a concept plan, but questioned the setbacks as shown in the plan. Gordon said staff had not done any detailed review with how the building sits on the property. Wischnack said she thought the setbacks were similar to the Ridge.

Allendorf said he always thought there was a lot going on even with past use of the property. This concept plan would be even more in terms of footprint. He wondered if the building would even fit on the site. Gordon said staff had not run any numbers on the property. He said the plan was denser than other things on Ridgedale Drive.

Richard Rotenberg, 13924 Emerald Ridge, said he owned the property since 1996. The reason he purchased it was because of the beauty of the property including the pond. It was a serene setting. He owned Redstone and built the office building. He looked at a number of ideas for the site and determined the best thing was for a luxury apartment building. He attempted to fit in with the city’s vision for 2035 and thought this plan was ideal.

Charlie Carpenter, an attorney with the Fabyanske Westra Hart & Thomson law firm, provided information about the concept plan. He said there was high demand for upscale rental housing. The upscale apartment building would serve as a catalyst for investment in the Ridgedale center concept. The goal was for the building to become an iconic presence that everyone in the city would be proud of.

Rotenberg said the average one bedroom apartment would be around 969 square feet. This contrasts to other units in the area where the average is around 750-850 square feet. Two bedroom units would average around 1,500 square feet. There would be high ceilings and the appliances would be luxurious.

The project architect, Jesse Hamer from Momentum Design Group, presented further details about the plan. Pushing the building north maximized the parking between it and the office building. It also increased the distance between the building and the neighbors to the south. The majority of parking would be enclosed both underground and at grade at the first level. The six story building would be approximately 55 feet in height. The natural screening of the site was very important to maintain
and was a big amenity. This was set as a priority at the beginning of the process.

Dan Rosen, an attorney with the Kluger, Kaplan, Silverman, Katzen & Levine law firm, said Rotenberg only did things at the highest level. Rosen noted the council received a letter from the Larkin Hoffman law firm representing some of the neighbors. He said the legal argument in the letter was a considerable reach and was inconsistent with the city’s comprehensive guide plan and zoning code. At the end of the day the fundamental opposition was not wanting a six story building. The common response to a development was “But I can see it and I couldn’t see it before.” In the summer, the neighbors would not be able to see the building. In the winter, there was no question something would be seen but the question was what the developer was doing to elevate the neighborhood. The choice was the luxurious vertical surface or a horizontal surface that might be asphalt roadways, driveways or rooftops. These were the only alternatives available. He said the city was looking for density in housing for the area. Without this plan, it would be difficult to achieve that goal. The idea then was to do it in the nicest way possible. He pledged the developer would be 100 percent respectful to the neighbors. The plan would be a tremendous upgrade from Redstone.

Jacob Steen, an attorney with the Larkin Hoffman, said the law firm was representing several of the most affected neighbors who live in the low density residential neighborhood to the south. There was no doubt this would be a nice facility and that it was appropriate for some level of development to occur on the site. It was apparent there was just too much being shoehorned onto the site with this plan. He said looking at the massing in context was important because the city spent a considerable effort with the community to develop policies that specifically address the south end of the Ridgedale area. The comp plan in several places referenced this single family, low density neighborhood by name specifically in the context of the buffers, the transition, massing and height. The buffers and transition were supposed to be buffering from the mall over this property to the single family residential neighbors. This plan would create a high density residential development directly abutting the lowest density residential development in the area. He urged the council to look through this lens as it was evaluating the plan. The comp plan specifically referenced minimizing the impacts of development on this property with managing impacts on nearby low density to the south. He said he hoped the idea of a proposed trail would be dropped because it was one of the neighbors’ biggest concerns. He encouraged the council to direct the applicant to right size the project.
Dr. Mark Stesin, 2000 Norway Pine Circle, said he was speaking not only as a neighbor whose property abuts the development property but also on the behalf of many neighborhoods. Residents on many streets in the area were concerned about the plan. They do not begrudge the property owner from building on his property, but the question was what was appropriate to be built on the property. He said he was very concerned about the mass impacts. This high density building would directly abut the single family residential homes without any transition. Currently he can see the two story office building so he does not buy into the claim the six story apartment building would not be visible. In addition to the building, there would be an issue with lights. This would impact many people in the neighborhood. Noise would also be a factor with the pool and recreation area as well as many of the balconies that will face the neighborhood. Traffic would also be an issue. At question was what the hub of the Ridgedale area project actually was. He said the apartment building was way out of proportion. Another issue was if the path was built as in the plan, his backyard would be about 10 feet away. This would cause safety issues related to crime creating an escape route from Ridgedale.

Heather Stesin, 2000 Norway Pine Circle, said Allendorf was right about being concerned with the footprint. The massive building would impose on the neighboring properties. She showed pictures from her property looking at the development property. She questioned if anyone would want a path so close to their property with the amount of crime in the world. She noted she and her husband along with some neighbors own the property in the center of the cul-de-sac so nothing will be built there. She showed a picture of the current three story building lit up at night and said she couldn’t imagine all the light coming from a six story building. She said people move in and out of apartments all the time and there would be many deliveries. Traffic would be an issue as will noise and lights for the entire neighborhood.

Wagner said one of the things that came up at the planning commission hearing was concern about the trail. He said during the discussion about the reconstruction of Ridgedale Drive, there were comments about making the area more walkable, and opening up Crane Lake as a park, although it was unknown how that would be funded. This would be a much better place for park dedication funds to be used than for a path around this building. He asked Gordon the distance between the west edge of Highland Bank and the neighborhood. Gordon indicated it was around 850 feet. Wagner said the council had indicated support for density around Ridgedale as part of the vision for the area as well as a mixed use of housing. He strongly supported that strategy. The council had also discussed stepping down density as it gets closer to residential neighborhoods. He didn’t begrudge the idea of apartments on this site but
he did have concern about a six story building. He said there was a desire to do a lot of the density on the Ridgedale property itself but that would require a approval from the mall owner as well as the anchors of the mall.

Bergstedt said he agreed with much of Wagner’s comments. He thought the trail was a terrible idea for a lot of reasons. The building had a massive footprint and was six stories high. He thought the proposed use of luxury apartments was fine for the site but more creativity was needed because the concept plan was too massive.

Wiersum said it was an attractive concept from a building perspective but he agreed the mass and scale were too much. He said it clearly needed to be a smaller building to get his support.

Acomb said housing was appropriate for the site. She was concerned about the setback from the road. She said the apartment building would dwarf the office building so it felt out of scale. The mass not only was too big as a transition to the single family residential neighborhood but also with the office building. She questioned if there was a council policy around an affordability component if a property was rezoned. Wischnack said the council adopted a resolution that an affordable component may be required by the council as part of rezoning. Acomb said while she appreciated that there was a market for executive and luxury apartments, she wondered if affordable housing could be included as well. She agreed park dedication fees would be better spent elsewhere in the Ridgedale area.

Allendorf said everybody loved trails but not in their yard. He didn’t think a trail belonged in this plan either. He said he wasn’t just concerned about the height of the building but also what was going on within the property. The footprint was too big. Something had be shrunk in order for him to support it. The issue of lights was unfortunate but did not concern him because there would be lights even with a four story building. He thought the site was the perfect place for luxury apartments but didn’t think a mix with affordable apartments made sense.

Ellingson agreed the trail was not appropriate. When Cherrywood Pointe was approved there was discussion about a trail for that development. This would have required cutting into the hillside and removing trees and would have ruined the natural area. He was concerned about the setback from Ridgedale Drive although he appreciated the effort to add distance from the single family home neighborhood. He agreed it would be better if the building wasn’t so big.
Schneider said when the council discussed the vision for the area there was a lot of discussion about the YMCA moving to a different location. When the YMCA decided to stay and upgrade the site the council discussed four or five story apartment buildings in the area that would have been even higher than this building given the topography. He said the desire to implement the vision incrementally for higher density housing in the Ridgedale area was still, for him, a top priority. The question was whether this concept was right or wrong and he thought it wasn’t right. He wasn’t sure what it would take to make it fit right. The visual impacts on the immediate adjacent homes would be similar with a four, five, or six story building. He encouraged Rotenberg to move forward with a high density project, and to work with the neighbors with landscaping their view shed so when the leaves were gone there still would be screening. His biggest concern was the building was 300 feet long, six stories high, and close to the road. He thought the Highland Bank was different because it had a lot of character to it with a lot of ins and outs, balconies and softer colors. This plan looked like a long wall. He would like to see more articulation.

C. Items relating to Dominium at 11001 Bren Road East

1)  Concept plan review for Dominium at 11001 Bren Road East

Gordon gave the staff report.

Wagner said there was a wonderful opportunity to tackle affordable housing and workforce housing. There were 1,050 units being proposed. On top of that there were a number of institutional uses that now were schools in the Opus area. What the area did not have was anything other than trails. There were a lot of units and no park land. He suggested staff put together some information for a study session. He said historically the city had a mixture of affordability and market rate units. Although he understood the reason related to how things were currently being financed, he thought this plan with three buildings in close proximity, was a major shift, one he was OK with. He thought there was a missed opportunity in creating a sense of place, a theme with what the council wanted the area to be. He didn’t think the plan felt like what the Shady Oak station area could be. He said the EDAC did a fabulous job analyzing the plan financially. He thought there were bigger picture issues for the Opus area.

Wiersum said he supported the plan. The opportunity to get this level of affordable housing in one proposal was not something the council was used to talking about. At the same time the council did not want to get into a situation where the city was only putting in affordable housing in certain
areas and not others. He liked the idea of getting some park opportunities even if they were just pocket parks. He questioned if there was an opportunity to also get greater connectivity to Lone Lake Park.

Acomb was thrilled to see the affordability coming from a company that knows that market very well. She had reservations about the size of the buildings in one area. That said, the community needs affordable housing. She really liked the senior affordable units. The map in the council packet showed there really wasn’t anything connecting this area and the light rail station over to Shady Oak Road. As the area develops it was important to keep in mind the need for getting people from the light rail station to where services are. She wondered if there were opportunities to get mixed use developments that would add retail to the area.

Bergstedt said the plan looked great and the mix of affordable senior and affordable workforce housing was something the city really needed. He thought it would help if there was a way to connect to Lone Lake Park or add pocket parks.

Allendorf said it was a wonderful project.

Ellingson said one of the wonderful things about the Opus area was the trail system. He said this was the kind of development the city wanted near the light rail station.

Schneider said conceptually the city couldn’t ask for a better neighbor to the light rail station. He agreed with Wagner that the Opus area with all its housing would benefit from a master planned corridor approach toward open space with connecting ponds and amenities similar to the Centennial Lakes area in Edina. The challenge was distance-wise this was much greater than the Southdale area. The question was how to link it all together. He suggested staff look at where there were some natural areas that should be preserved and also look at the area all the way down to Crosstown and ways to link the entire area together through the developments. This was worth hiring a consultant to look at. It would add tremendous value to the developments.

Barone noted that a park planner position was being created for 2018.

Allendorf noted that many years ago Gerry Rauenhorst developed the Opus area with the one way road system. The paths were included to get connectivity from one area to another. Rauenhorst’s vision was to use golf carts. The idea was to separate pedestrian traffic from automobile traffic. Wischnack said staff had discussed options with the developer to allow pedestrians to get around off of the roadway.
Acomb said the information about the financing indicated a possibility of deferring the park dedication fees from the project. She asked for more information. Wischnack said a deferment was not a waiver of the fees. If the project was built in phases, portions of the fee might be deferred over a period of time. Other options were being discussed with the developer.

Wagner said as far as the design the concept looked a little too boxy and might not stand the test of time.

Wiersum said the TIF seemed reasonable but noted there still would be an $880,000 million gap. He asked if the developer could speak on his plan to cover the gap and if the project would proceed if the gap remains when the financing is determined.

Ryan Lunderby from Dominium said the project would still be a go. This was an $115 million project so the amount of the gap would not stop it. He said city funds would be used last and the company would search to find other resources potentially from the county or the Metropolitan Council. He added the project would also go forward whether or not light rail happened. The need for this type of housing was that great.

Schneider said the concept plan showed a play lot in one of the corners of the property. One design improvement would be to figure out a way to reconfigure the building to provide for a more prominent and centrally located open space for the residents to enjoy. This would help make the building look less boxy and institutional.

**D. Resolution approving the second amendment to the regulatory agreement for Minnetonka Heights**

Wagner moved, Acomb seconded a motion to adopt resolution 2017-134 approving the Second Amendment to the Regulatory Agreement between the City of Minnetonka and Heartland Heights, LLC. All voted “yes.” Motion carried.

**F. Process for filing the council vacancy to occur in Ward 3**

Wagner noted there was a single person left in the audience who was at the meeting for item 13F. He suggested moving the item before item 13E on the agenda.

Barone and Heine gave the staff report.
Schneider said he had indicated at the study session discussion that he felt the community would better be served by an appointment process but only using an enhanced version that allowed for more public input. He suggested adding a few steps to the appointment process outlined in the staff report. One would be for staff to mail out a self-return postcard to each household in Ward 3 with a list of the applicants and a link to the live broadcast interview session. Residents would rank their preferences on the postcard and mail it back to the city. Staff would provide the council with a summary. The council would use this information to conduct the interviews and rank their choices. This was similar to a process used to hire past city managers. Using this process would likely mean more public engagement than a special election held in April.

Bergstedt said at the study session the council discussed the options and Allendorf, Schneider and himself preferred an appointment process. The reasons he preferred appointing someone to fill the vacancy was because of the April election date, that it was for a ward seat, and there would be no primary no matter how many people ran. Because of this, the winner could win with a small number of votes. His other concern was if the appointment process was used, someone could fill the seat February 12. If a special election was called the winner would be seated April 23. This would meant there would be two and a half additional months that the residents in ward 3 would not have a representative.

Acomb said she appreciated Schneider’s innovative approach but she still supported a special election. Councilmembers are considered elected officials and not appointed officials. Having been through a special election, she saw the value in having to work to get elected. There was value in a person having to get out and meet and talk to people, knock on doors, call people on the phone, try and get people to allow a yard sign. She saw benefit that it only involved one ward since it was less costly and there was a smaller area involved.

Ellingson said it was a difficult choice because both methods had worked well for the city. He noted Wiersum, Bergstedt, and Schneider all had been appointed at one time. The best and most qualified people were appointed. He said Acomb made a good point about the council being elected officials. If the council made an appointment Wiersum would be the only one making the decision who lived in the ward. He thought the people living in the ward should make the decision.

Wiersum said he had been appointed and also got elected. He said had he not been appointed he probably wouldn’t be on the council. He supported appointment in the past but given the amount of time left on his term, nearly two years, he thought having an election was the right thing to
do. He said he received a number of emails, letters and calls and no one had said the council should appoint someone. Appointing was simpler, cheaper and faster but he thought the council needed to be willing to take a risk with the messiness of democracy.

Wagner said he supported a special election given the amount of time left on the term. He said it was likely there were people who had been thinking of running for Wiersum’s seat since the day he filed to run for mayor. Every time there was around two years left on a term, the council chose to have a special election.

Barone said staff would be working on a plan to communicate to residents it was likely the vacancy would be filled at an April 10 special election.

E. Items relating to the 2018 operating budget and tax levies

1) Public consideration of proposed budget and levies;
2) Resolution adopting a budget for the year 2018, a revised budget for 2017, and setting a tax levy for the year 2017, collectible in 2018, amending the 2018-2022 Capital Improvement Plan, and consenting to a special benefit tax levy of the Minnetonka Economic Development Authority; and
3) Resolution setting a tax levy for the Bassett Creek Watershed Management Tax District for the year 2017, collectible in 2018

Barone gave an abbreviated staff report.

Wagner suggested Barone go through the entire Powerpoint presentation at the next council meeting so a video record was available for residents.

Allendorf moved, Wagner seconded a motion to adopt resolution 2017-135 setting a tax levy in the Bassett Creek Watershed Management Tax District for the year 2017, collectible in 2018 and resolution 2017-136 adopting a budget for year 2018, a revised budget for 2017, amending the current CIP to be consistent with these budgets, setting a tax levy for 2017, collectible in 2018, and consenting to a special benefit tax levy of the Minnetonka Economic Development Authority, collectible in 2018. All voted “yes.” Motion carried.

15. Appointments and Reappointments: None
16. Adjournment

Wagner moved, Wiersum seconded a motion to adjourn the meeting at 11:35 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
Minutes
Minnetonka City Council
Monday, December 18, 2017

1. **Call to Order**

   Mayor Terry Schneider called the meeting to order at 6:30 p.m.

2. **Pledge of Allegiance**

   All joined in the Pledge of Allegiance.

3. **Roll Call**

   Councilmembers Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum and Terry Schneider were present.

4. **Approval of Agenda**

   Wiersum moved, Acomb seconded a motion to accept the agenda with addenda to items 10D, 10G, and 14B. All voted “yes.” Motion carried.

5. **Approval of Minutes: None**

6. **Special Matters:**

   A. **Recognition of Mayor Terry Schneider**

      Wiersum read the recognition and presented Schneider with a plaque. He said Schneider had been a mentor and a friend and that he learned a great deal from him.

      Schneider said he thought his contributions over the years had made a difference. He said he believed after 24 years on the city council that it was time to turn things over to a new generation and new voices.

      Acomb said Schneider’s tenure of public service was more than just the years, it was a way of life. She said this was commendable. She praised his ability to be a creative problem solver and his wisdom and knowledge of the city’s history helped her with her decision making on so many issues.

      Wagner said Schneider and Allendorf’s historical perspective would be greatly missed by the council. He praised Schneider for his ability to make courageous decisions.
B. Recognition of Councilmember Dick Allendorf

Wiersum read the recognition and presented Allendorf with a plaque. He said he learned a lot from Allendorf especially Allendorf’s ability to be visionary about the community and fiscally conservative at the same time.

Allendorf said during the past 24 years, the staff had changed but the dedication and professionalism had not. The council had asked staff for a culture of openness and professionalism and that had been established. For this to happen it required leadership. He praised City Manager Geralyn Barone and her predecessors for providing this leadership. In his day job he gets to see how a number of city councils work. In comparison the Minnetonka city council has worked well together to the betterment of the community. He thanked the staff, the council, and the residents of the city who allowed him to serve over the past 24 years.

Schneider said he and Allendorf were both first elected in 1991. Back then, change was needed and he didn’t think the city manager and staff had expected quite the level of change the two new councilmembers brought forward. This included taking a more long range approach with the budget process. The shift in council dynamics has continued the past 24 years to a point where the entire council believed this fiscal prudence and long term planning had always been there even though it had not. He said Allendorf led that effort and he complimented Allendorf for his steadfast diligence over the years.

Acomb said she valued Allendorf’s perspective and even though it was often different from her own, the difference had taught her how to be a good councilmember. He had shown her the real value of local government, which was about compromise, collaboration and getting things done. She appreciated his years in public service not only for the city but also his time as a school board member.

Wagner said Allendorf had a record of service that touched so many areas including the city council, the school district and the planning commission. He praised Allendorf for looking at issues with a citywide perspective. As one of the first speakers on many items, he set the tone for the council discussion and he appreciated Allendorf’s courage in doing this.

Wiersum said the council was losing two giants and that their shoes would not be immediately filled. He said he appreciated Allendorf’s knowledge of what made good planning and his sense for scale and mass. He had learned a lot from him.
Barone thanked Schneider and Allendorf on behalf of the staff for all their support over the years.

C. 2018 budget and levies – public information

Barone presented the information.

Wiersum noted the federal tax legislation will limit the ability to write off local taxes. He questioned if it was feasible for residents to pay their 2018 property taxes early still allowing them to deduct them.

7. Reports from City Manager & Council Members

Barone reported on upcoming council meetings and city events.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Ordinance authorizing sale of land for boundary line adjustment 17125 and 17001 Excelsior Blvd.

Allendorf moved, Bergstedt seconded a motion to adopt ordinance 2017-19. All voted “yes.” Motion carried.

B. Resolution Establishing Polling Places for the 2018 State Primary and General Election

Allendorf moved, Bergstedt seconded a motion to adopt resolution 2017-136 designating the city’s polling places in 2018. All voted “yes.” Motion carried.

C. Resolution ordering the abatement of nuisance conditions existing at 11505 Lakeview Lane West

Allendorf moved, Bergstedt seconded a motion to adopt resolution 2017-137 ordering the abatement of the nuisance condition. All voted “yes.” Motion carried.

D. Resolution approving agreement for donation to the city of vacant land on Martha Lane
Per the addendum, the item was moved to agenda item 11C because five votes were required for approval.

E. Resolution approving preliminary and final plat of WILLISTON ACRES 3rd ADDITION, a two-lot subdivision at 14819 Margaret Place

Allendorf moved, Bergstedt seconded a motion to adopt resolution 2017-138 approving the preliminary and final plat of WILLISTON ACRES 3RD ADDITION, a two-lot subdivision at 14819 Margaret Place. All voted “yes.” Motion carried.

F. City manager performance pay

Allendorf moved, Bergstedt seconded a motion to approve a lump sum merit payment amount of $1,445.74. All voted “yes.” Motion carried.

G. Labor agreement between the city of Minnetonka and International Union of Operating Engineers, Local No. 49

Allendorf moved, Bergstedt seconded a motion to approve the 2018-2020 labor agreement between the city of Minnetonka and the International Union of Operating Engineers, Local No. 49, AFL-CIO. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Applications for renewed precious metal and secondhand dealer licenses for 2018

Allendorf moved, Wiersum seconded a motion to approve the precious metal and secondhand dealer licenses for the following establishments for license year January 1, 2018 through December 31, 2018: Evergreene Jewelers; Ideal Diamond, Inc.; Best Buy #4; Best Buy Mobile #2975; and Shane Co. All voted “yes.” Motion carried.

B. Resolution accepting gifts, donations and sponsorships given to the city during 2017

Allendorf moved, Wiersum seconded a motion to adopt resolution 2017-139 accepting the list of gifts, donations and sponsorships for 2017, which have a total estimated value of $163,298. All voted “yes.” Motion carried.

C. Resolution approving agreement for donation to the city of vacant land on Martha Lane
Allendorf moved, Wiersum seconded a motion to adopt resolution 2017-140 approving agreement for donation to the city of vacant land on Martha Lane. All voted “yes.” Motion carried.

12. **Introduction of Ordinances:** None

13. **Public Hearings:**

   **A. Resolutions regarding utility related items:**

   1) Municipal water and sanitary sewer rates;  
   2) Municipal water and sanitary sewer connection fees;  
   3) Recycling fee; and  
   4) Stormwater rates.

   Finance Director Merrill King gave the staff report.

   Schneider opened the public hearing at 7:28 p.m. No one spoke. He closed the public hearing at 7:28 p.m.

   Wagner moved, Bergstedt seconded a motion to adopt resolution 2017-141 approving municipal water and sanitary sewer rates; resolution 2017-142 approving municipal water and sanitary sewer connection fees; resolution 2017-143 approving recycling fee; and resolution 2017-144 approving stormwater rates. All voted “yes.” Motion carried.

14. **Other Business:**

   **A. Resolution calling a public hearing on the issuance of multifamily revenue bonds for Dominium, 11001 Bren Rd E**

   Community Development Director Julie Wischnack gave the staff report.

   Wiersum moved, Wagner seconded a motion to adopt resolution 2017-145, calling a public hearing on the issuance of multifamily housing revenue bonds for Dominium. All voted “yes.” Motion carried.

   **B. Resolution approving a conditional use permit for an 8-resident licensed residential care facility at 5022 Baker Road**

   City Planner Loren Gordon gave the staff report.

   Stephen Ling, an attorney with the Dougherty, Molenda, Solfest, Hills & Bauer law firm, said he was speaking on behalf of Counter Point Recovery. He said the applicant had some concerns with the resolution.
As with any application for a conditional use permit (CUP) if the applicant met the standards of the city’s zoning ordinance, the council must grant the CUP. In this case, the applicant had satisfied all the conditions. The proposed resolution contained some limitations that were inappropriate. He said the first of those was the limitation on the number of residents to eight rather than the 12 for which the applicant had applied. The city’s zoning ordinance allowed a limitation on the total number of residents but the limitation only applied to the size of the property itself or the size of the house specifically 3,000 square feet for each resident and 300 square feet for each overnight resident. This meant the property had to contain at least 36,000 square feet and the house had to contain at least 3,600 square feet. The applicant satisfied both conditions.

Ling said the second concern raised by the council and neighbors related to parking. He said the concern was somewhat misplaced because the only portion of the CUP that addressed parking states, “there shall be no on street parking.” The applicant had not proposed any on street parking. The residents would not have vehicles. The ordinance allowed for additional parking for occasional visitors. The applicant would comply with the parking requirements in the ordinance. He said any concern about the increase in the number of residents in connection with parking was misplaced. The resolution also required the applicant to monitor outdoor parking at least once a month. This too was outside of the zoning ordinance. He requested that condition be removed as well.

Ling said the applicant also opposed another proposal that the applicant install a security system on all doors and windows because it was outside of the zoning ordinance requirements. He said the applicant planned to install a security system but was opposed to the imposition of the requirement as a condition. There were also concerns with the landscaping plans. The landscaping proposed in the backyard was inappropriate because it did not provide additional screening for the neighboring properties to the north and south. The 5022 Baker Road property was setback further from the road from both the properties to the north and south. The backyard already was screened by the applicant’s house. Additional privacy fencing in the backyard would not add any more buffering or screening for the adjacent properties. He said the proposed fence on the north side of the property might be located on a power line easement. The applicant was willing to put the fence directly on the lot line if need be. Requiring it as a condition to be placed where it might not be allowed was problematic.

Allendorf said for a six person facility there was a limit of four vehicles to be parked on the driveway. Increasing the number of residents would also increase the number of medical related and attorney and professional
visits. He was concerned that the parking for this additional traffic would be a burden on the site and neighborhood. He asked the city attorney to comment on his concerns. City Attorney Corrine Heine said the ordinance contained a condition related to traffic and parking. She said she disagreed with the applicant’s counsel because he was reading the condition very narrowly. The ordinance provides that in general, no more than four vehicles can be parked on the driveway unless otherwise agreed to by the council. The ordinance anticipates that the council could allow parking of more than four vehicles where it was necessary for the proposed use. Twelve residents, additional staff, and more visitors might require more parking than simply four residents. The applicant had proposed only four spaces and the council, through the resolution, had determined that was not adequate for 12 residents and all the guests. The applicant had not met the burden of proving there was adequate parking.

Schneider said the offer to have offsite visits might be a mitigating factor but the CUP was issued generically for a 12 person facility that may or may not have the ability to do offsite visits. This was something the council had to weigh in determining the adequacy of meeting the conditions. Heine agreed that was correct. The applicant had underscored the necessity of looking at the application for 12 person facility because her attorney’s letter indicated that she can’t be held to the representations she made about the operational program in the application she submitted. The thing the council specifically identified was the security for the property but that was a representation that was made by the applicant to show that the application would not have offsite impacts and that she would install a security system. Even though the applicant said she going to install a security system, she now was saying she couldn’t be held to that even though that was meant to show she had met all the general and specific standards in the ordinance.

Wagner asked Heine to comment on Ling’s comments about buffering. He said buffering was something clearly in the mind of the council and specific concerns were outlined. Heine said the purpose of the buffering was to screen the use from adjacent sites. This had to be a reasonable condition justified by the physical characteristics of the property. The applicant was asserting that some of the landscaping requested won’t serve a buffering purpose and therefore was not necessary. She said the council had to determine for itself based on the record, if they agreed with that assertion. She said in respect to the easement, it was her understanding the applicant was not contesting the condition that a fence be located along the north property line, but wanted enough flexibility to locate the fence somewhere north of the driveway between the property line and the driveway.
Wagner said his understanding was the request was that the fence not be extended all the way to the west property line. Heine said her understanding was the applicant was saying the fence did not need to extend to the west property line because the additional amount of fencing would not serve a buffering purpose. Wagner said the easiest condition for him was the buffering. Current conditions could always be changed by the northern property line. If the neighbor to the north wanted to take down some trees and there was less buffering as a result, they still were entitled to buffering. In his mind the south property line clearly was inadequate from a buffering standpoint although there were trees. He didn’t see a burden the council was placing on the application by requiring buffering. It clearly was in the ordinance and the applicant had agreed to it before.

Schneider said he suggested the fenced in backyard from an overall staffing/security comfort level of the residents, guests, and the neighbors. This was combined with the idea of running the fence to the north. He didn’t intend that to be a condition for approval. He made the suggestion as a better way to operate the facility. He said it probably was overreach to have it as a formal condition. Before he made the suggestion the idea had been raised to run the fence all the way to the west. He was ok removing the condition for a backyard fence as long as it did not remove a condition for a fence along the north to run continuously to the west.

Wagner said what was discussed was the north and south property lines should have screening whether it be fencing or through an acceptable landscaping plan.

Wiersum said looking at the diagram with proposed screening on the south property line, and reading some of the correspondence that was highly prescriptive in the type of screening, the goal was having screening that was adequate. He would be fine with having staff work with the applicant to come up with appropriate screening at the time it was installed rather than having a formal landscaping plan. Wagner said his concern with that was he didn’t want staff to have to figure everything out. He sensed a contentious situation existed and he didn’t want to place staff in a situation between the neighbors and the applicant. Wiersum said there needed to be a sustainable approach that wasn’t overly burdensome on the applicant such as requiring trees that constantly needed to be replaced. There had to be something that was going to work from day one.

Barone said if council wanted specific things included, they should be part of the resolution. The more clarity given to staff, the easier it would be for staff to gain compliance.
Wischnack noted the landscaping plan included in the resolution included the species and height of the trees. She said the council could add a condition requiring the applicant to get final approval of the planting plan by natural resources staff. This has been done with other developments. Wiersum said that sounded like a good idea. Wagner agreed. Wagner said one thing missing was an ongoing maintenance plan.

Allendorf said the facility might require more in terms of governmental services than other residences. He originally supported approving seven residents before he compromised on eight. Historically the city has seen more police calls at group homes with six residents than for other residential homes. He noted the applicant did not say anything related to this. He thought this was a reason to limit the number of residents. He asked the city attorney if this was a valid reason to limit the approval to eight residents rather than allow 12. Heine said section three, paragraph six of the proposed resolution addressed Allendorf’s concern. The determination in that paragraph was it was appropriate to limit the number of residents to eight people in order to mitigate undue adverse impacts described in the paragraph. She noted the police officer who spoke at the public hearing indicated that on average for this type of use, the number of police calls was greater than for an average single family home. Allendorf said he was not referring to a six person facility but rather going above that number which would stretch a government service. Heine said that was what the language in the resolution was meant to address.

Wagner said in evaluating a CUP, the council always looked at the characteristics of the site. That was why he shared his concerns with the parking and the possibility of increased nuisance related violations. He asked if the provision included public services for other things like parking violations that might have a significant impact on other governmental services or if the provision strictly related to public safety. Heine said the paragraph in the resolution was specific to police calls and what she heard Wagner suggesting was broadening it to other calls for public service like nuisance enforcement. Wagner said historically the city dealt with those types of violations on a complaint basis rather than having staff go out looking for potential violations. Schneider said public safety indicated someone felt in danger and that was more relevant to the number of residents in the home rather than a situation involving a neighbor who frequently complained about another neighbor’s property. The latter could happen anywhere in the city. He preferred not watering down the language in the resolution.

Schneider said that even before receiving the letter from the applicant’s attorney he had a concern about requiring her to monitor parking on a monthly basis and annually report back to the city. The whole purpose
was if the applicant came back asking to increase the number of residents, there would be some independent monitoring of the facility to determine if it was working properly or not. The idea of self-monitoring one day a month was meaningless. He suggested eliminating the condition for the self-reporting and putting the burden back on the city. Staff would periodically monitor the site at random times. This information would be shared with the applicant.

Wiersum said he agreed with Schneider’s suggestion. He wanted to be fair in terms of this being a residential family neighborhood and the impact on the neighborhood. He was comfortable approving eight residents even though his preference was limiting it to six. Once a CUP was granted, it wasn’t un-granted. If the city got it wrong at the beginning, there was no path back. He was willing to take the risk of being conservative because there were a number of concerns involved. The city needed to protect the character of its neighborhoods. At the same time he was a supporter of group homes and the need for them in the city. He said there was a sacred trust with having the facilities be well run and having them have a good relationship with the neighbors and the city’s ability to have even more facilities in the city. He wanted to be cautious because if a good relationship was maintained between the facilities and the neighborhoods, it would make it easier if the opportunity came to expand this facility or add others in the city. From his perspective the situation would be totally different if this application was in a commercial area.

Schneider said the condition the council still needed to discuss was making the electronic monitoring required rather than an option. He said in evaluating the probability of undue city services and undue impact on the general health and well-being on the community and neighborhood, it came down to looking at how to minimize the potential of a situation like when a resident was off his medication and left the facility without permission impacting the neighbors. That was his main concern in suggesting that if someone wandered off, staff would be notified. It was difficult to prove there was adequate staffing until there was a period of trouble. His preference was electronic monitoring as a condition, so if there was a problem, it could be identified and addressed quickly.

Wiersum asked if a condition requiring a security system could be required for a specific use or if it needed to be more generic in terms of applying to all group homes. He said he had a personal reason for asking the question. His mother lived in a senior living facility and walked outside during the winter. The door locked behind her and she immediately tried to get back inside but ended up freezing to death. If the door had an alarm this would not have happened. He said an alarm system did not have to do with the type of facility but rather was about protection and safety not
only for the neighborhood but also for the residents of the facility. Heine said state law contains a provision that allow cities to impose conditions that are intended to address safety and health aspects. Court decisions have declared such conditions should be related to site characteristics. She said the proposed condition was a prime example of something related to health and safety and was an aspect of the site. The building did not have built in security and Wiersum’s example showed why an alarm system would be appropriate in some circumstances.

Schneider said the council discussed at length the appropriate number of residents at the last meeting. He asked if the council was still comfortable with eight residents or if someone wanted the number adjusted. No one indicated they wanted the number changed. He said the council discussion indicated two changes to the proposed resolution: eliminating the parking monitoring and changing some of the landscape requirements.

Heine and Wischnack shared suggested changes to the proposed resolution that incorporated the changes based on the council discussion.

Wagner moved, Allendorf seconded a motion to adopt resolution 2017-146, as amended, approving the conditional use permit for an 8-resident licensed residential care facility at 5022 Baker Road.

Bergstedt said he, like Wiersum, would rather error on being too conservative at the front end. He thought eight residents was a good number. If a year from now everything was working well, the applicant could come back asking for council approval for more residents.

Bergstedt, Wagner, Allendorf, Acomb, Wiersum and Schneider voted “yes.” Ellingson voted “no.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Wagner moved, Wiersum seconded a motion to adjourn the meeting at 8:29 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #10A  
Meeting of Jan. 8, 2018

**Brief Description:**  
Resolution designating an Acting Mayor and Alternate Acting Mayor for 2018

**Recommended Action:**  
Make designation and adopt resolution

**Background:**

The City Charter requires that the city council choose from its members a person to serve as Acting Mayor in the Mayor's absence or disability. In the past, the city council has also chosen an Alternate Acting Mayor to serve in the event the Mayor and Acting Mayor are unavailable.

Here is a list of the designations for the past five years:

- 2017 – Acomb acting, Wagner alternate
- 2016 – Allendorf acting, Acomb alternate
- 2015 – Bergstedt acting, Allendorf alternate
- 2014 – Wagner acting, Allendorf alternate
- 2013 – Wiersum acting, Wagner alternate

**Recommendation:**

Attached is a resolution that may be used to designate the Acting Mayor and Alternate Acting Mayor. After the city council has made these designations, the appropriate blank areas will be completed.

Based on the foregoing, the city council is requested to adopt the following motion (filling in the appropriate designations.)

That the resolution designating Councilmember _______ Acting Mayor and Councilmember __________ as Alternate Acting Mayor for the year 2018 is hereby adopted.

**Submitted through:**  
Geralyn Barone, City Manager
Perry Vetter, Assistant City Manager

**Originated by:**  
David Maeda, City Clerk
BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. Section 2.06 of the Minnetonka City Charter authorizes the City Council to designate an Acting Mayor to serve in the absence of the Mayor.

1.02. Because there may be times when the Mayor and designated Acting Mayor are both out of the city, the designation of another councilmember is advised.

Section 2. Council Action.

2.01. For the calendar year 2018, Councilmember ______ is designated as the Acting Mayor for the City of Minnetonka, to serve in the absence of the Mayor.

2.02. For the calendar year 2018, Councilmember _______ is designated as the Alternate Acting Mayor for the City of Minnetonka, to serve in the absence of the Mayor and Acting Mayor.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Jan. 8, 2018.

______________________________
Brad Wiersum, Mayor

ATTEST:

______________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Resolution adopted
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Jan. 8, 2018.

________________________________________
David E. Maeda, City Clerk
City Council Agenda Item #10B  
Meeting of Jan. 8, 2018

Brief Description: Designation of the city’s official newspaper for 2018

Recommended Action: Designate Lakeshore Weekly News as the city’s official newspaper for 2018 legal notices

Background

The city charter requires the city council to designate a newspaper annually to publish the city’s legal notices, ordinance titles and summaries, and other official announcements. For 2018, Administrative Services has budgeted $8,000 from the Cable Fund for legal notices.

Requests for proposals for the city’s 2018 legal publication needs were sent to the Minnetonka Sun-Sailor and the Lakeshore Weekly News, with a submission deadline of Dec. 22, 2017. Both the Sun-Sailor and the Lakeshore Weekly News submitted proposals.

The Lakeshore’s primary office remains at 1001 Twelve Oaks Center Drive. This address is within the Minnetonka city limits and by state statute automatically qualifies the Lakeshore to serve as Minnetonka’s official newspaper.

The Sun-Sailor’s primary office is located at 10917 Valley View Road, Eden Prairie.

In spite of not having an office in Minnetonka, the Sun Sailor could qualify to serve as the city’s official newspaper under an exception provided in the state statute, requiring that “the publisher of the newspaper furnishes a sworn statement, verified by a recognized independent circulation auditing agent, covering a period of at least one year ending no earlier than 60 days before designation of the newspaper, stating that the newspaper’s circulation reaches not fewer than 75 percent of the households within the political subdivision.”

The Sun-Sailor’s unofficial estimate is that the newspaper is delivered to less than 75 percent of households in Minnetonka. Based on this information, the Sun-Sailor doesn’t qualify as a candidate for official newspaper for 2018.

For 2018, the Lakeshore’s per-column inch bid rate is $9.78, which reflects a 3 percent increase over the rate bid for 2017. While the Lakeshore does not provide carrier delivery to homes, it distributes papers each week at 243 public locations, including Minnetonka City Hall.

City staff recommends the Lakeshore Weekly News be designated as the city’s official newspaper for 2018 legal notices.

Recommendation

Designate Lakeshore Weekly News as the city’s official newspaper for 2018 legal notices.

Submitted through:
Geralyn Barone, City Manager
Perry Vetter, Assistant City Manager
Originated by:
   Kari Spreeman, Communications and Marketing Manager
City Council Agenda Item #10C
Meeting of Jan. 8, 2018

Brief Description  Joint Powers Agreement for I-494 Corridor Commission
Recommendation  Approve the agreement

Introduction/Background
The I-494 Corridor Commission is a joint powers organization established in 1986 to address concerns about increasing traffic congestion along the I-494 corridor. The commission works to encourage economic growth and regional prosperity through improved transportation options. The board of the I-494 Corridor Commission includes representatives from each of five member cities (Eden Prairie, Richfield, Bloomington, Edina and Minnetonka), the Minnesota Department of Transportation, the Metropolitan Council, and the private business community.

Occasionally, the commission is in need of changes and updates to documents involved in the joint powers agreement.

Staff Recommendation
Attached is the original agreement and its amendments. The original document was in need of updating. The following are some examples of changes:

- Deleting reference to the City of Plymouth, which is no longer a member;
- Clarifying that the Commission’s jurisdiction includes all of the geographic area of the member cities instead of only the land near I-494;
- Clarifying worker’s compensation coverage, insurance requirements, and liability;
- Clarifying that all meetings will be open to the public;
- Clarifying the roles of the officers; and
- Clarifying the ability to hire and fire administrators.

The proposed version would replace the original agreement. The city attorney has reviewed the document and finds it is acceptable. Therefore, staff recommends the city council approve the agreement.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Julie Wischnack, AICP, Community Development Director
JOINT AND COOPERATIVE AGREEMENT

PRELIMINARY STATEMENT

The Cities of Bloomington, Eden Prairie, Edina, Minnetonka and Richfield are Parties to this Agreement and are governmental units of the State of Minnesota. Minnesota Statute 471.59 permits two or more governmental units, by agreement of their governing bodies, to jointly and cooperatively exercise any power common to each of them. The Parties to this Agreement have chosen to execute a cooperative agreement providing for the joint exercise of powers to implement the recommendations in the I-494 Corridor Study adopted by the Parties in 1987.

ARTICLE 1.

GENERAL PURPOSE

The primary purpose of this Agreement is for the member municipalities to jointly and cooperatively implement the recommendations of the I-494 Corridor Study, a copy of which is attached and marked Exhibit A.

ARTICLE 2.

NAME

The Parties hereto agree to establish an organization to be known as the I-494 Corridor Advisory Commission to carry out the objectives of this Agreement.

ARTICLE 3.

DEFINITION OF TERMS

For the purpose of this Agreement, the terms defined in this Article shall have the meanings given below.
3.1) "Commission" means the organization created pursuant to this Agreement.

3.2) "City Council" or "Council" means the governing body of a Party.

3.3) "Commissioners" means the persons appointed pursuant to this agreement to serve as commissioners.

3.4) "Party" means a municipality which has entered into this Agreement.

3.5) "Affiliate Member" means a person or organization selected by the Commission to have special status with the Commission, with only the rights specified in this Agreement.

3.6) "Improve-494" means the non-profit, private sector committee formed to further the objectives of the I-494 Corridor Study.

ARTICLE 4.

ADDITIONAL PARTIES

Any other municipality may become a Party upon unanimous approval of the Parties.

ARTICLE 5.

EFFECTIVE DATE

A municipality shall enter into this Agreement by duly executing a copy of this Agreement and by filing such copy, together with a certified copy of the authorizing resolution, with the City Manager of the City of Minnetonka. This Agreement shall become effective upon approval by at least four municipalities.
ARTICLE 6.
POWERS AND DUTIES OF THE COMMISSION

6.1) The powers and duties of the Commission shall include the powers set forth in this article.

6.2) It may cooperate with the Minnesota Department of Transportation to partially pay for and participate in preparation of environmental impact analysis of I-494 improvements, including preliminary geometric design and evaluation of high-occupancy vehicle lanes on I-494.

6.3) It may cooperate with the Minnesota Department of Transportation to secure a roadway indirect source permit from the Minnesota Pollution Control Agency and access revision approval from the Metropolitan Council and Federal Highway Administration.

6.4) It may research and recommend funding strategies for I-494 construction.

6.5) It may research travel demand management strategies and ordinances, develop model ordinances, and recommend joint action on such strategies and ordinances by the Parties.

6.6) It may research and make recommendations to the Parties regarding other matters related to the Commission's purpose.

6.7) It may cooperate with Improve-494 and other affiliate members and appropriate groups to further the objectives of the I-494 Corridor Study. It may consult with and assist Improve-494 and other affiliate members and appropriate groups to facilitate travel demand management strategies and programs.
6.8) It may cooperate with the Metropolitan Council, Regional Transit Board and Metropolitan Transit Commission to develop transit operation plans.

6.9) It may monitor land use development, traffic volumes and travel characteristics in the I-494 corridor.

6.10) It may, with consent of the city council of each Party, update the I-494 Corridor Study.

6.11) It may consult with persons knowledgeable in transportation, such as research organizations, educational institutions, other political subdivisions, municipal organizations, regulatory organizations, technical experts, and any other persons who can provide pertinent information concerning implementation of the recommendations of the I-494 Corridor Study.

6.12) It may enter into any contracts deemed necessary by the Commission to carry out its powers and duties, except that all contracts for an amount exceeding $5000 shall be approved by at least four Parties.

6.13) It may accept gifts, apply for and use grants, enter into agreements required in connection therewith and hold, use, and dispose of money or property received as a gift or grant in accordance with the terms thereof.

6.14) It shall cause an annual, independent audit of the books of the Commission to be made and shall make an annual financial accounting and report in writing to the Parties. The annual audit shall be conducted as part of the normal annual audit of one of the Parties and paid for by that Party. This obligation shall be undertaken by each Party in turn, on a rotating basis to be determined
by the Commission. The Commission's books and records shall be available for and open to the examination by the Parties at all reasonable times.

**ARTICLE 7. Commissioners**

7.1) The Commission shall consist of ten commissioners. Each Party shall be entitled to two commissioners and one alternate for each of those commissioners. Each commissioner shall have one vote. The Council of each Party shall appoint its two commissioners and their alternates. Commissioners shall serve without compensation from the Commission.

7.2) Each commissioner and alternate shall serve until a successor is appointed and assumes his or her responsibilities. Commissioners and alternates shall serve at the pleasure of the Council appointing them. When a Council appoints a commissioner or alternate, it shall give notice of the appointment to the Commission's Secretary-Treasurer.

7.3) Each commissioner shall be responsible for notifying his or her alternate of meetings which the alternate should attend. In the absence of a commissioner, his or her alternate shall have all the rights and responsibilities of the commissioner, except that no alternate may be, or act as, an officer of the Commission.

7.4) There shall be no voting by proxy, but all votes must be cast by the commissioner or designated alternate at a Commission meeting.

7.5) A majority of the commissioners shall constitute a quorum.
7.6) A vacancy on the Commission shall be filled by the Council of the Party whose position on the Commission is vacant.

7.7) Improve-494 shall be an affiliate member of the Commission. The Commission may choose by majority vote to designate additional affiliate members. These members may participate in discussions of the Commission but may not vote. In addition, these members shall be sent notices of all meetings, but a failure to notify these members shall not invalidate any action. Affiliate members may be excluded from lawful closed meetings of the Commission. The Commission may further define the role of affiliate members and may establish different requirements for each affiliate member.

ARTICLE 8.

MEETINGS

8.1) The Commission shall meet at least quarterly on a schedule determined by the Commission.

8.2) Special meetings of the Commission may be called (a) by the Chair or (b) upon written request of a majority of the commissioners. Five days' written notice of special meetings shall be given to the commissioners.

ARTICLE 9.

OFFICERS

9.1) **Number, Election, Qualifications** - The officers of the Commission shall consist of a Chair, a Vice Chair and a Secretary/Treasurer. Each officer shall be elected annually by the Commission and shall hold office until his/her successor takes office, earlier disqualification, death, resignation, or removal. All officers must be commissioners. No more than one commissioner of a Party shall be elected an officer during the same term.
9.2) **Chair; Vice Chair** - The Chair shall preside at all meetings of the Commission and shall perform all duties incident to the office of Chair and such other duties as may be delegated by the Commission. The Vice Chair shall act as Chair in the absence of the Chair.

9.3) **Secretary/Treasurer** - The Secretary/Treasurer shall be responsible for keeping a record of all of the proceedings of the Commission. The Secretary/Treasurer shall send written notice of meetings and material pertaining to agenda items to each commissioner. He/She shall have custody of the Commission's funds, shall pay its bills, shall keep its financial records, and generally conduct the financial affairs of the Commission. The Secretary/Treasurer shall be responsible for such other matters as shall be delegated to him/her by the Commission. All checks issued on behalf of the Commission shall be approved by the Commission and signed by the Secretary/Treasurer and one other commissioner from a Party other than that of the Secretary/Treasurer. The Commission shall obtain a fidelity bond or other insurance to cover all persons authorized to handle funds of the Commission.

9.4) **Other Officers** - The Commission may appoint such other officers as it deems necessary. All such officers shall be commissioners.

**ARTICLE 10.**

**FINANCIAL MATTERS**

10.1) Commission funds may be expended by the Commission in accordance with the procedures established under the Minnesota Municipal Contracting Law, Minn. Stat. §471.345, as if any one party
were acting. The contract value amounts in that law for each party may not be aggregated. Legal instruments other than checks shall be executed after Commission approval, by any two officers.

10.2) The Parties shall pay a proportion of the cost of preparing an I-494 environmental impact statement and preliminary design according to the following schedule, regardless of whether or not they have withdrawn from this Agreement:

<table>
<thead>
<tr>
<th>City of Bloomington</th>
<th>11%</th>
<th>$99,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Eden Prairie</td>
<td>5%</td>
<td>45,000</td>
</tr>
<tr>
<td>City of Edina</td>
<td>4%</td>
<td>36,000</td>
</tr>
<tr>
<td>City of Minnetonka</td>
<td>2%</td>
<td>18,000</td>
</tr>
<tr>
<td>City of Richfield</td>
<td>3%</td>
<td>27,000</td>
</tr>
</tbody>
</table>

If the cost of the impact statement exceeds $900,000, the Parties shall have no obligation to pay any part of the cost which exceeds that amount. In addition to the amount shown above, the City of Bloomington shall collect and contribute any money donated by private parties, such as Improve-494, towards the impact statement cost.

This formula provides for Parties to contribute 25% of the consultant fees for the environmental impact statement allocated in proportion to the number of trips generated in the study area according to year 2010 forecasts. The remaining costs are to be paid by the Minnesota Department of Transportation, Hennepin County, Metropolitan Airports Commission, Metropolitan Council, developers, landowners, and/or other people.

10.3 The financial contributions of the Parties in support of other Commission functions shall be per capita. Each of the Parties shall pay to the Commission an amount as annually approved by the
Parties not to exceed $.10 per capita based on the most recent Metropolitan Council population estimates. This amount may be used by the Commission to pay its expenses.

10.4) A proposed budget and recommended financial contributions of the Parties shall be formulated by the Commission and submitted to the Parties on or before August 1 of each calendar year. By September 1 of each calendar year, the Council of each Party shall approve, modify, or reject the proposed Commission budget and the Party's financial contribution and give notice of its action to the Commission. The budget shall be deemed approved by a Party in the absence of action by September 1. Final action adopting a budget for the ensuing calendar year shall be taken by the Commission on or before September 15 of each year.

10.5) The Parties shall make their financial contributions to the Commission on a monthly basis. At no time shall the funds in the Commission's treasury, exclusive of encumbered funds and funds from sources other than the Parties, exceed $25,000. If the Funds exceed that amount, the Secretary/Treasurer shall notify the Parties to discontinue their contributions until notified that the funds have fallen below that amount.

10.6) Any Party may inspect and copy the Commission books and records at any and all reasonable times. All books and records shall be kept in accordance with normal and accepted accounting procedures and principles used by Minnesota statutory cities.

10.7) Each Party shall pay a one-time initiation fee to the Commission within 60 days after this Agreement becomes effective. These fees shall be used to pay the Commission's initial expenses.
The fee for each Party shall be as follows:

City of Bloomington  $5,500
City of Eden Prairie  2,500
City of Edina  2,000
City of Minnetonka  1,000
City of Richfield  1,500

ARTICLE XII.

WITHDRAWAL

11.1) **Withdrawal** - Any Party may withdraw from this Agreement effective on January 1 of any year by giving written notice to the Commission Chair prior to October 1 of the preceding year. The notice shall be accompanied by a certified copy of a resolution of its Council stating its decision to withdraw from the Commission. The withdrawal shall be effective upon actual receipt of the notice and resolution by the Chair, who shall send a copy of the notice and resolution to each commissioner.

11.2) **Financial Effect of Withdrawal** - No financial benefit shall inure to a Party that withdraws from this Commission nor shall there be any reimbursement for any contribution made or required of the withdrawn Party by this Agreement. The withdrawn Party shall have no further responsibility for obligations imposed by this Agreement or incurred by the Commission, except the obligation to pay its share of the environmental impact statement cost under paragraph 10.2.

ARTICLE 12.

AMENDMENTS

12.1) **Amendments** - This Agreement may be amended only by written amendment entered into by all of the Parties to this Agreement in the same manner as this Agreement is entered into pursuant to Article 5 hereof.
ARTICLE 13.
DISSOLUTION

13.1) Duration of Commission - The Commission shall be dissolved if less than four parties remain, or by operation of state or federal law or regulation, now or hereinafter enacted, or by mutual signed agreement of all of the Parties.

13.2) Distribution of Assets - Upon dissolution of the Commission, all remaining assets of the Commission, after payment of all obligations, shall be distributed among the Parties that are Parties to the Agreement at the time of dissolution, in proportion to their contributions for the year in which the dissolution occurs and in accordance with procedures established by the Commission. The Commission shall continue to exist after dissolution for such period, no longer than six months, as is necessary to wind up its affairs, but for no other purpose.

IN WITNESS WHEREOF, each undersigned municipality has caused this Agreement to be signed on its behalf on the date indicated below.

Dated: __7/11/88__

CITY OF BLOOMINGTON
By ____________________________
Its Deputy mayor

By ____________________________
Its Manager

CITY OF EDEN PRAIRIE
By ____________________________
Its Mayor

By ____________________________
Its Manager
Dated: ____________________

CITY OF EDINA
By: ____________________
   Its Mayor
By: ____________________
   Its Manager

CITY OF MINNETONKA
By: ____________________
   Its Mayor
By: ____________________
   Its Manager

CITY OF RICHFIELD
By: ____________________
   Its Mayor
By: ____________________
   Its Manager

Dated: ____________________

Dated: ____________________

Dated: ____________________
JOINT AND COOPERATIVE AGREEMENT - AMENDMENT NO. 2

PRELIMINARY STATEMENT

The Cities of Bloomington, Eden Prairie, Edina, Minnetonka, Plymouth and Richfield are Parties to this Agreement and are governmental units of the State of Minnesota. Minnesota Statute §471.59 permits two or more governmental units, by agreement of their governing bodies, to jointly and cooperatively exercise any power common to each of them. The Parties to this Agreement have chosen to enter into a cooperative agreement pursuant to M.S.A. §471.59 providing for the joint exercise of powers to improve the ability to more effectively and efficiently move people and goods along the I-494 Corridor. This Agreement amends the I-494 Corridor Commission Joint Powers Agreement between the cities of Bloomington, Eden Prairie, Edina, Minnetonka, Richfield and Plymouth and deletes the city of Maple Grove as a Party. This amendment to the Joint and Cooperative Agreement shall be effective January 1, 2002.

ARTICLE 1.

NAME

The Parties hereto agree to establish a joint powers organization to be known as the I-494 Corridor Commission to carry out the general purpose and objectives set forth in this Agreement.

ARTICLE 2.

GENERAL PURPOSE

The primary purpose of this Agreement is for the member municipalities to jointly and cooperatively work to improve the ability to more effectively and efficiently move people and goods along the I-494 Corridor.
ARTICLE 3.

DURATION

The duration of the Commission shall be perpetual unless otherwise dissolved according to the provisions of Article 15 hereof.

ARTICLE 4.

DEFINITION OF TERMS

For the purpose of this Agreement, the terms defined in this Article shall have the meanings given below.

4.1) "Commission" means the organization created pursuant to this Agreement.

4.2) "City Council or "Council" means the governing body of a Party.

4.3) "Commissioners" means the persons appointed pursuant to this agreement to serve as commissioners.

4.4) "Party" means a municipality which has entered into this Agreement.

4.5) "Affiliate Member" means a person or organization approved by the Commission to have special status with the Commission, with only the rights specified in this Agreement.

4.6) "Per Capita" means the most current population data for each Party as determined by the Metropolitan Council population forecasts.

ARTICLE 5.

ADDITIONAL PARTIES

Any other municipality may become a Party upon unanimous approval of the Parties. An organization or person may be approved as an Affiliate Member upon a majority vote of the Commissioners.
ARTICLE 6.

EFFECTIVE DATE

A municipality shall enter into this Agreement by duly executing a copy of this Agreement and by filing such copy, together with a certified copy of the authorizing resolution, with the Commission. This Agreement shall become effective upon approval by all Parties to the Agreement.

ARTICLE 7.

POWERS AND DUTIES OF THE COMMISSION

7.1) The powers and duties of the Commission shall include, but not limited to, the powers set forth in this article.

7.2) It may research and recommend to state agencies and the legislature funding strategies for I-494 construction and its reconstruction.

7.3) It may research and implement travel demand management strategies, develop model ordinances, and recommend joint action on such strategies and ordinances by the Parties.

7.4) It may research and make recommendations to the Parties regarding other matters related to the Commissions' purpose.

7.5) It may cooperate with affiliate members and appropriate groups to further the objectives of the I-494 Corridor Study. It may consult with and assist affiliate members and appropriate groups to facilitate travel demand management strategies and programs throughout the Corridor.

7.6) It may cooperate with the Metropolitan Council, Metro Transit, opt-out transit systems and other transit related organizations based in the Corridor to develop Corridor related transit operation plans.
7.7) It may monitor land use development, traffic volumes and travel characteristics in the I-494 corridor.

7.8) It may, with consent of the city council of each Party, update the I-494 Corridor Study and expand it as necessary.

7.9) It may consult with persons knowledgeable in transportation, including, but not limited to, research organizations, educational institutions, other political subdivisions, municipal organizations, regulatory organizations, technical experts, and any other persons who can provide assistance concerning mobility improvements, implementation of the recommendations of the I-494 Corridor Study and otherwise assist in meeting the objectives of the Commission.

7.10) It may enter into any contracts deemed necessary by the Commission to carry out its powers and duties, except that all contracts for an amount exceeding $5000 shall be approved by at least four Parties.

7.11) It may accept gifts, apply for and use federal, state, local or private grants, enter into agreements required in connection therewith and hold, use, and dispose of money or property received as a gift or grant in accordance with the terms thereof.

7.12) It may employ staff whose duties shall be to administer policies as established by the Commission.

7.13) It shall cause an annual, independent audit of the books of the Commission to be made and shall make an annual financial accounting and report in writing to the Parties. The annual audit shall be conducted as part of the normal annual audit of one of the Parties and paid for by that Party. This obligation shall be undertaken by each Party in turn, on a rotating basis to be determined.
by the Commission. The Commission's books and records shall be available for and open to the examination by the Parties at all reasonable times.

ARTICLE 8.

COMMISSIONERS

8.1) The Commission shall consist of twelve commissioners. Each Party shall be entitled to two commissioners and one alternate. Each commissioner shall have one vote. The Council of each Party shall appoint its two commissioners and their alternates. Commissioners shall serve without compensation from the Commission. The Commission’s Secretary shall obtain from each Party confirmation of the commissioners and alternate appointed by each Party.

8.2) The term of each commissioner and alternate shall commence upon appointment and shall continue until a successor is appointed and assumes his or her responsibilities. The commissioners and alternates shall serve at the pleasure of the Council appointing them. A commissioner may resign by giving notice of resignation to the Commission’s Secretary-Treasurer.

8.3) Each commissioner shall be responsible for notifying the commissioner’s alternate of meetings which the alternate should attend. In the absence of a commissioner, the alternate shall have all the rights and responsibilities of the commissioner, except that no alternate may be, or act as, an officer of the Commission.

8.4) There shall be no voting by proxy. All votes at a Commission meeting must be cast by a commissioner or the designated alternate commissioner.

8.5) A majority of the commissioners shall constitute a quorum.

8.6) A vacancy on the Commission shall be filled by the Council of the Party whose position on the Commission is vacant.
8.7) The Commission may choose by majority vote to designate affiliate members. These members may participate in discussions of the Commission but may not vote. In addition, these members shall be sent notices of all meetings, but a failure to notify these members shall not invalidate any action. Affiliate members may be excluded from lawfully closed meetings of the Commission. The Commission may further define the role of affiliate members and may establish different requirements for each affiliate member.

ARTICLE 9.

MEETINGS

9.1) The Commission shall meet at least quarterly on a schedule determined by the Commission.

9.2) Special meetings of the Commission may be called (a) by the Chair or (b) upon written request of a majority of the commissioners. A minimum of five days' written notice of special meetings shall be given to the commissioners.

9.3) The affirmative vote of a majority of the commissioners present at the meeting shall be required for the adoption of any resolution or for the approval or authorization of any Commission action. However, no resolution shall be adopted and no other action approved or authorized unless a quorum is present at the time of the vote.

ARTICLE 10.

OFFICERS

10.1) Number, Election, Qualifications - The Officers of the Commission shall consist of a Chair, a Vice Chair and a Secretary/Treasurer. Each officer shall be elected bi-annually by the Commission. Officers may be elected at a regular or special meeting of the Commission but, in any
event, a notice that officers will be elected at the meeting shall be given to all commissioners at least five days before the meeting. The term of each officer shall commence upon the officer's election and shall continue until his successor is elected or, if sooner, until the officer's death, resignation or removal. The Commission may remove an officer at any time with or without cause. All officers must be commissioners. No more than one commissioner of a Party shall be elected an officer during the same term.

10.2) Chair, Vice Chair - The Chair shall preside at all meetings of the Commission and shall perform all duties incident to the office of Chair and such other duties as may be delegated by the Commission. The Vice Chair shall act as Chair in the absence of the Chair.

10.3) Secretary/Treasurer - The Secretary/Treasurer shall be responsible for keeping a record of all the proceedings of the Commission. The Secretary/Treasurer shall send written notice of meetings and material pertaining to agenda items to each commissioner. The Secretary/Treasurer shall have custody of the Commission's funds, shall pay its bills, shall keep its financial records, and generally conduct the financial affairs of the Commission. The Secretary/Treasurer shall be responsible for such other matters as shall be delegated by the Commission. All checks issued on behalf of the Commission in excess of $2,000 shall be approved by the Commission and signed by the Secretary/Treasurer. The Commission shall obtain a fidelity bond or other insurance to cover all persons authorized to handle funds of the Commission.

10.4) Other Officers - The Commission may appoint such other officers as it deems necessary. All such officers shall be commissioners.
ARTICLE 11.

EMPLOYEES

1.1) The Commission may employ an administrator and other staff to perform duties as established by the Commission. An employee of the Commission may also be an employee of or affiliated with one of the Parties.

1.2) The compensation, benefits and other remuneration of Commission staff shall be established by the Commission.

ARTICLE 12.

FINANCIAL MATTERS

12.1) Commission funds may be expended by the Commission in accordance with the procedures established under the Minnesota Municipal Contracting Law, Minn. Stat. 471.345, as if any one party were acting. The contract value amounts in that law for each party may not be aggregated. Legal instruments other than checks shall be executed after Commission approval, by any two officers.

12.2) Each Party shall pay to the Commission an annual amount equal to $20 times the number of the Party's inhabitants based on the most recent census of the United States. Each Party shall make its annual payment to the Commission prior to March 31 of each calendar year.

12.3) A proposed budget and recommended financial contributions of the Parties shall be formulated by the Commission and submitted to the Parties on or before August 1 of each calendar year. By October 1 of each calendar year, the Council of each Party shall approve, modify, or reject the proposed Commission budget and give notice of its action to the Commission. The budget for an ensuing calendar year shall be deemed approved by a Party in the absence of action by October
1 of the prior year. Final action adopting a budget for the ensuing calendar year shall be taken by the Commission on or before December 15 of each year. The budget shall be adopted upon approval by at least four Parties.

12.4) Any Party may inspect and copy the Commission books and records at any and all reasonable times. All books and records shall be kept in accordance with normal and accepted accounting procedures and principles used by Minnesota statutory cities.

12.5) Any new Parties added according to Article Five of this Agreement shall pay a one-time initiation fee of $1,000 to the Commission within 60 days of joining into the Commission. Affiliate members shall pay a one-time initiation fee of $2,000 to the Commission within 60 days of joining the Commission. All initiation fees shall be used to help pay Commission administrative and operating expenses.

ARTICLE 13.

WITHDRAWAL

13.1) Withdrawal - Any Party may withdraw from the Commission effective on January 1 of any year by giving written notice to the Commission Chair and every other Party prior to October 1 of the preceding year. The notice shall be accompanied by a certified copy of a resolution of the Party's Council stating its decision to withdraw from the Commission.

13.2) Financial Effect of Withdrawal - A Party that withdraws from this Commission shall not be entitled to a refund in whole or in part, for any contribution made to the Commission by the withdrawing Party and shall remain liable for its contribution for any year beginning before the date of its withdrawal.
ARTICLE 14.

AMENDMENTS

14.1) **Amendments** - This Agreement may be amended only by written amendment entered into by all of the Parties to this Agreement in the same manner as this Agreement is entered into pursuant to Article 6 hereof.

ARTICLE 15.

DISSOLUTION

15.1) **Dissolution** - The Commission may be dissolved by written agreement signed by all of the Parties who are then members of the Commission.

15.2) **Distribution of Assets** - Upon dissolution of the Commission, all remaining assets of the Commission, after payment of all obligations, shall be distributed among the Parties that are members of the Commission at the date of dissolution, in proportion to their contributions for the year in which the dissolution occurs. The Commission shall continue to exist after dissolution for such period, no longer than six months, as is necessary to wind up its affairs, but for no other purposes.

IN WITNESS WHEREOF, each undersigned municipality has caused this Agreement to be signed on its behalf on the date indicated below.

**CITY OF BLOOMINGTON**

Dated: ____________________ By: ____________________

Its Mayor

Dated: ____________________ By: ____________________

Its Manager
CITY OF EDEN PRAIRIE

Dated: ____________________

By: ________________________
  Its Mayor

Dated: ____________________

By: ________________________
  Its Manager

CITY OF EDINA

Dated: ____________________

By: ________________________
  Its Mayor

Dated: ____________________

By: ________________________
  Its Manager

CITY OF MINNETONKA

Dated: ____________________

By: ________________________
  Its Mayor

Dated: ____________________

By: ________________________
  Its Manager
CITY OF PLYMOUTH

Dated:_________

By:_________________________
Its Mayor

Dated:_________

By:_________________________
Its Manager

CITY OF RICHFIELD

Dated:_________

By:_________________________
Its Mayor

Dated:_________

By:_________________________
Its Manager
I-494 CORRIDOR COMMISSION

JOINT POWERS AGREEMENT

PRELIMINARY STATEMENT

The Cities of Bloomington, Eden Prairie, Edina, Minnetonka, and Richfield (hereafter referred to as Parties) are Parties to this Agreement and are governmental units of the State of Minnesota. Minnesota Statute 471.59 permits two or more governmental units, by agreement of their governing bodies, to jointly and cooperatively exercise any power common to each of them. The Parties to this Agreement have chosen to enter into a cooperative agreement pursuant to M.S.A. 471.59 providing for the joint exercise of powers to improve the ability to more effectively and efficiently move people and goods along and around the I-494 Corridor. This Agreement amends and restates that certain Joint and Cooperative Agreement among the Parties as dated July 11, 1988. A subsequent amendment became effective on January 1, 2002. This Agreement shall be known as the I-494 Corridor Commission Joint Powers Agreement and is effective as of January 31st, 2018.

ARTICLE 1.

Name

The Parties hereto agree to establish a joint powers organization to be known as the I-494 Corridor Commission to carry out the general purpose and objectives set forth in this document.

ARTICLE 2.

General Purpose

The primary purpose of this agreement among the Parties is to work jointly and cooperatively to more effectively and efficiently move people and goods along and around the I-494 Corridor including other major transportation corridors within the Parties’ jurisdictions (hereafter referred to as the Corridor).

ARTICLE 3.

Duration

The duration of the Commission shall be perpetual unless otherwise dissolved according to the provisions of Article 13 hereof.
ARTICLE 4.

Definition of Terms

For the purpose of this Agreement, the terms defined in this Article shall have the meanings given below.

4.1) **Commission** – means the organization created pursuant to this Agreement.
4.2) **City Council or Council** – means the governing body of a Party.
4.3) **Commissioner** – means a person appointed pursuant to this Agreement to serve as a Commissioner.
4.4) **Alternate** – means a person appointed pursuant to this Agreement to serve in place of a Commissioner as provided in Article 9 of this Agreement.
4.5) **Party** – means a governmental entity which has entered into this Agreement.
4.6) **Affiliate Member** – means a person or organization approved by the Commission to have special status with the Commission, with only the rights specified in this Agreement.
4.7) **Corridor** – means the area comprising the geographic limits of all Parties.

ARTICLE 5.

Additional Parties

5.1) Any other government unit may become a Party upon unanimous approval of the Parties and amendment of this agreement.
5.2) An organization or person may be approved as an Affiliate Member upon a majority vote of the Commissioners.

ARTICLE 6.

Powers and Duties of the Commission

6.1) The powers and duties of the Commission shall include, but not be limited to, the powers set forth in this article.
6.2) It may research and recommend to state agencies and the legislature funding strategies and priorities for transportation and transit improvements along and around the Corridor.
6.3) It may research and implement travel demand management strategies, develop model ordinances and recommend joint action on such strategies and ordinances by the Parties.
6.4) It may research and make recommendations to the Parties regarding other matters related to the Commission’s purpose.
6.5) It may cooperate with Affiliate Members and relevant groups to further the objectives of the Commission. It may consult with, and assist, Affiliate Members and relevant groups to facilitate travel demand management strategies and programs throughout the Corridor.

6.6) It may cooperate with the Metropolitan Council, Metro Transit, opt-out transit system and other transit related organizations to develop Corridor related transit operation plans.

6.7) It may monitor land use development, traffic volumes and travel characteristics in the Corridor.

6.8) It may, with consent of the city council of each Party, update transportation or transit studies and expand them as necessary.

6.9) It may consult with persons knowledgeable in transportation, including, but not limited to, research organizations, educational institutions, other political subdivisions, municipal organizations, regulatory organizations, technical experts, and any other persons who can provide assistance concerning mobility improvements, implementation of transportation and transit studies within the Corridor and otherwise assist in meeting the objectives of the Commission.

6.10) It may accept donations to further the mission of the Commission, apply for and use federal, state, local or private grants, enter into agreements required in connection therewith and hold, use and dispose of money or property received as a gift or grant in accordance with the terms thereof.

6.11) It may employ staff whose duties shall be to administer and implement policies as established by the Commission.

6.12) An independent audit of the books of the Commission shall be made every three years with an accountant review in the intervening years. An annual financial accounting and report shall be made in writing to the Parties. The Commission’s financial records shall be available for and open to the examination by the Parties at all reasonable times.

6.13) It may enter into such contracts or entities, public or private, to carry out the purposes of the Commission. Contracts let and purchases made under this agreement shall conform to the requirements applicable to contracts and purchases of its Parties.

6.14) The Commission shall at all times have in effect financial management policies and procedures which may be amended from time to time by the Commissioners constituting a majority of the Parties to the Agreement.

**ARTICLE 7.**

**Commissioners**

7.1) The Commission shall consist of up to two Commissioners from each Party. Each Commissioner shall have one vote. The Council of each Party shall appoint its two Commissioners and
Alternate. Commissioners shall serve without compensation from the Commission. The Commission’s Secretary shall obtain from each Party confirmation of the Commissioners and Alternate appointed by each Party.

7.2) The term of each Commissioner and Alternate shall commence upon appointment and shall continue until a successor is appointed and assumes his or her responsibilities. The Commissioners and Alternates shall serve at the pleasure of the Council appointing them. A Commissioner or Alternate may resign by giving notice of resignation to the Commission’s Chair.

7.3) A Commissioner who will be absent from a meeting shall be responsible for notifying the Alternate of meetings which the Alternate should attend. In the absence of a Commissioner, the Alternate shall have all the rights and responsibilities of the Commissioner, except that no Alternate may be or act as an Officer of the Commission.

7.4) There shall be no voting by proxy. All votes at a Commission meeting must be cast by a Commissioner or an Alternate voting in place of an absent Commissioner.

7.5) A majority of the Commissioners shall constitute a quorum.

7.6) A vacancy on the Commission shall be filled by the Council of the Party whose position on the Commission is vacant.

7.7) The Commission may choose by majority vote to designate additional Affiliate Members. These members may participate in discussions of the Commission but may not vote. In addition, these members shall be sent notices of all meetings, but a failure to notify these members shall not invalidate any action. Affiliate Members may be excluded from lawfully closed meetings of the Commission. The Commission may further define the role of Affiliate Members and may establish different requirements for each Affiliate Member.

7.8) A Commissioner that is an employee of a Party remains an employee of the appointing Party while serving as a Commissioner and is not an employee of the Commission.

7.9) Commissioners are not employees of the Commission.

ARTICLE 8.

Meetings

8.1) The Commission shall meet at least quarterly on a schedule determined by the Commission.

8.2) Special meetings of the Commission may be called (a) by the Chair or (b) upon written request of a majority of the Commissioners. A minimum of three (3) days’ written notice of special meetings shall be given to the Commissioners.
8.3) The affirmative vote of a majority of the Commissioners present at the meetings shall be required for the adoption of any resolution, or for the approval or authorization of any Commission action. However, no resolution shall be adopted and no other action approved or authorized unless a quorum is present at the time of the vote.

8.4) All meetings shall be open to the public except where a closed meeting is allowed or required under Minnesota Statutes.

**ARTICLE 9.**

**Officers**

9.1) **Number, Election, Qualifications.** The Officers of the Commission shall consist of a Chair, a Vice Chair, Secretary, and Treasurer. A Party may not have more than one of its Commissioners serve as an Officer at any time except for the Secretary. Each Officer shall be an elected official. Officers will be elected bi-annually by the Commission. Officers may be elected at a regular or special meeting of the Commission, but in any event, a notice that Officers will be elected at the meeting shall be given to all Commissioners at least five (5) days before the meeting. The term of each Officer shall commence upon the Officer’s election and shall continue until his or her successor is elected or, if sooner, until the Officer’s death, resignation or removal. The Commission may remove an Officer at any time with or without cause. The Commission may appoint the Executive Director as Secretary. Any Commissioner may serve as Secretary including those who are not elected officials.

9.2) **Chair, Vice Chair.** The Chair shall preside at all meetings of the Commission and shall perform all duties incident to the office of Chair and such other duties as may be delegated by the Commission. The Vice Chair shall act as chair in the absence of the Chair.

9.3) **Secretary.** The Secretary shall maintain the roster of all Commissioners, Alternates, and Affiliate Members. The Secretary shall be responsible for keeping a record of all the proceedings of the Commission and shall serve as the Responsible Authority of the Commission for the purposes of the Minnesota Government Data Practices Act. The Secretary shall send written notice of meetings and material pertaining to agenda items to each Commissioner. Unless also a Commissioner, the Secretary shall not be a voting member of the Commission.

9.4) **Treasurer.** The Treasurer shall oversee the Commission’s funds. The Commission shall pay its bills, keep its financial records, and generally conduct its financial affairs in accordance with its adopted Financial Management Policies and Procedures. The Treasurer will review financial books and records on a regular basis to determine that all laws relating to financial matters are observed and that the Financial Management Policies and Procedures are followed. Strict accountability of all funds and report of all receipts and disbursements shall be provided for.
9.5) **Other Officers.** The Commission may appoint such other Officers as it deems necessary. All such Officers shall be Commissioners.

**ARTICLE 10.**

**Employees**

10.1) The Commission may employ an Executive Director. The Executive Director shall supervise staff.

10.2) The compensation, benefits and other remuneration of Commission staff shall be established by the Commission.

10.3) The Commission shall supervise the Executive Director. The Commissioners constituting a majority of the Parties to the Agreement must vote to hire or fire the Executive Director.

**ARTICLE 11.**

**Withdrawal**

11.1) **Withdrawal** – Any Party may withdraw from the Commission effective January 1 of any year by giving written notice to the Commission Chair and every other Party prior to October 1 of the preceding year. The notice shall be accompanied by a certified copy of a resolution of the Party’s Council stating its decision to withdraw from the Commission.

11.2) **Financial Effect of Withdrawal** – A Party that withdraws from this Commission shall not be entitled to a refund in whole or in part, for any contribution made to the Commission by the withdrawing Party and shall remain liable for its contribution for any year beginning before the date of its withdrawal.

**ARTICLE 12.**

**Amendments**

This Agreement may be amended only by written amendment entered into by all of the Parties of this Agreement in the same manner as this Agreement is entered into pursuant to Article 5 hereof.

**ARTICLE 13.**

**Dissolution**

13.1) **Dissolution** – The Commission may be dissolved by written agreement signed by all of the Parties who are then members of the Commission.

13.2) **Distribution of Assets** – Upon dissolution of the Commission, all remaining assets of the Commission, after payment of all obligations, shall be distributed among the Parties that are members of
the Commission as of the date of dissolution, in proportion to their contributions for the year in which the
dissolution occurs. The Commission shall continue to exist after dissolution for such period, no longer
than six months, as is necessary to wind up its affairs, but for no other purposes.

ARTICLE 14.

Insurance

14.1) Liability Insurance: The Commission shall maintain liability coverage with the League of
Minnesota Cities Insurance Trust with a minimum limit equal to or greater than maximum municipal
liability tort limit in Minnesota Statutes, section 466.04, Subd. 1, under standard LMCIT liability
coverage forms.

14.2) Workers’ Compensation Insurance: The Commission, rather than the individual Parties,
shall secure Workers’ Compensation coverage for any employees hired by the Commission.

ARTICLE 15.

Liability

15.1) The Commission is a separate and distinct public entity to which the Parties have
transferred all responsibility and control for actions taken pursuant to this Agreement.

15.2) The Commission shall defend and indemnify the Parties, and their Officers, employees,
and volunteers, from and against all claims, damages, losses, and expenses, including attorney fees,
 arising out of the acts or omissions of the Commission in carrying out the terms of this Agreement. This
Agreement does not constitute a waiver on the limitations of liability set forth in Minnesota Statutes,
section 466.04.

15.3) Nothing herein shall be construed to provide insurance coverage or indemnification to an
Officer, employee, or volunteer of any Member for any act or omission for which the Officer, employee,
or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith.

15.4) To the fullest extent permitted by law, action by the Parties to this Agreement are
intended to be and shall be construed as a “cooperative activity,” and it is the intent of the Parties that
they shall be deemed a “single governmental unit” for the purposes of liability, as set forth in Minnesota
Statutes, section 471.59, Subd. 1a(a), and provided further that for the purposes of that statute, each Party
to this Agreement expressly declines responsibility for the acts or omissions of another Party. The Parties
to this Agreement are not liable for the acts or omissions of another party to this Agreement except to the
extent they have agreed in writing to be responsible for the acts or omissions of the other Parties.
ARTICLE 16.

Financial Matters

16.1) The Commission funds may be expended by the Commission in accordance with the procedures established under the Minnesota Municipal Contracting Law, Minn. Stat. section 471.345 and Minn. Stat. section 412.311, as if any one Party were acting. The contract value amounts in those laws for each Party may not be aggregated. Legal instruments other than checks shall be executed after Commission approval, by the Executive Director and an Officer.

16.2) The financial contributions of the Parties in support of other Commission functions shall be per capita. Each of the Parties shall pay to the Commission an amount as annually approved by the Parties.

16.3) A proposed budget and recommended financial contributions of the Parties shall be formulated by the Commission and submitted to the Parties on or before August 1 of each calendar year. By September 2 of each calendar year, the Council of each Party shall approve, modify, or reject the proposed Commission budget and the Party’s financial contribution and give notice of its action to the Commission. The budget shall be deemed approved by a Party in the absence of action by September 1. Final action adopting a budget for the ensuing calendar year shall be taken by the Commission on or before September 15 of each year.

16.4) The Parties shall make their financial contributions to the Commission on an annual basis.

16.5) Any Party may inspect and copy the Commission’s financial books and records at any and all reasonable times. All financial books and records shall be kept in accordance with normal and accepted accounting procedures and principles used by Minnesota statutory cities.
IN WITNESS WHEREOF, each undersigned municipality has caused this Agreement to be signed on its behalf on the date indicated below.

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<th>Municipality</th>
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<td>Its Manager</td>
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Brief Description: Resolution correcting polling place information that was adopted in Resolution 2017-136

Recommended Action: Adopt the resolution

Background

At its December 18, 2017 meeting, the city council adopted a resolution establishing the 23 polling place locations for elections conducted in 2018. This met a new provision in state election law requiring the city council to annually adopt a resolution establishing the polling place locations for the following year.

The resolution, Resolution 2017-136, erroneously flipped the locations for Ward 1 Precinct D and Ward 1 Precinct E. The attached resolution clarifies the correct polling locations for those two precincts.

Staff has already worked with Hennepin County and the Office of the Secretary of State to ensure the correct information is listed in the statewide voter registration system as well as the state’s online polling place finder.

Recommendation

Staff recommends that the city council approve the resolution correcting Resolution 2017-136.

Submitted through:
Geralyn Barone, City Manager
Perry Vetter, Assistant City Manager

Originated by:
David Maeda City Clerk
BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. On Dec. 18, 2017, the city council adopted a resolution, 2017-136, establishing the 23 polling locations in the city for elections conducted in 2018. A new provision in state election law requires the council to adopt such a resolution annually for the following year.

1.02. Resolution 2017-136 erroneously switched the locations for Ward 1 Precinct D and Ward 1 Precinct E.

1.03 The correct polling location for Ward 1 Precinct D is Destiny Hill Church (formerly St. Paul Lutheran Church) located at 13207 Lake Street Extension.

1.04 The correct polling location for Ward 1 Precinct E is Bet Shalom Congregation located at 13613 Orchard Road.

Section 2. Council Action.

2.01. The Minnetonka City Council hereby adopts the resolution correcting Resolution 2017-136 establishing the polling locations in the city for the 2018 elections.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Jan. 8, 2018.

___________________________________________
Brad Wiersum, Mayor

ATTEST:

___________________________________________
David Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Jan. 8, 2018.

______________________________
David Maeda, City Clerk
Brief Description: Participation in the Government Alliance on Race and Equity

Recommended Action: Authorize and support staff participation

Background

Beginning in 2016, the League of MN Cities (LMC) began a partnership with the Government Alliance on Race and Equity (GARE). This partnership provides opportunities for local governments to participate in an introductory cohort-learning track to focus on identifying and eliminating racial inequities. Over 200 local officials from 14 Minnesota government agencies have participated, each developing indicators, outcomes and action plans specific to their community.

Although Minnetonka has a positive reputation for ensuring employees and the public feel welcome and included here, there is always opportunity for self-evaluation and room for constructive enhancements to improve the environment even more. In 2017, city staff established an internal diversity and inclusion committee, to assist in identifying organizational obstacles to city employment and services and develop an implementation plan to reduce or remove those obstacles. The committee plans to build upon four main efforts, the Foundation Effort, the Internal Effort, the Bridging Effort and an External Effort. David Maeda, City Clerk, leads this committee’s work.

Beginning in 2018 with the support of the city council, City of Minnetonka staff will begin participation in the yearlong GARE introductory cohort-learning program on race and equity. Work on the GARE program will assist the staff diversity and inclusion committee with one band of the inclusion spectrum, race and equity. Lessons learned from both programs can and will benefit the city staff, residents and those conducting business in the city.

The process of the GARE program contains five steps to develop an action plan. Those steps are Preparation; Research and Information Gathering; Research Findings; Developing a Plan; and Implementation, Reporting, and Evaluation. Action plans are results orientated with established indicators, outcomes and measures.

Participation Commitments

The role of GARE is to:
- Manage and implement the overall project, including provision of training, sharing of curriculum, tools and resources, arrangement of speakers, communications and outreach.
- Providing best, promising and next practices
- Cross-cohort learning opportunities, peer-to-peer exchanges, as well as technical assistance.

The role of the LMC is to:
- Disseminate information to LMC membership and provide for special events
• Assist with meeting logistics
• Feature the work of participating jurisdictions in LMC publications and training sessions.
• Work with GARE to obtain foundation funding

The role of the City of Minnetonka is to:
• Commit to send a team of people to the entire series. Approximately 10 staff members will participate. This represents a commitment of 64 hours per person in 2018, plus completion of action steps between sessions.
• Work with GARE and LMC to promote the Advancing Racial Equity speaker series to elected officials, government staff and community partners.
• Perry Vetter, Assistant City Manager, will lead this effort.

Participation in the GARE program is primarily a staff participation role. However, part of the participation is to provide regular and timely updates to the city council on the effort and to gather appropriate feedback when necessary to continue working forward. These efforts will assist in implementing the city council’s strategic profile goals and the Imagine Minnetonka recommendations. Minnetonka has always been a welcoming and respectful organization and community. The work on the GARE program intends to generate conversations and to improve or enhance our community even further by identifying any obstacles that may exist.

Recommendation

Adopt a motion authorizing and supporting city staff participation in the 2018 League of Minnesota Cities and Government Alliance on Racial Equity Introductory Cohort Program.

Submitted through:
  Geralyn Barone, City Manager

Originated by:
  Perry Vetter, Assistant City Manager
City Council Agenda Item #10F
Meeting of Jan. 8, 2018

Brief Description: Cooperative agreement with City of Bloomington regarding 2018 National Football League Super Bowl event

Recommended Action: Approve the agreement

Background

The 2018 Super Bowl event will be held at US Bank Stadium in Minneapolis. Multiple events are expected to take place in locations throughout the metropolitan area in connection with the Super Bowl, including within the city of Bloomington.

At the Aug. 28, 2017 council meeting, the council approved a cooperative agreement with the City of Minneapolis related to the provision of public safety at Super Bowl events. That agreement noted that the City of Bloomington had its own separate agreement with the Minnesota Host Committee.

The City of Bloomington has requested that Minnetonka enter into a cooperative agreement to provide public safety at Super Bowl events in Bloomington. The proposed agreement is similar in nature to the Minneapolis agreement. Some key differences include:

- Bloomington Police Department will be the lead enforcement agency and will make work assignments under a unified command structure.
- The sole source of funds to reimburse Minnetonka for its services is money provided by the private entities that request public safety and security at their facilities.
- Bloomington will defend and indemnify Minnetonka against claims that arise out of Minnetonka’s provision of services, with certain limitations:
  o Bloomington’s insurance through the LMCIT is the primary policy; Bloomington will not defend or indemnify against claims not covered by the LMCIT policy (e.g., actions involving malice or actions outside the scope of employment).
  o Bloomington will not defend or indemnify for claims that are covered by the liability policy provided by the Host Committee, under the agreement with Minneapolis.
  o If the aggregate amount of any one or all claims arising from one occurrence exceeds $2 million, Minnetonka and Bloomington are each responsible for the acts or omissions of their own employees.
Recommendation

Approve the agreement.

Submitted through:
   Geralyn Barone, City Manager
   Scott Boerboom, Police Chief

Originated by:
   Corrine Heine, City Attorney
THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT REGARDING PUBLIC SAFETY IN BLOOMINGTON, MINNESOTA, RELATED TO THE 2018 NATIONAL FOOTBALL LEAGUE SUPER BOWL (hereinafter referred to as the “Agreement”), is made effective, except as otherwise made operationally effective as set forth in Section 5 herein, on this _____ day of January, 2018, by and between the CITY OF BLOOMINGTON, a home rule charter city and a Minnesota municipal corporation (“City”) acting through its Police Department (“BPD”) and the CITY OF MINNETONKA, a Minnesota municipal corporation acting through its Police Department (“Provider”). City, BPD, and each Provider may be referred to individually as a “Party” or collectively as the “Parties” to this Agreement.

WHEREAS, the City is the location of several events occurring before, during, and after the 2018 National Football League Super Bowl from Friday, January 26, 2018, through Monday, February 5, 2018 (“Event”); and

WHEREAS, a Unified Command structure (as that term is defined in Section 2.4) is needed to ensure the level of security coordination required for the Event; and

WHEREAS, the BPD will be the lead law enforcement agency for the Event in the City of Bloomington. When BPD is the lead law enforcement agency its duties will include making staff assignments and to administer and manage the Unified Command; and

WHEREAS, the City has agreed to serve as the fiscal agent for law enforcement costs for the Event by entering into this Agreement with the “Provider”; and

WHEREAS, the City is in need of procuring additional extra duty and contract overtime law enforcement personnel to provide the public safety measures required for such a large and unique Event; and

WHEREAS, at the request of the City, the Provider is willing to provide the services of the law enforcement personnel identified in this Agreement to the City to assist the BPD with public safety services during the Event.

NOW, THEREFORE, pursuant to the authority contained in Minnesota Statutes Section 471.59 (“Joint Exercise of Powers”) or Minnesota Statutes Sections 626.76 and 626.77, or both or all, and in consideration of the mutual covenants herein contained and the benefits that each party hereto shall derive hereby, the Parties agree as follows:
1. **PURPOSE OF THE AGREEMENT**

1.1 The purpose of this Agreement is to set forth the terms and conditions whereby the Provider will provide the City with Licensed Peace Officers to be assigned to one or more of the Event locations identified on Exhibit A attached hereto to assist the BPD through the use of a unified command center (as defined in Section 2.4) to provide law enforcement and security services (“Services”) during the term of the Event.

1.2 Provider will exercise its best efforts to assist with Event security. The Parties acknowledge and agree that resource availability requires Provider to exercise its best judgment in prioritizing and responding to the public safety needs of its jurisdiction including, but not limited to, the Event. That prioritization decision belongs solely to Provider. The Provider may, at any time, recall the Provider’s resources when, it is considered to be in Provider’s best interest to do so.

1.3 Provider’s resources shall be full-time, Licensed Peace Officers and each such Licensed Peace Officer must meet the following criteria as defined in Minnesota Statutes Sections 626.84, Subdivision 1(c) and 471.59, Subdivision 12.

2. **ADDITIONAL CRITERIA OF LICENSED PEACE OFFICERS; PROVIDER SCOPE OF SERVICE**

2.1 In addition to meeting the criteria set forth in Section 1 of this Agreement, the Provider agrees that each of the Licensed Peace Officers shall also meet the following criteria:

2.1.1. That each Licensed Peace Officer shall by reason of experience, training, and physical fitness be deemed by the Provider of being capable of performing public safety and law enforcement duties for the Event; and

2.1.2. That each Licensed Peace Officer meets the Police Officer Standards and Training (POST) requirements and other standards required by the Provider. Throughout the term of this Agreement, the Provider shall promptly notify the BPD in the event that any licensed peace officer is no longer satisfies the POST or other standards established by the Provider; and

2.1.3. That unless otherwise provided or requested by the BPD, each Licensed Peace Officer shall be equipped or supplied, or both, by Provider at Provider’s own expense, with a seasonally appropriate patrol uniform of the day and equipment, including but not limited to service belts with Provider radio equipment, service weapon, and personal soft ballistic body
armor, and traffic vest.

2.2 Provider acknowledges and agrees that at any time during the term of this Agreement the City has the sole discretion to decline to accept or use, or both, any of Provider’s Licensed Peace Officers or other law enforcement resources without cause or explanation.

2.3 The Provider agrees as follows:

2.3.1 As requested by BPD, Provider shall list information on each of Provider’s Licensed Peace Officers no later than thirty (30) days before the Event that includes, but is not limited to, name, rank, agency, badge number, photo, cell phone number, and emergency contact information. Said information shall be used strictly for law enforcement purposes related to the Event and each Party will hold the data in the same classification as the other does under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (“MGDPA”); and

2.3.2. That upon reasonable advance written notification from the BPD, each of Provider’s Licensed Peace Officers or other law enforcement resources so designated by the BPD shall participate in orientation training activities related to Event security, that are coordinated or conducted by the BPD or its designee; and

2.3.3. That each Licensed Peace Officer shall be assigned by the BPD, as determined and required by the BPD, to any Event-related assignment based on the Licensed Peace Officer’s skill-set and known duty assignment as well as the needs of the operation; including, but not limited to, foot patrol, motorized patrol, static posts at outdoor perimeters, general security inside or outside venues, and traffic control; and

2.3.4. That Licensed Peace Officers participating in the Event may, if so determined by the BPD, be placed in an “On Assignment” status by BPD in which the Licensed Peace Officer should be physically proximate to the Event location, so as to be able to physically report in a timely manner to such duty post assigned by the BPD and prepared to undertake the specific job task or responsibility assigned by the BPD; and

2.3.5. That at the request of the BPD, Provider will designate personnel that participated in or provided Event security to further participate in and/or provide information to and otherwise cooperate with the BPD in any “after action activities” following the conclusion of a training session or actual Event security. “After action activities” may include, but not be limited to post training session meetings and revisions of training protocols and post
Event security meetings, evaluations, mediation or court proceedings.

2.4 Provider acknowledges and agrees that at all times during any required training session or during the Event each of Provider’s Licensed Peace Officers or other law enforcement resources and employees, regardless of rank or job title held as an employee of the Provider, shall be subject to a structure of supervision, command and control coordinated through a unified law enforcement command and following unified command principles and practices established throughout the law enforcement community (herein referred to as “Unified Command”).

2.5 The Provider agrees to exercise reasonable efforts to cooperate and provide the City, with any other information reasonably requested by the City that the City deems necessary to facilitate and enable compliance with the terms and conditions contained in this Agreement.

2.6 Event staffing levels will be determined by the BPD as the lead law enforcement agency and fiscal agent.

2.7 The Provider will comply with the statutes and rules requiring the preservation of evidence including, but not limited to, Minnesota Statutes Sections 590.10 and 626.04. Provider must preserve all handwritten notes, photographs, incident reports, video recordings, statements, audio recordings, personal notes, interview audio, text messages, cell phone videos, removable electronic media, squad car videos, any other video recordings, emails, voice mails, computer files and all Work Product, Supporting Documentation and Business Records as those terms are defined in Section 8.1 of this Agreement.

2.8 The BPD will maintain a list of Licensed Peace Officers assigned to the Event. Provider will be responsible for providing accurate lists of its Licensed Peace Officers that will be assignable to the Event as a result of signing this Agreement.

3 CITY RESPONSIBILITIES

3.1 The City will be solely responsible for all communications with the Minnesota Host Committee, which that is coordinating the official National Football League activities occurring in Minneapolis, St Paul, and Bloomington (“Host Committee”) within the same general time period as the Event covered by this Agreement. However, this Agreement only applies to the Event locations listed in Exhibit A.

3.2 City agrees that it will provide or facilitate any necessary training to prepare for providing Event security. The substance of the training, if necessary; including the locations, dates, and times, shall be detailed in a separate writing provided from the BPD to the Provider.
3.3 The person responsible on behalf of the BPD for the daily operation, coordination and implementation of this Agreement, which responsibilities shall include, but not limited to, determining the assignments of the Provider’s law enforcement resources, shall be BPD Deputy Chief of Police Mike Hartley (hereinafter referred to as the “Coordinator”). Except as otherwise provided in this Agreement, all contacts or inquiries made by the Provider with regard to this Agreement shall be made directly to the Coordinator or the Coordinator’s designee.

3.4 The City will develop and provide to each Provider an adequate supply of the standard incident report form to be used by the City and Providers that provide Services at the Event under the direction of the Unified Command.

3.5 The City will provide to Provider, the “claims procedure” as indicated in Exhibit C hereto that will be used by third party claimants who file claims against the City or against any Provider

4. **COMPENSATION AND PAYMENT PROCESS**

4.1 The sole source of funds to reimburse each Provider performing under this Agreement shall be funds provided to BPD by private entities requesting public safety and security at their facilities during the Event.

4.2 For and in consideration of the Provider performing under this Agreement, the Provider will be reimbursed for said Services at the rates and in the manner as indicated in attached Exhibit B. All of a Provider’s Licensed Peace Officers and other law enforcement resources that (a) perform law enforcement services within the Provider’s jurisdiction; and (b) are subject only to the Provider’s authority and are therefore not under the Unified Command, are not eligible to have Provider’s costs reimbursed pursuant to this Agreement.

4.3 The BPD will prepare and include in Exhibit B eligibility guidelines for cost reimbursement and a checklist for the preparation and submission of the reimbursement request.

4.4 Provider may submit any questions regarding the cost reimbursement process to Sue LeGrand or her designee at: slegrand@bloomingtonmn.gov.

4.5 For any disputed amounts, the Provider shall provide the BPD with written notice of the dispute, including the date, amount, and reasons for dispute within fifteen (15) days after receipt of the Reimbursement Summary Report. The BPD and Provider shall memorialize the resolution of the dispute in writing and follow the dispute resolution procedure in Section 13 of this Agreement.
5. **TERM OF AGREEMENT**

This Agreement shall be effective as of the date indicated on the first page so that the Parties can undertake planning for all Event-related activity and shall expire on March 1, 2018, or the date to which law enforcement resources or Services are extended, whichever is later, unless terminated earlier in accordance with the provisions in Section 6. Except for the provision of orientation training as discussed and to be scheduled pursuant to Section 3.2 of this Agreement, Services furnished by the Provider for the Event shall begin on January 26, 2018, and shall terminate on February 5, 2018, unless terminated sooner or extended in whole or in part as provided herein.

6. **TERMINATION**

6.1 Termination by the City. The City may terminate this Agreement upon providing to the Provider fifteen (15) days advance written notice for any of the reasons stated below:

6.1.1 Cancellation of Super Bowl LII; or

6.1.2 Failure by the Provider to perform any material term under this Agreement and failure to cure the default within the time requested by the City; or

6.1.2 Without cause prior to the initial orientation training session.

6.2 Termination by the Provider. The Provider may terminate this Agreement upon providing to the City not less than thirty (30) days advance written notice for any of the reasons stated below:

6.2.1 Cancellation of Super Bowl LII; or

6.2.2 Without cause prior to the initial orientation training session.

6.3 In the event of a termination, each Party shall fully discharge all obligations owed to the other Party accruing prior to the date of such termination, and, except as otherwise provided herein, each Party shall be released from all obligations, which would otherwise accrue subsequent to the date of termination.

7. **AGREEMENT MANAGEMENT**

7.1 The Provider has identified the following person[s] as persons to contact only with regard to the following matters regarding the Agreement:

Capt. Andrew Gardner 612-202-1475 – All Super Bowl Responsibilities
8. **WORK PRODUCT, RECORDS, DISSEMINATION OF INFORMATION**

8.1 For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

“*Work Product*” shall mean any report, including incident reports, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that are used or belong to BPD or results from Provider's Services under this Agreement.

“*Supporting Documentation*” shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences used to generate any and all work performed and Work Product generated under this Agreement.

“*Business Records*” shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other format, belonging to BPD or Provider and pertain to work performed under this Agreement.

8.2 Subject to applicable law, including but not limited to the Minnesota Official Records Act, Minnesota Statutes Section 15.17, and the MGDPA, all deliverable Work Product, Supporting Documentation and Business Records or copies thereof, that are needed from or result from the Provider's Services under this Agreement shall be delivered to the City either pursuant to this Agreement or upon reasonable request of the City and shall become the property of the City after delivery.

8.3 The City and the Provider each agrees not to release, transmit, disclose or otherwise disseminate information associated with or generated as a result of the work performed (i.e. Work Product, Supporting Documentation and Business Records) under this Agreement without notice to the other. Except as otherwise required by and subject to federal or state law, or both, neither the City nor the Provider shall release, transmit, disclose or disseminate any Work Product, Supporting Documentation, or Business Records, which shall be classified as “security information”, “security service” or “security service data”, defined under Minnesota Statutes Sections 13.37 and 13.861 or any like data, as defined or required, or both, in all federal, state, and local laws or ordinances, and all applicable rules, regulations, and standards.

8.4 In the event of termination, all Work Product, Supporting Documentation, and Business Records prepared by the Provider under this Agreement shall be delivered to the City by the Provider by the termination date.
8.5 Both the City and the Provider agree to maintain all Business Records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Provider, the Auditor of the State of Minnesota, or other duly authorized representative.

8.6 Both the City and the Provider agree to abide strictly by the MGDPA and, in particular, Minnesota Statutes Sections 13.05, subds. 6 and 11; 13.37, Subd. 1(a) and 1(b), 138.17, and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Provider or the City in performing functions under this Agreement is subject to the requirements of the MGDPA and both the City and the Provider must comply with those requirements. If any provision of this Agreement is in conflict with the MGDPA or other Minnesota state laws, state law shall control.

9. INSURANCE; LIABILITY; MUTUAL RESPONSIBILITY; NO WAIVER OF IMMUNITIES

9.1 Insurance Coverage for Event. Subject to the limitations below, the City agrees to defend and indemnify the Provider against any claims brought, or actions filed, against the Provider, or any Licensed Police Officer of the Provider for the injury to, death of, or damage to the property of any third person(s) arising out of the performance and provide of assistance to the City pursuant this Agreement.

9.1.1 Provider understands and agrees that the City’s municipal liability policy issued through the League of Minnesota Cities Insurance Trust (“LMCIT Policy”) will be the primary policy as it relates to defense and indemnification of claims and lawsuits arising out of the Provider’s actions, and Provider agrees to cooperate with the City and the League of Minnesota Cities Insurance Trust in all claims and suits arising out of this Agreement.

9.1.2 Provider understands and agrees that the City will not defend or indemnify Provider, its officers or employees, for any claims or lawsuits that do not take place during the term of the Agreement; or any claim or lawsuit that would be considered as a result of a “covered event” as defined by the law enforcement liability policy purchased through the Host Committee and administered by the City of Minneapolis for specific Super Bowl related events authorized by the National Football League.

9.1.3 Provider agrees to be bound by the terms and conditions contained in the
LMCIT Policy.

9.1.4 Provider agrees that it will cooperate with the League of Minnesota Cities Insurance Trust and with the City by reasonably and timely responding to the League of Minnesota Cities Insurance Trust’s request(s) for information or to appear at meetings or judicially mandated hearings.

9.2 Liability Coverage as Sole Source for Liability and Indemnity. Provider hereto agrees that it will only seek recovery for any liability incurred in carrying out the terms of this Agreement from the LMCIT policy set out in Section 9.1 of this Agreement.

9.2.1 If Provider’s liability is not subject to recovery through the LMCIT Policy, then the Provider agrees that it will otherwise be responsible for its own acts or omissions, or both, and those of its officials, employees, representatives and agents in carrying out the terms of this Agreement, whether those acts or omissions occur within or outside of the jurisdiction or geographic limits of the City of Bloomington.

9.2.2 In the unlikely event that the aggregate amount of any one or all claims arising from one occurrence exceeds $2 million, then each Party agrees that it will otherwise be responsible for its own acts or omissions, or both, and those of its officials, employees, representatives and agents in carrying out the terms of this Agreement, whether those acts or omissions occur within or outside the of the jurisdiction or geographic limits of the City of Bloomington.

9.3 Further Limitation On Provider Liability. It is understood and agreed that the liability of a Provider that is a municipality, county or similar political subdivision shall be limited by the provisions of Minnesota Statutes Chapter 466 (Tort Liability, Political Subdivisions) and by other applicable law. Nothing contained in this Agreement shall waive or amend, nor shall be construed to waive or amend any defense or immunity that either Party, its respective officials and employees, may have under said Chapter 466, Section 471.59 subd. 1a, and any common-law immunity or limitation of liability, all of which are hereby reserved by the Parties that have entered into this Agreement.

9.4 Provider Workers’ Compensation Insurance Required. Except as expressly provided herein, each Party shall be responsible for injuries or death of its own personnel. Each Party will maintain workers’ compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this Agreement. Except as expressly provided herein, each Party waives the right to sue any other Party for any workers’ compensation benefits paid to its own employee or volunteer or their dependents.
9.5 Provider Responsible for Own Equipment. Except as expressly provided herein, each Party shall be responsible for damages to or loss of its own equipment. Except as expressly provided herein, each Party waives the right to sue any other Party for any damages to, or loss of its equipment.

9.6 Provider Rendering First Aid. Except for immediate first aid rendered by a Provider at the scene of an accident or occurrence, no other medical assistance, expenses or aid is covered under this Agreement.

9.7 Except for the foregoing, the Parties intend that this Agreement will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

10. INDEPENDENT CONTRACTORS

Provider in its relationship with the City under this Agreement is an independent contractor. No Provider, its Licensed Peace Officers or other law enforcement resources shall be considered an employee of the City. The City, its Licensed Peace Officers or other law enforcement resources shall not be considered employees of the Provider.

11. SUBCONTRACTING

The City and Provider agree that no Services will be subcontracted and agree not to enter into any subcontracts to provide any Services under this Agreement.

12. ASSIGNMENT

Neither the City nor the Provider will assign or transfer any interest in this Agreement without the consent of the other Party.

13. DISPUTE RESOLUTION

The City and the Provider each agree to cooperate and negotiate in good faith to resolve any disputes that arise regarding the terms of this Agreement and the performance of the Services. If good faith negotiations fail to resolve a dispute, then the Parties will use mediation services to attempt to resolve the dispute. The City and Provider will equally share the expense of the mediator.

The Parties will select a mediator by each submitting three names in rank order of preference to the other Party. If there is no common name on each Party’s list, then a neutral, third party, law enforcement representative that is not a party to this Agreement will select a mediator for the Parties. If mediation fails to resolve a dispute between Parties, then the Parties may exercise their legal or equitable rights.
14. **AUDIT OF AGREEMENT RECORDS**

Pursuant to Minnesota Statutes Section 16C.05, both the City’s and the Provider’s books, records, documents, and accounting procedures and practices with respect to any matter covered by this Agreement shall be made available to the State of Minnesota Office of the State Auditor upon written notice, at any time during normal business hours, for the purpose of auditing, examining or making excerpts or transcripts of relevant data.

15. **AMENDMENT OR CHANGES TO AGREEMENT**

15.1 Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the Parties hereto; after all appropriate and necessary authority has been acquired by each such Party.

15.2 Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term “Agreement” as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

16. **NOTICES**

Except as otherwise stated in this Agreement, all notice or demand to be given under this Agreement shall be delivered in person or deposited in United States First Class Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

City: Jeff Potts, Chief of Police, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN  55431, jpotts@bloomingtonmn.gov; or

Provider: David Maeda, City Clerk, City of Minnetonka, 14600 Minnetonka Blvd., Minnetonka, MN 55345    dmaeda@eminnetonka.com

or such other contact information as either party may provide to the other by notice given in accordance with this provision. Nothing in this Section 16 shall prohibit a Party from contemporaneously providing the communication by electronic mail when such occurs at the same time as depositing in United States Mail.

17. **CHOICE OF LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement
shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

18. ENTIRE AGREEMENT

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties hereto relating to the subject matters herein. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

The matters set forth in the “WHEREAS” clauses at the beginning of this Agreement are true and correct and by this reference incorporated into and made a part of this Agreement.

19. AGREEMENT NOT EXCLUSIVE

The City retains the right to contract with other public safety and security providers for other matters or for the Event, in the City’s sole discretion.

20. NO DISCRIMINATION

Provider agrees not to discriminate in providing the Services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Provider agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by the Provider or its Licensed Police Officer(s).

21. PUBLICITY

The Parties shall develop language to use when discussing this Agreement. Provider agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language.

22. WAIVER

Failure of a Party to enforce any provision of this Agreement does not affect the rights of the Parties to enforce such provision in another circumstance. No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.
23. **SEVERABILITY**

In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect and will be construed and enforced as if such invalid or unenforceable provision had not been included.

24. **INTERCHANGE OF GOVERNMENT EMPLOYEES**

The Parties shall cooperate in achieving the objectives of this Agreement pursuant to Minnesota Statutes Sections 15.51 through 15.57.

25. **COMPLIANCE WITH LAWS**

The Parties shall comply with all applicable federal, state, and local statutes, regulations, rules and ordinances currently in force or later enacted including but not limited to the MGDPA, Minnesota Statutes Section 471.425, subd. 4a, and as applicable, non-discrimination and affirmative action laws and policies.

REMAINDER OF THIS PAGE IS BLANK
IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement the day and year first above written.

CITY OF MINNETONKA

By: _____________________________  
    Brad Wiersum, Mayor

Date: ______________________________

By: _______________________________  
    Geralyn Barone, City Manager

Date: ______________________________

Reviewed and Approved By:    

By: ____________________________  
    Corrine Heine, City Attorney

Date: ______________________________

CITY OF BLOOMINGTON

By: _______________________________  
    Its: City Manager, James D. Verbrugge

Date: ______________________________

By: _______________________________  
    Its: Police Chief, Jeffrey D. Potts

Date: ______________________________

Reviewed and Approved By:    

By: ____________________________  
    Its: City Attorney

Date: ______________________________
EXHIBIT A

EVENT LOCATIONS

The City of Minnetonka will provide Services at locations as needed and directed by the City of Bloomington.
EXHIBIT B

EVENT REIMBURSEMENT GUIDELINES


1. Bloomington Police Department (“BPD”) will serve as fiscal agent for purposes of this Agreement.
2. Reimbursement will be for hours worked in direct support of the BPD.
3. Reimbursement will occur only for hours worked consistent with official operational plans approved by BPD.
4. There will be no reimbursement for non-personnel costs, backfill, pre-Event training, equipment, and other expenses including but not limited to travel costs, fuel, mileage, per diem, etc.
5. Reimbursement will occur only for state, county, and local law enforcement personnel participating in Event security details.
6. To the extent possible, law enforcement personnel will be notified of their daily and hourly schedule 15 to 30 days prior to the Reimbursement Period. There will be no reimbursement for any changes to the schedule or for any scheduled off days during this period or for off hours where personnel are not actively assigned to an event detail.
7. No officer will be assigned to a shift that begins in less than 96 hours without the Provider’s prior approval.
8. Providers and personnel assigned to the event must adhere to all BPD requirements in order to be eligible for reimbursement.
9. If certain Event Services are cancelled within 24 hours of when the law enforcement officer’s shift is scheduled to begin, then that Licensed Police Officer will be compensated for 3 hours of time. If certain Event Services are cancelled more than 24 hours of when the law enforcement officer’s shift is scheduled to begin, then that Licensed Police Officer will not be compensated.
10. For reimbursement purposes, a law enforcement officer’s shift begins and ends when he/she checks in/out on site.
11. Provider must submit to the City an Officer Pay Rate Information Form in the format set out in Exhibit D (“Form”), attached and incorporated hereeto, that lists the 2018 regular (100%) pay rates with associated badge numbers for all Licensed Police Officers providing Services pursuant to this Agreement. Provider must submit the Form to Sue LeGrand at slegrand@bloomingtonmn.gov on or before January 15, 2018.
12. Reimbursement will be paid at time and a half of the Licensed Police Officer’s pay rate as stated on the Form, plus a 17.65% fringe for PERA and Medicare related costs. These rates are all-inclusive and will not be adjusted.
13. On or before February 9, 2018 (covering pay period 1/26/18-1/28/18) and on or before February 23, 2018 (covering pay period 1/29/18-2/5/18), the City will provide a Reimbursement Summary Report (“Report”) to the Provider reflecting the dates and hours of service performed by Provider’s Licensed Police Officers.

   a. Within five (5) days of receipt of the Report from the City, Provider shall review the Report for accuracy and indicate to the City which hours were straight time and which hours were overtime, then return the completed Report to Sue LeGrand at slegrand@bloomingtonmn.gov.

   b. Provider will submit an invoice along with a copy of the Report to BPD. Thereafter, BPD will review the documentation and work with Provider to address any discrepancies.

   c. BPD will issue reimbursement to Provider consistent with this Agreement within forty-five (45) days of receipt of the Provider’s invoice, Report copy, and documentation.

14. Any variation from the above guidelines must be approved by the Bloomington Police Department.
EXHIBIT C

CLAIMS PROCEDURE FOR CLAIMS

All claims will be submitted to the City on its standardized “Claim Form” found on its website (https://www.bloomingtonmn.gov/sites/default/files/claimform.pdf). Once received and recorded by the City, the City will forward the Claim Form on to the League of Minnesota Cities Insurance Trust (“LMCIT”) for investigation and determination of liability. Acceptance or denial of a claim may be appealed through the City’s Risk and Litigation Manager. Her contact information is alarson@bloomingtonmn.gov or 952-563-4932.
### EXHIBIT D

**OFFICER PAY RATE INFORMATION FORM**

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City Council Agenda Item #13A
Meeting of Jan. 8, 2018

Brief Description
On-sale intoxicating liquor license for Copper Cow, LLC, at 5445 Eden Prairie Rd.

Recommendation
Open the public hearing and continue to Feb. 26, 2018

Background
The city has received an application from Copper Cow, LLC for an on-sale intoxicating liquor license for a new restaurant. The owners, Chris and Danielle Bjorling, currently own the Copper Hen in Minneapolis and are planning a second concept in Minnetonka, The Copper Cow. The Copper Cow will be located in the former Dairy Queen site in Glen Lake.

Business Ownership
Copper Cow, LLC is equally owned by Chris and Danielle Bjorling.

Business Operations
The restaurant is approximately 2,500 square feet and will be located in the former Dairy Queen in Glen Lake. The proposal anticipates seating for 80 indoor guests and 30 seats outside. The space has a drive thru, but the owners are planning on using this for a take-out/pick up area. The restaurant will be open the following hours:

- Monday – Friday: 11 a.m. – 11 p.m.
- Saturday: 10 a.m. – 11 p.m.
- Sunday: 10 a.m. – 10 p.m.

Projected food to liquor ratio will be 78% food and 22% alcohol.

Chris Bjorling will also serve as the general manager. He resides in Minneapolis and meets the metro-area residency requirements of the city’s liquor ordinance.

Staff receives initial and ongoing training for alcohol service to ensure no issues occur (see business plan).

The licensed premise will include an outdoor patio. The approval of the licensed premise is subject to the conditions of approval for the requested conditional use permit which will coincide with the final hearing on Feb. 26. The patio is required to have a cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access must be only through the principal building.
Applicant Information

Application information and license fees have been submitted. The police department’s investigative report on this application is pending and will be forwarded to the council prior to the continued public hearing.

Recommendation

Staff recommends that the city council open the public hearing and continue the hearing to Feb. 26, 2018.

Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director

Originated by:
   Kathy Leervig, Community Development Coordinator
Location Map
Project: The Copper Cow
Applicant: Chris Bjorling
Address: 5445 Eden Prairie Rd
The Copper Cow Business Plan for License Application

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I. Staffing
II. Safeguards against under-age sales and Server Awareness
III. Projected food to liquor ratios
IV. Hours of operation and entertainment plan
V. Menu
VI. Orderly appearance for operations
VII. Sound and noise management plan
I. Staffing

The Copper Cow intends to employ between 30-40 staff members. This will be made up of a mix of Management staff, including an Executive Chef, Sous chef and Front of House management. Hourly staff will consist of line cooks, bakers, hosts, bartenders, servers and support staff.

II. Safeguards Against Underage Sales & Server Awareness

Alcohol Server Training Plan Overview

Alcohol Server Staff Training Will Include:

- Thoroughly review laws pertaining to alcohol service; this will include a discussion portion (not entirely a lecture) order to assess if the employee understands and takes the issue seriously.
- Review establishment policies pertaining to alcohol access and service and stress the expectation that they be followed.
- Provide this information verbally and in writing; require them to sign an acknowledgement form.
- Make sure the person understands the potential consequences for not complying with laws or policies.
- Emphasize that employees are encouraged to refuse any order if they believe it may violate a law or business policy.
- Make sure employees are aware of how and when they should communicate situations or issues to management.
- Training will include having employees role play scenarios related to the service of alcohol, such as:
  - Asking for an ID and as necessary explain why they need to see one
  - Asking for a second form of ID to help confirm identity
  - Declining alcohol when the customer has no ID or when the ID shows the customer to be underage
  - Declining alcohol when there are concerns about an ID being altered, fake, or misused
  - Recognizing and declining a third party sale where minors are using people of age to get alcohol for them
  - Resisting customer pressure and handling a wide range of customer conduct and behaviors
  - Declining an alcohol order because of concerns about a patron being intoxicated and/or over-served.
Regular staff training will occur upon hire and annual training will occur with all employees ongoing and include our “No Proof, No Service” policy training:

- **Be Cautious** – it is very hard to tell a young person’s age. Ensure that staff are checking IDs, even of those that look older than 21.
- **Be Consistent** – have employees always check ID, even if they think the establishment served the customer before or are pretty certain they are of legal drinking age.
- **Be Courteous** – have staff let the customer know that refusing a sale due to lack of ID is simply following policy and that your establishment would be happy to serve them when they are able to produce a valid ID.
- **Be Conscientious** – it may be useful to ensure that you and your staff record all refusals including date, time, appearance of the customer, items refused, and staff name for every refusal.
- **Be Careful** – there is evidence that staff may often fail to refuse service if they feel afraid of the consequences, abuse, and violence. Make sure you and your staff feel safe, confident, and supported in refusing service.

**Policy for Carding and Steps to Take When Carding:**

Employees will follow our “Acceptable Forms of ID” policy (described below). ID must be a picture ID and will follow the guidelines below:

**ONLY ACCEPT THE FOLLOWING AS CREDIBLE PHOTO PROOF OF AGE:**

- State photo driving license
- State non-driver identification card
- A passport

**DO NOT ACCEPT THE FOLLOWING AS PROOF OF AGE (easier to alter or get duplicates and/or do not have DOB):**

- College or school ID – even if it contains their date of birth
- An identification NOT issued by a state or federal government agency
- Birth certificates or social security cards

**Tips for determining if an ID is valid:**

- Always take physical control of the ID and request that it be taken out of wallets or covers so that you may:
  - Check the back; look for poor photocopy quality (blurred imagery) or digitized lettering. Also, look for wording that indicates it is not an issued by a branch of government, a disclaimer, or statement of authenticity.
  - Check for thickness, unevenly cut corners and bumpy surfaces indicating a picture has been replaced or the card has been hand cut.
Discipline Policy for Servicing Alcohol to Minors

- If a staff member is found to have served a minor, inquiry and investigation will occur to understand how that happened
- Depending on the results of the investigation, suspension or on-the-spot termination may be applicable
- If a lapse in following our alcohol service policy occurred, re-training will occur to ensure our staff fully understands our policy

Self-Audits

- Employees will be periodically quizzed to assess their understanding and implementation of the alcohol service policy
- Re-training will occur for any identified gaps in understanding and application of the alcohol service policy

Resources:

III. Projected food to liquor ratios

The projected food to liquor ratio is 78% food and 22% liquor.

IV. Hours of Operation and Entertainment Plan

Monday – Friday: 11 am – 11 pm
Saturday: 10 am – 11 pm
Sunday: 10 am – 10 pm
Entertainment Plan
Most events will most likely be held on Friday-Sunday. We do not at present have plans for consistent live music, but we could see the possibility of hosting events that would have live music or a DJ. We will have a sound system that will play music for restaurant guests and there may be some speakers positioned so it can be heard on the patio as well.

V. Menu

Starters
Sweet Potato Salad
Kale Coleslaw
Pretzel Bites
Fries
Fried Cheese Balls

Burger Salads
Arugula, capers, red onion salad
Spinach, artichoke, peppers salad

Sandwiches
Build-your-own Burgers:
Choose your meat: Beef, Turkey, Chicken or Mushroom
Choose your toppings: lettuce, tomato, onion, bacon, cheddar, swiss, blue cheese, mozzarella, bacon, mushroom, fried egg
Choose your sauce: BBQ sauce, avocado mayo, garlic mayo
(and then we will offer some 'composed' sandwiches using the ingredients listed above)

Desserts
Skillet Chocolate Chip Cookie served with Vanilla Ice Cream
Chocolate filled doughnut
Chocolate cake

Shakes & Malts
Strawberry, Chocolate, Vanilla, Cookies N Cream and a seasonal flavor
Toppings: Oreos, peanuts, cashews, whipped cream, cherries, butterfinger, graham cracker
*We will also offer boozy shakes which we will add alcohol to the shake

Bar Beverages
Tap beer, wines, liquor spirits, boozy shakes (noted above)

Other Beverages
Soda products (most likely Coke products), coffee, tea, juices, milk
**We are considering opening an hour earlier on the weekends and adding a few brunch items to the menu**

**Brunch Items**
Doughnut breakfast burger – the buns would be fried doughnuts cut in half and the burger would be a sausage patty topped with a fried egg, cheese, lettuce and tomato
Burger scramble – scrambled eggs, beef, onion, tomato and cheddar
Breakfast hash – hash browns, scrambled eggs, beef, onion, tomato and cheddar

VI. Orderly appearance of operations

For garbage service, we will contract with a local hauler for regular pickups to ensure trash and recycling is taken in a timely and orderly fashion. We typically assign an individual each day to clean around the garbage area to ensure any trash that has fallen out is picked up swiftly and the area is kept clean.

For graffiti, it will be cleaned and removed in a timely fashion. We will most likely be installing some exterior facing cameras which will hopefully deter graffiti.

VII. Sound and noise management plan

To recap from section IV: Most events will most likely be held on Friday-Sunday. We do not at present have plans for consistent live music, but we could see the possibility of hosting events that would have live music or a DJ. We will have a sound system that will play music for restaurant guests and there may be some speakers positioned so it can be heard on the patio as well. We would anticipate music to be played during our hours of operation. If it is found that the noise generated from the establishment is too loud, we will be happy to address complaints on an as-needed basis. We would request that during special events, that if additional sound is generated, that people would be understanding for those occurrences.
Brief Description: Resolution declaring vacancy in the council seat for Ward 3

Recommended Action: Adopt the resolution

Background

Due to his election as mayor, Council Member Brad Wiersum has submitted his resignation from the office of Ward 3 council member, effective at noon on Jan. 8, 2018. The resignation creates a vacancy in that seat.

The city attorney has prepared a resolution declaring a vacancy in the seat of Ward 3 council member. The resolution is technically not required by charter, because the vacancy is automatic in cases of resignation. Nevertheless, adoption of the resolution formally recognizes the existence of the vacancy.

The city council has previously determined that it will fill the vacancy by a special election, to be held on April 10, 2018. A resolution calling for the special election will be presented to the council at its Jan. 22, 2018 regular meeting. (By state law, special elections must be held in February, April or May. Under city charter, a special election must occur within 90 days after the council calls for the special election. Because Jan. 8 is more than 90 days from April 10, the resolution calling for the special election is scheduled for the Jan. 22, 2018 regular city council meeting.)

Recommendation

Adopt the resolution.

Submitted through:
  Geralyn Barone, City Manager
  Perry Vetter, Assistant City Manager
  David Maeda, City Clerk

Originated by:
  Corrine Heine, City Attorney
January 3, 2018

Minnetonka City Council
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Dear Mayor Schneider and Minnetonka City Council Members:

Please accept my resignation from the Office of Councilmember, City of Minnetonka, Ward 3, effective Noon, January 8, 2018.

It has been a tremendous honor to serve with you in this capacity. I look forward to being sworn in as Mayor of Minnetonka on January 8.

Thank you.

Sincerely,

Brad J. Wiersum
Resolution No. 2018-
Resolution declaring vacancy in the council seat for Ward 3

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. Council Member Brad Wiersum was elected to the council as the Ward 3 representative at the general municipal election in 2015, for a term from Jan. 4, 2016 to Jan. 6, 2020.

1.02. At the 2017 general municipal election, Council Member Brad Wiersum was elected as mayor, for a term beginning Jan. 8, 2018 to Jan. 3, 2022.

1.03. By letter dated Jan. 3, 2018, Council Member Brad Wiersum resigned his office as Ward 3 council member, effective at noon on Jan. 8, 2018 at noon.

Section 2. Council Action.

2.01. The Council declares that the office of council member for Ward 3 is vacant as of Jan. 8, 2018 at noon.

Adopted by the City Council of the City of Minnetonka, Minnesota, on.

__________________________________________
Brad Wiersum, Mayor

Attest:

__________________________________________
David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on .

__________________________________________
David E. Maeda, City Clerk
City Council Agenda Item #14B  
Meeting of Jan. 8, 2018

Brief Description  
Concept plan review for The Villas of Glen Lake at 5517 and 5525 Eden Prairie Road

Action Requested  
Discuss concept plan with the applicant. No formal action required.

Background

Quest Development, Inc. has submitted a concept plan for redevelopment of the two, single-family residential properties at 5517 and 5525 Eden Prairie Road. The northerly of the two lots is currently zoned B-1 and the southerly lot is zoned R-1. Both are guided low-density residential.

The concept plan contemplates development of five villa homes, sometimes referred to as detached townhomes. At 3.3 units per acre, the concept development would be defined as low-density. The combined site is roughly 1.5-acres in size.

Key Issues

City staff has identified the following considerations for any development of the subject properties:

- **Site Access**: Hennepin County has jurisdictional control of access to Eden Prairie Road. Both county and city engineers would need to evaluate the access location suggested by a formal development application. The city would further need to evaluate the type of access – public or private.

- **Site Impact**: Utility access, tree preservation, grading and drainage must be evaluated. A portion of the combined site would be regulated by the city’s steep slope ordinance. As part of a formal application, staff would conduct a thorough site impact analysis.

Review Process

Staff has outlined the following review process for the proposal. At this time, a formal application has not been submitted.

- **Neighborhood Meeting**: The developer held a neighborhood meeting on December 12, 2017. Twelve area property owners attended and asked questions pertaining to setbacks, tree removal, and access.

- **Planning Commission Concept Plan Review**: The planning commission conducted a Concept Plan Review on December 14, 2017. The commission generally noted that detached townhomes were a desirable home type and may provide a good transition between single-family areas to the south and commercial areas to the north. However, the commission also expressed general concern about: (1) minimal setback suggested from the north and west property lines; (2) tree removal on the west side of the site; and
(3) visitor parking. The owner of the commercial property immediately to the north addressed the commission. He outlined a variety of concerns related to setbacks, lack of screening between properties, off-site drainage and trees impacts, and pedestrian safety. The owner also noted current issues with people trespassing on his property.

- City Council Concept Plan Review. The city council Concept Plan Review is intended as a follow-up to the planning commission meeting and would follow the same format as the planning commission Concept Plan Review. No staff recommendations are provided, the public is invited to offer comments, and council members are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.

Staff Recommendation

Staff recommends the city council provide comment and feedback on the identified key issues and others deemed appropriate. The discussion is intended to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Through:  Geralyn Barone, City Manager
           Julie Wischnack, AICP, Community Development Director
           Loren Gordon, AICP, City Planner

Originator:  Susan Thomas, AICP, Assistant City Planner
ADDITIONAL INFORMATION

Next Steps

- **Formal Application.** If the developer chooses to file a formal application, notification of the application would be mailed to area property owners. Property owners are encouraged to view plans and provide feedback via the city’s website. Through recent website updates: (1) staff can provide residents with ongoing project updates, (2) residents can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) residents may provide project feedback on project; and (4) staff can review resident comments.

- **Neighborhood Meeting.** Prior to the planning commission meeting and official public hearing, an additional public meeting would be held with neighbors to discuss specific engineering, architectural and other details of the project, and to solicit feedback. This extends the timing that has historically been provided in advance of the planning commission review to allow more public consideration of the project specifics.

- **Council Introduction.** The proposal would be introduced at a city council meeting. At that time, the council would be provided another opportunity to review the issues identified during the initial concept plan review meeting, and to provide direction about any refinements or additional issues they wish to be researched, and for which staff recommendations should be prepared.

- **Planning Commission Review.** The planning commission would hold an official public hearing for the development review and would subsequently recommend action to the city council.

- **City Council Action.** Based on input from the planning commission, professional staff and general public, the city council would take final action.

Roles and Responsibilities

- **Applicants.** Applicants are responsible for providing clear, complete and timely information throughout the review process. They are expected to be accessible to both the city and to the public, and to respect the integrity of the public process.

- **Public.** Neighbors and the general public will be encouraged and enabled to participate in the review process to the extent they are interested. However, effective public participation involves shared responsibilities. While the city has an obligation to provide information and feedback opportunities, interested residents are expected to accept the responsibility to educate themselves about the project and review process, to provide constructive, timely and germane feedback, and to stay informed and involved throughout the entire process.

- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and
concerns prior to the council’s consideration by carefully balancing the interests of applicants, neighbors, and the general public.

- **City Council.** As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, planning commissioners, applicants and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.

- **City Staff.** City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
• Reviewed a concept plan for Dominium apartments that would be located in Opus. The use and density was found to be appropriate. Integrating parks and trails in Opus was discussed.

There was a comprehensive guide plan meeting December 11, 2017 and the next one will be in January 2018. Please check the city’s website, eminnetonka.com, to confirm the date.

The next planning commission meeting will be January 4, 2017.

6. Report from Planning Commission Members

Schack reported on how the comprehensive guide plan meeting focused on economic development. She encouraged everyone to watch the presentation and discussion on line. Powers agreed that it is good to get involved and learn how a city operates.

Calvert attended the mountain bike meeting that had over 200 interested parties in attendance. There is a lot of education needed to learn about mountain-bike trails.

7. Public Hearings: Consent Agenda

No item was removed from the consent agenda for discussion or separate action.

Calvert moved, second by Powers, to approve the item listed on the consent agenda as recommended in the staff report as follows:

A. Time extension for a parking lot setback variance from 20 feet to 5 feet at 11311 K-Tel Drive.

Approve a 12-month time extension.

Knight, O’Connell, Powers, Schack, Sewall, Calvert, and Kirk voted yes. Motion carried and the item on the consent agenda was approved as submitted.

Chair Kirk stated that this motion may be appealed to the city council if requested in writing within 10 days to planning staff.

8. Public Hearings: None

9. Other Business

A. Concept plan review for The Villas of Glen Lake at 5517 and 5525 Eden Prairie Road.

Chair Kirk introduced the proposal and called for the staff report.
Thomas reported. Staff recommends that the planning commission provide comments and feedback on the identified key issues and other issues the planning commission deems appropriate. The discussion is intended to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Blaine Waters, Quest Development, applicant, stated that:

- He lives in the Glen Lake community.
- There is a desire for this type of housing priced below the $800,000s.
- The intent is for the area to be walkable and this type of housing would fit with that vision.
- He welcomed comments and questions.

Powers asked for the price point. Mr. Waters was hoping for $550,000 to $650,000. It would be difficult to have the price any lower due to land and building costs. There would be 1,450 square feet on the main level and another 1,000 square feet in the basement. Mr. Waters was still researching if a second-story option would be offered. He predicted that most of the houses would be rambler style.

Chair Kirk confirmed with Mr. Waters that the houses would have walk-out basements.

In response to Powers’ question, Mr. Waters said that the backyards would be minimal and geared toward empty nesters. There would be small areas to congregate and entertain. The steep-slope, wooded area would not be able to be developed.

Chair Kirk invited those present to provide comments.

Greg Olson, owner of the office building at 5509 Eden Prairie Road, stated that:

- He would like a buffer between his lot and the proposed site. He would like a fence and landscaping.
- A five-foot setback seems too small.
- He invited commissioners to walk the property. He marked the property line. The corner of his office building is 17 feet from the property line.
- He is worried about water flooding his basement and parking lot on the east side.
- He thought five houses would be considered high-density residential. He was concerned with the amount of hard cover surface.
- He was worried about losing trees located on the property line.
- Neighbors have walked through his property for years with dogs and people have dumped garbage in his dumpster. Neighbors have dumped grass clippings on his property. He has had people sleep in their vehicles in the parking lot or leave their vehicles in the lot overnight.
- He takes pride in the parking lot. The plan upset him.
- He was worried about people walking through his parking lot.
• When Highway 169 was closed, traffic was backed up along Eden Prairie Road.
• He was concerned that the proposal’s snow would be dumped in his parking lot.
• The vehicle lights would shine in his windows.

Thomas appreciated the drainage, buffering, and setback questions which would be looked at if a formal application would be submitted. The concept plan may fit zoning for a PUD or R-3, low or medium density residential district.

Sewall stated that there should be an increase in buffering that corresponds with a decrease in the size of setbacks. As much natural buffering as possible would be the best option. He did not think empty nesters would walk around a parking lot too much.

Calvert suggested maintaining the mature trees between the properties to maintain the buffer and natural feel.

Chair Kirk stated that new townhomes at an affordable price are needed in the city. However, the proposal would sacrifice too much in terms of the volume of space that would be covered by hard surface. The root zones of the neighbors’ trees should be protected. That would require a little more than the five-foot setback. He struggled with the density. He was not as concerned with the hydrology, but the trees on the north and south would have to be protected. There could be a problem if the street would be widened or a sidewalk or trail added.

Calvert agreed that new, single-level housing stock is in desperate need. The natural buffer and preserving the root zones of the mature trees located between the site and neighbor are important. The houses would be located close to Eden Prairie Road which could become problematic if the street would be expanded or a sidewalk or trail added.

Schack concurred. The tree ordinance provides specific requirements that could be met by preserving the trees on the steep slope, but clear-cutting trees adjacent to the neighbor is not appealing. She encouraged incorporating the wooded areas into the plan.

Powers said that if the villas already existed and a commercial building would be proposed where it is now, then the commercial building would not be allowed to have such a small setback to the property line.

O’Connell asked if the city would have the ability to build a sidewalk north of the site. The trees located between the properties are important. He asked for the amount of buildable area and setbacks for an office building on the property zoned for an office building. He supports this type of housing. The proposal would provide a transition from an office building to single-family residential housing.

Calvert asked if there would be sustainable aspects to the proposal. Mr. Waters explained that the building code now requires many sustainable practices. The proposal
would meet or exceed code requirements. It would be cost prohibitive to utilize
geothermal or solar power for five villas.

Chair Kirk thought that the Groveland Pond villas are too large for the setbacks. The
volume of the houses in The Sanctuary creates a more aesthetically pleasing
development.

Calvert liked that the proposal would provide a transition from commercial to single-
family housing.

Knight did not have a problem with the setbacks between the proposed houses, but he
did not like the north side yard setback. That would be too tight. He asked how the
private drive would be regulated. Thomas answered that the city must approve a private
street, it was not a given. A private street must be able to support the weight and turning
radius of the largest fire truck. There is a minimum private drive/street width requirement
of 20 feet and 14-foot vertical requirement.

Calvert noted the issues of guest parking and snow removal.

Knight noted the large setback on the south side. He suggested moving the houses
further south.

The city council is tentatively scheduled to review the concept plan on January 8, 2018.

10. Adjournment

*Calvert moved, second by Powers, to adjourn the meeting at 7:27 p.m. Motion
carried unanimously.*

By: ____________________________
Lois T. Mason
Planning Secretary
City Council Agenda Item #14C
Meeting of Jan. 8, 2017

Brief Description
Concept plan review for Ridgedale Executive Apartments at 12501 Ridgedale Drive

Action Requested
Discuss concept plan with the applicant. No formal action required.

Background
At the Dec. 4, 2017 meeting, the city council reviewed a proposed redevelopment plan by the Rotenberg Companies for the existing commercial property located at 12501 Ridgedale Drive. The proposed plan, Ridgedale Executive Apartments, contemplated redevelopment of the former RS Sports Grill portion of the property with a 6-story, 111-unit luxury apartment building. The existing office building, located on the same property, would remain.

The council reviewed the plans and provided the following comments:

- The building was generally too tall and massive; 6 stories seemed like too much.
- The building made the site feel too dense.
- The building articulation could be improved along the Ridgedale Drive façade.
- There was no need for the trail; park dedication fees could be used for other improvements in the Ridgedale area.

Revised Plans
The developer has revised the proposed apartment building plans based on input from the neighborhood, planning commission, and city council. The revised plans include the following responses:

- A decrease in the building height from 6 to 5 stories.
- A decrease in the unit count from 111 to 93 units.
- An increase in setback to Ridgedale Drive (originally 27 ft. – 33 ft.; as revised 36 ft. - 40 ft.)
- Addition of landscaping along Ridgedale Drive.
- Reduction of the mass of the upper story building parapet end caps.
- Removal of the trail connection adjacent to the pond.

Neighborhood Meeting
The developer will be hosting a second neighborhood meeting prior to the city council meeting. The meeting will be held on Jan. 8, 2018 from 5 to 6 p.m. in the Minnehaha Room located in the lower level of city hall.
Staff Recommendation

Staff recommends the city council provide feedback on the revised plans. The discussion is intended to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Through:  Geralyn Barone, City Manager
          Julie Wischnack, AICP, Community Development Director

Originator:  Loren Gordon, AICP, City Planner
ADDITIONAL INFORMATION

Next Steps

- **Formal Application.** If the developer chooses to file a formal application, notification of the application would be mailed to area property owners. Property owners are encouraged to view plans and provide feedback via the city’s website. Through recent website updates: (1) staff can provide residents with ongoing project updates, (2) residents can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) residents may provide project feedback on project; and (4) and staff can review resident comments.

- **Neighborhood Meeting.** Prior to the planning commission meeting and official public hearing, an additional public meeting would be held with neighbors to discuss specific engineering, architectural and other details of the project, and to solicit feedback. This extends the timing that has historically been provided in advance of the planning commission review to allow more public consideration of the project specifics.

- **Council Introduction.** The proposal would be introduced at a city council meeting. At that time, the council would be provided another opportunity to review the issues identified during the initial concept plan review meeting, and to provide direction about any refinements or additional issues they wish to be researched, and for which staff recommendations should be prepared.

- **Planning Commission Review.** The planning commission would hold an official public hearing for the development review and would subsequently recommend action to the city council.

- **City Council Action.** Based on input from the planning commission, professional staff and general public, the city council would take final action.

Roles and Responsibilities

- **Applicants.** Applicants are responsible for providing clear, complete and timely information throughout the review process. They are expected to be accessible to both the city and to the public, and to respect the integrity of the public process.

- **Public.** Neighbors and the general public will be encouraged and enabled to participate in the review process to the extent they are interested. However, effective public participation involves shared responsibilities. While the city has an obligation to provide information and feedback opportunities, interested
residents are expected to accept the responsibility to educate themselves about the project and review process, to provide constructive, timely and germane feedback, and to stay informed and involved throughout the entire process.

- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and concerns prior to the council's consideration by carefully balancing the interests of applicants, neighbors, and the general public.

- **City Council.** As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, planning commissioners, applicants and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.

- **City Staff.** City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
Location Map

Applicant: Rotenberg Companies
Address: 12501 Ridgedale Dr
REVISED PLANS
12501 RIDGEDALE DRIVE
Minnetonka, MN

Project Narrative For Concept Review
January 8, 2018

Developer: Ridgedale Executive Apartments, LLC
12455 Ridgedale Drive, Suite 103
Minnetonka, MN 55305
(Mr. Richard J. Rotenberg – Principal)
952-545-9059

Property Owner: The Rotenberg Companies, Inc.

Architect: Momentum Design Group
Jesse Hamer, LEED AP, 612-859-5833

Civil Engineer/
Landscape Architect: Civil Site Group, PC
Patrick Sarver, Landscape Architect
A. SUBMITTAL CONTENTS
Included in this submittal is this Project Narrative and the preliminary development plans and drawings listed on the attached Schedule of Plans & Drawings.

B. PROJECT LOCATION
The 12501 Ridgedale project site lies just south of Ridgedale Center on Ridgedale Drive generally between the YMCA (to the east) and the Hennepin County Government Center/Library (and pond) to the west. It is located within a “Mixed Use” land use category area in the City's 2030 Comprehensive Guide Plan and is included in the study area of RIDGEDALE; A VISION FOR 2035 commissioned by the City of Minnetonka and dated September 2012.

C. PROPERTY – EXISTING CONDITIONS
The property on which the project is to be located is a single lot totaling approximately 193,047 square feet or about 4.43 acres in area. The re-development project is to be located at the north end of the property. The south end of the property has been maintained as a wooded bluff, with some wetland area below leading from the pond situated to the west of the property. Minimal or no impact on the south end of the property is expected. The northern part of the property is currently improved with a two-story office building and a one-story brick building (previously occupied as a branch bank by Norwest Bank and more recently as a restaurant by Redstone Grill). That so-called “Redstone” building would be removed as part of this re-development project. Parking lot improvements make up most of the rest of that north end. The current parking lot was extended onto the YMCA property to the east to accommodate the parking requirements of Redstone Grill. Those so-called YMCA parking lot improvements are expected to be removed.

Legal Description: Lot 3, Block 1, Ridgedale Center Fifth Addition, Hennepin County, Minnesota.
Ownership: The Rotenberg Companies, Inc.
PIN: 02-117-22-33-0009

D. SUMMARY OF THE PROPOSED PROJECT
The proposed 12501 Ridgedale project is the development of a new 93-unit apartment building which will include below grade and at grade indoor parking facilities. The building is designed to be located on the northerly part of the property, basically laid out along Ridgedale Drive and facing the Ridgedale Mall. It will be over the space now occupied by the restaurant building (which will be removed along with a substantial portion of the existing asphalt surface parking near the restaurant building). The office building (and its parking lot located just the east of the office building) will remain. The apartment units will be one and two bedrooms (and possibly one three bedroom). Two levels of in-structure parking will be reserved for the apartment residents. One level will be underground and the other will be indoor parking within the first level of the building, as shown on the attached plans for parking. Forty-five (45) spaces of surface parking will be constructed on site and an existing 13 spaces are to remain, bringing the total of surface parking to 58 spaces.

E. PROJECT CONCEPT
Redstone’s departure to join other restaurants at the mall has presented an excellent opportunity to participate in the transformation of the Ridgedale Village area. Our project is proposed to bring luxury apartment homes to what will become the Ridgedale Parkway, together with life and vitality to energize the Ridgedale Village as it grows and matures. Though only to include 93 apartments, the extraordinarily high quality of the 12501 Ridgedale project is anticipated to provide a substantial boost toward the critical mass necessary to achieve the City’s vision for Ridgedale. The project is designed to introduce the diversity of upscale housing and fill the niche for it. We expect to satisfy the demand of empty nester baby boomers for the highest quality home coupled with the freedom and amenities of a luxury apartment – an apartment home equivalent to the beautiful Minnetonka homes they're now leaving. These apartment homes will also attract young professionals and other newcomers to the City whose communities lack the means and/or the foresight to provide this sort of housing opportunity. As described in the City’s Vision statement for Ridgedale Village, the 12501 Ridgedale project will bring residents who wish to urbanize and engage in the walkable community envisioned for the Ridgedale Village. The close, very walkable, proximity of the
As said, the 12501 Ridgedale project will feature one and two bedroom luxury apartment homes designed and constructed to the highest condominium-caliber standards, offering residents the convenience of leasing, coupled with a thoughtfully programmed living environment. The apartments themselves will be larger than ordinarily offered and feature elegantly flowing floorplans, wide plank hardwood flooring, master bedroom suites with spacious walk-in closets and luxurious baths, private patios and gourmet kitchens. Many will offer expansive views of the adjacent pond and/or the wooded bluff to the south of the property. Upscale features at this full-service building will include a well-appointed sun terrace offering a heated pool, spa, poolside chaise lounges and an outdoor chef’s kitchen complete with large Viking grills and warming drawers. There are also expected to be an additional wide array of amenities available to the residents, including multi-level heated parking for all residents, electric vehicle recharging stations, an indoor car wash bay at the lower parking garage, and a temperature controlled bicycle storage and repair center in a secured area. The project will emphasize healthy living and so will also include a state-of-the-art fitness center, a private yoga/dance studio, a Pilates studio, a spin studio, putting green and an all sports simulator where residents can practice their golf swings and even play on a virtual football field. The building will be completely smoke-free. In addition, there will be a card/game room and a community room, featuring a fully equipped gourmet kitchen, large size TVs, intimate seating areas and a dining table large enough to accommodate 18 people, whether it may be for family gatherings or community events. In the event you wish to work from home, there will be a beautifully appointed boardroom, outfitted with video conferencing equipment, a TV monitor for presentations and complimentary WiFi. The building will be pet friendly with a pet spa for grooming. There will be a remarkable attention to detail with an unparalleled commitment to the residents’ experience, including on-site management staff and a 24-hour on-site lifestyle concierge will offer the highest level of service, such as last minute dinner reservations, personal shopping, arranging for airport transportation, event planning, housekeeping and more.

The 12501 Ridgedale project is being designed to add an iconic identity to the Ridgedale Village and enhanced sense of place, while also maintaining (and improving) compatibility with the surrounding neighborhood. The building is designed with an elegant stone façade and clean features to pair the welcoming and familiar style of the neighborhood with modern and luxurious finishes. The design sets a grand example for future development in the Ridgedale Village Center using upscale finishes and materials both on the interior and exterior of the building. This building design compliments the existing office building, integrating similar stone finishes, as well as continuing a similar warm color pallet. In addition, a number of improvements have been made to the front, north façade of the building, which enhances the interface with the public realm. The building face was pulled back from the boulevard and is now 36’ to 40’ back from the property line. This was achieved by stepping the façade of the building. A warm, complimentary stone was added to the façade at the base, the top floor, and a couple of accent areas. The bold, angled roof element at the northwest corner was removed in order to maintain a more suburban character, along with the lowering of the building height overall. Finally, a formal pedestrian connection to the public sidewalk was made at the entry of the building, including stairs, upgraded paving, the addition of seating areas, and landscaping. These characteristics will provide a building at 12501 Ridgedale that residents and neighbors will both appreciate and enjoy as a striking enhancement of the neighborhood and will, hopefully, become an iconic addition to the regional community.

Of special concern in regard to compatibility was the goal to respect, and minimize the impact on, the residential neighborhoods located to the south of the project. To that end, the building has been reduced in height from 6 floors to 5, has been sited on the property as far north as possible, lying along Ridgedale Drive, and has been designed to face northerly away from those residences and rather toward the mall. As the 12501 Ridgedale project is currently designed, the closest home is at least approximately 423 feet away from the nearest point of the proposed building. The expectation has been that the heavily wooded bluff located at the south end of the project property between the neighbors to the south and the proposed project building to the north would effectively screen the project and serve as an adequate buffer. While foliage is on the trees and understory in those woods, the screening effect of those woods should be excellent. During the neighborhood meeting recently hosted by the developer, concern was raised by the neighbors about the visibility of the project building from their homes through the woods, especially during the times when the foliage is down. Though some screening would still be effected by the woods during those seasons, it appears that at least some of the building would be visible from several of the homes. In response to those concerns, the developer has reduced the height of the building and is committed to
working with the affected residents to develop supplemental screening. Installation of evergreens at the
top of the bluff may be a viable solution, perhaps even providing some additional screening for those
neighbors from the views and lights of the mall itself (to the extent not screened by the proposed building
itself).

It may be worthy of noting in regard to compatibility too that the restaurant that had been operating on the
site, especially when busy, generated quite a bit of noise, lights and traffic (not to mention occasional police
activity) – material aspects of which should be substantially reduced or eliminated by virtue of the change
in use.

As noted, the project has been designed to respect and preserve the beautiful natural features of the
property – the wooded bluff, natural wetlands and the pond. It is expected that these natural areas will be
preserved as they are. The proposal also allows the easternmost portion of the existing parking lot to
return to a natural green space. This allows future natural growth to integrate into the wetland and forested
spaces of the site, improving the quality of the neighborhood and the environment. In addition to natural
growth, water infiltration will increase in this location as it was previously an impervious surface. Through
studies and design work from the civil engineer and landscape architect, the project strives to accomplish
a sufficient and environmentally friendly site design in respect to its current surroundings, meeting the
expectations for a high-quality development for the Ridgedale Village Center.

In regard to the proposed building itself, we expect to emphasize sustainability in its construction, operation
and life within it. More simply, we intend to use environmentally-friendly practices, products and services,
including the following:

1. The roof will be reflective with a high solar reflectivity index (SRI). This type of roof will reflect more
   solar heat, subsequently lowering the temperature inside the building and reducing the need for lower
   air-conditioning temperatures, keeping energy consumption (and costs) lower.
2. Low VOC paints, carpets and adhesives.
3. Recharging stations for electric vehicles to be located in the parking garage.
4. Energy efficient Low-E glass windows, which will reduce the use of artificial lighting (and corresponding
electricity).
5. High-performance, water saving fixtures, including low-flow shower heads, toilets and faucets.
6. High efficiency HVAC units (up to 11.0 EER and 95% TE)
7. Energy efficient appliances (ENERGY STAR® Certified)
8. Other high efficiency lighting and fixtures
9. Whenever possible, recycling of paper, cardboard, cans, plastics and glass will be emphasized --
   separate trash chute collection for recycling will be provided.
10. Use of paper envelopes, paper towels and other paper products with a high percentage of post-
    consumer recycled content will be encouraged.

It is also expected that the building itself will integrate nicely with the new Ridgedale Parkway and
Ridgedale Mall to the north of the building, with its high quality exterior finish (including natural cut stone)
being compatible with the most recent improvements to the exterior materials at the mall. Its appearance
viewed from the north is also expected to be buffered by the trees and vegetation along the Ridgedale
Parkway. Our multi-family residential project will create a transition from the high intensity commercial
retail mall and the residential neighborhoods to the south.

Finally, the 12501 Ridgedale project, offering a front row seat to the vibrant transformation of the Ridgedale
Village Center, should serve as a beacon to empty nesters and young professionals throughout the metro
area. The project offers a housing alternative that appears especially important and necessary to retain
affluent baby boomers who are now empty nesting and want to downsize in Minnetonka. Though wanting
the convenience of apartments, they do not want to downsize into lesser quality. Successful young
professionals share similar values. Housing necessary to satisfy this niche is not currently available in
Minnetonka. Without the leasing opportunity presented by the project, there will certainly be Minnetonka
empty nesters that move to other communities that do offer such high quality apartment homes. Moreover,
this project should attract similarly situated persons from other communities, including young professionals,
whether baby boomers, Gen X or Gen Y. As mentioned in the 2035 vision statement, this is the
demographic that want to urbanize and engage in a high quality experience within their community.
Accordingly, the future residents of the 12501 Ridgedale project will be exactly those persons that will
energize the Ridgedale Village envisioned by the city. They will be out and about, supporting and vitalizing Ridgedale Village Center - shopping, enjoying the broad array of other retail destinations and partaking of its fine dining opportunities - all within a short walk of the 12501 Ridgedale project. Accordingly, the 12501 Ridgedale project, if approved, and the residents it will bring, should provide an armature for the future investment and improvements necessary to successfully realize the vision that is the Ridgedale Village Center. Perhaps suffice to say, we expect the 12501 Ridgedale project would serve well the City's goals for the transformation of Ridgedale and, as importantly, strengthen the entire image of Minnetonka.

F. ADDITIONAL PROJECT DETAILS*

1. A. Unit Count, Floor Areas (approx.)

   153,240 sf:  93 Apartment Units, Common and Amenity Areas
   70,611 sf:  Garage, 192 Indoor Parking Stalls
   223,851 sf total

B. Parking Count

   192 garage stalls
   58 surface stalls
   250 total parking stalls

C. Unit Breakdown Per Floor

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<td>FLOOR FIVE</td>
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   TOTAL 56 37 93

2. Other Detail

   • GROSS SITE AREA 4.43 Acres; 193,047 sf
   • GROSS BUILDING AREA 14,361 sf Office Building
                             223,851 sf Apartment Building
   • NET FAR 0.90
   • APARTMENT UNITS 93 Units
   • RESIDENTIAL DENSITY 21.0 Units/Acres

* These details are current as of December 28, 2017 – the numbers may be modified as the project design matures.
SCHEDULE OF PLANS & DRAWINGS

(12501 Ridgedale Drive)

1. Rendering
2. Site plan
3. Elevations (North & East)
4. Elevations (South & West)
5. Southwest Isometric
6. Aerial View from Northwest
7. 3D Views
8. Lower Garage Floor Plan
9. 1st Floor Plan
10. 2nd Floor Plan
11. Typical Floor Plan
12. Site Context Plan
13. Neighborhood Context Plan
14. Site Sections
15. Neighborhood Perspectives
NEW APARTMENT BUILDING
FIRST FLOOR ELEVATION: 94’
BOTTOM OF LOWEST GARAGE: 93’-8”

EXISTING OFFICE BUILDING

PARKING SUMMARY
OFFICE REQUIRED PARKING SPACES:
14361 SF / 100 X 4 = 57 SPACES

APARTMENT REQUIRED PARKING SPACES:
MINNETONKA STANDARDS:
93 UNITS X 2 SPACES/UNIT = 186 SPACES REQUIRED

CURRENT DESIGN:
• INDOOR GARAGE SPACES PROVIDED 192
• OUTDOOR SPACES PROVIDED 58
TOTAL PARKING REQUIRED: 243
TOTAL PARKING PROVIDED: 250

UNIT COUNTS
• TWO BEDROOM 37 UNITS
• ONE BEDROOM 56 UNITS
TOTAL 93 UNITS

FAR CALCULATION
TOTAL SITE AREA
4.43 ACRES/193,047 SF
TOTAL PROTECTED WETLAND AREA
6838 SF
TOTAL BUILDABLE AREA
186,209 SF
NON GARAGE BUILDING AREA (153,240 SF) + EXISTING OFFICE AREA
(14,361 SF) / BUILDABLE LAND AREA(186,209 SF) = 0.90 FAR

MINNETONKA ZONING
PLANNED I-394 DISTRICT:
2017 LAND USE CATEGORY COMMERCIAL
ZONING
2020 LAND USE CATEGORY CHANGE TO MIXED
USE PROPERTY
2035 RIDGEDALE VILLAGE CENTER VISION:
• PEDESTRIAN FRIENDLY
• REVITALIZE USE
• ADDITIONAL RESIDENTIAL GROWTH
• VITALITY ENCOURAGED BY MIXED USES

LIGHTING STUDY
CURRENT DESIGN SITE LIGHTING:
• FOOTCANDLE UNDER POLE 5 FT-C
• FOOT CANDLE BETWEEN POLES 1 FT-C
SOUTHERN PERIMETER OF SITE

YMCA SITE LIGHTING:
• FOOTCANDLE UNDER POLE 10 FT-C
• FOOTCANDLE BETWEEN POLES 2 FT-C

GRAND TOTAL BUILDING AREA
223,851 SF
SOUTHWEST ISOMETRIC
NEW APARTMENT BUILDING
BOTTOM OF LOWEST GARAGE: 933'-8"
EXISTING OFFICE BUILDING
13 EXISTING STALLS REMAIN
FIRST FLOOR ELEVATION: 943'
RIDGEDALE DRIVE
5 STALLS
12 STALLS
7 STALLS
8 STALLS
NEW CITY PEDESTRIAN AND BIKE TRAIL
SITE SECTION B
443 FT TO BUILDING
5 STALLS
12 STALLS
4 STALLS
2 STALLS
SITE SECTION C
475 FT TO BUILDING
SITE SECTION A
423 FT TO BUILDING
NEW GREEN SPACE
YMCA BUILDING
RIDGEDALE MALL PARKING LOT
NORWAY PINE CIRCLE
AUSTRIAN PINE LANE
POTENTIAL EVERGREEN TREE SCREENING
7 STALLS
480X343
2017 MOMENTUM DESIGN GROUP LLC
RIDGEDALE EXECUTIVE APARTMENTS
MINNETONKA, MINNESOTA
ORIGINAL PLAN EXCERPTS
City Council Agenda Item #15A
Meeting of Jan. 8, 2018

Brief Description: Appointment of representatives to various advisory boards, commissions and committees

Recommended Action: Approve the appointments

Background

Each year the council is required to approve the appointments of the representatives to various outside boards, commissions and committees. These appointments are indicated on the attached listing by a single asterisk next to the committee name. The appointments that are not made on an annual basis are indicated by a single spade next to the committee name.

Also on the roster is a listing of the various city advisory groups, outside agency boards, commissions and committees for which council members, city staff, and others serve as City of Minnetonka representatives. These representatives have been appointed by other agencies, and formal city council approval is not necessary. This list is updated and presented to the council on an annual basis.

Recommendation

Approve the following appointments:

- Brad Wiersum as the Minnetonka City Council Legislative Contact to Metro Cities.
- Brad Wiersum as the Minnetonka City Council representative to the Municipal Legislative Commission Board of Directors.
- [Open position] as the Minnetonka City Council representative to the I-494 Joint Powers Organization.
- [Open position] as the Minnetonka City Council representative to the Southwest Suburban Cable Commission and Robert Ellingson as the alternate.
- Corrine Heine as the Minnetonka City Council’s appointed representative to the Suburban Rate Authority and Perry Vetter as the alternate.
- Darin Ellingson as the Minnetonka City Council’s appointed representative to the Bennett Family Park Board.
- Sara Woeste as the Minnetonka City Council’s appointed representative to the Minnetonka School District Community Education Advisory Council.
- Kelly O’Dea as the Minnetonka City Council’s appointed representative to the Music Association of Minnetonka.
- Brad Wiersum as the Minnetonka City Council representative to the West Hennepin Affordable Housing Land Trust (Homes Within Reach).
- Alisha Gray as the Minnetonka City Council’s appointed representative to the Wayzata Schools Community Collaboration Council.
Meeting of Jan. 8, 2018
Subject: Appointment of representatives to various advisory boards, commissions, etc.

Submitted through:
   Brad Wiersum, Mayor
   Geralyn Barone, City Manager

Originated by:
   Pat Schutrop, Administrative Assistant
# City of Minnetonka
## 2018 Council Representatives/Staff Participant or Contact

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<th>Committee</th>
<th>Council Representative</th>
<th>Staff Participant/Contact</th>
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<td><strong>CITY ASSOCIATIONS</strong></td>
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<tr>
<td>LMC Improving Fiscal Futures Committee</td>
<td>None</td>
<td><strong>Geralyn Barone</strong></td>
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<td>LMC Improving Service Delivery Committee</td>
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<td>LMC HR &amp; Data Practices Committee</td>
<td>None</td>
<td>**Corrine Heine; **Jason Branstrom</td>
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<td>LMC Board</td>
<td>Brad Wiersum</td>
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<td>*Metro Cities Legislative Contact</td>
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<td>Metro Cities Municipal Revenue &amp; Tax Committee</td>
<td>None</td>
<td>Merrill King</td>
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<td>Metro Cities Metropolitan Agencies Committee</td>
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<td>Metro Cities Housing &amp; Econ. Develop. Committee</td>
<td>Patty Acomb</td>
<td>Julie Wischnack</td>
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<td>NLC Energy, Environment, &amp; Natural Resources Steering Committee</td>
<td>Patty Acomb</td>
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<td><strong>REGIONAL ORGANIZATIONS</strong></td>
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<td>*Bassett Creek Watershed Mgmt. Commission</td>
<td>Mike Fruen &amp; Bill Monk</td>
<td>Will Manchester</td>
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<td>SW LRT Comm. Works Steering Committee</td>
<td>Tony Wagner &amp; ** Brad Wiersum</td>
<td>**Julie Wischnack</td>
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<td>SW LRT Mgmt Committee</td>
<td>Brad Wiersum &amp; ** Tony Wagner</td>
<td>Julie Wischnack</td>
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<td>SW LRT Executive Change Control Board</td>
<td>Brad Wiersum</td>
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<td>SW LRT Community Advisory Committee</td>
<td>Brian Kirk &amp; Shriajoy Abry</td>
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<td>Southwest LRT Business Advisory Committee</td>
<td>Dave Peliner &amp; Dan Duffy (Twinwest)</td>
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<td>*1-494 Joint Powers Organization</td>
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<td>**Julie Wischnack</td>
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<td>Lake Minnetonka Area Mayors Group</td>
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<td>*Lake Minnetonka Conservation District</td>
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<td>Minnehaha Creek Watershed District</td>
<td>Bill Becker; ** Patty Acomb</td>
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<td>**Alisha Gray &amp; **Julie Wischnack</td>
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<td>*West Hennepin Affordable Housing Land Trust</td>
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Revised Jan. 2018
Addendum
Minnetonka City Council
Meeting of January 8, 2018

13A On-sale intoxicating liquor license for Copper Cow, LLC, at 5445 Eden Prairie Rd

14B Concept plan review for The Villas of Glen Lake at 5517 and 5525 Eden Prairie Road

The attached email was received after the council packet was distributed.

14C Concept plan review for Ridgedale Executive Apartments at 12501 Ridgedale Drive

The attached letter was received after the council packet was distributed.
ITEMS 13A and 14B

City staff received the attached comment after the council packet had been finalized.

ITEM 14C

City staff received the attached letter today.
City officials,

I am writing today to voice my support for both Copper Cow and Villas of Glen Lake and welcome new and increased density infill to the Glen Lake neighborhood. Both proposals fulfill the guiding principals in the Glen Lake neighborhood master plan.

Even with the parking variance for the Copper Cow, I feel that this will not be an issue as many neighborhood residents walk or bike to establishments and events in the neighborhood.

Minnetonka should embrace both of these projects as they will continue to build the tax base of the city and showing that the Glen Lake neighborhood is a vibrant and active place to live, work and play.

Brian Smidt

Minnetonka, MN
January 8, 2017

The Honorable Mayor Brad Wiersum
and City Council Members
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Proposed Ridgedale Executive Apartments, 12501 Ridgedale Drive

Dear Mayor Wiersum and Council Members:

This firm represents a coalition of neighbors affected by and opposed to the Ridgedale Executive Apartments project ("Project") that is proposed by Rotenberg Companies ("Applicant") at 12501 Ridgedale Drive ("Property") in the City of Minnetonka. The project is before the City Council for concept plan review this evening, January 8th. We respectfully request that this letter be made part of the administrative record for the Project along with my previous correspondence from November 30, 2018.

Our clients recognize and appreciate that the Applicant has eliminated the proposed trail and reduced the proposed height of the Project from six (6) stories to five (5) stories in response to the concerns of the neighborhood and the City Council. Notwithstanding the revisions, the Project has effectively been reduced by approximately eight (8) feet. The size, scale, and intensity of the proposed Project still exceed that allowed by the City Code and contemplated in the 2030 Comprehensive Guide Plan (the "Comp Plan").

Based on the preliminary concept drawings, the Project is inconsistent with the City’s Comp Plan and zoning code and inconsistent with the surrounding community. The building exceeds the allowed size and scale and is more appropriate in the core of the Ridgedale area or along Interstate 394, as opposed to the Project’s location on the periphery of the area which abuts a longstanding residential neighborhood. The following letter summarizes several of our clients’ objections.

The Project Conflicts with the Comprehensive Plan

The Project is not consistent with the City’s Comp Plan and would require, at a minimum, a Comp Plan amendment. State law and the City Code require all zoning regulations to be consistent with the City’s Comp Plan.¹ The Comp Plan’s Future Land Use map designates the

¹ Minn. Stat. § 473.858, subd. 1.
Property for Mixed Use. In addition, the Property is designated as the southernmost edge of the I-394 Corridor/Ridgedale Area.\(^2\)

The Project is inconsistent with several guiding Comp Plan principles for the I-394 Corridor/Ridgedale Area and conflicts with the intent of the designation. The guiding strategies of the I-394 Corridor/Ridgedale area include “Inclusion of transitions to surrounding residential uses to provide buffers (as maintained in the past) between the more intense uses to the north (i.e., Ridgedale Mall) and the low density residential uses to the south.”\(^3\) This guiding principle demonstrates the City’s intent for the district, which is to concentrate the density along I-394 and in the Ridgedale core. The Project would grossly conflict with this intent and result in the development of some of the highest-density residential development on one of the southernmost properties in the designated area, immediately adjacent to a single-family neighborhood.

The Project further conflicts with several of the development criteria established by the Comp Plan for the I-394 Corridor/Ridgedale Area, including the following policies:

1. **Policy 4.A.1. Adherence to the development criteria including the policies of the I-394 Plan and the I-394 zoning district standards.**\(^4\)

The Project conflicts with this policy as it does not comply with the Planned I-394 (PID I-394) District standards and therefore requires a Comp Plan amendment and a zoning code amendment. The Project is proposed as mixed use. The Comp Plan designates the Property as both Mixed Use and within the I-394 Corridor/Ridgedale Area, which pursuant to this Comp Plan policy must be consistent with the PID I-394 District.

The PID I-394 District does not permit mixed use development. Accordingly, the Project is not permitted unless it is rezoned to the PUD District. The Property cannot, however, be rezoned pursuant to City Code Section 300.31, subd. 11.b, which prohibits rezoning to any other zoning classification. “A contrary rezoning will be permitted only if it is demonstrated that the planned I-394 district incorrectly applies to a specific property.”\(^5\) Accordingly, the Project cannot be rezoned to another zoning district without violating this provision. If the City determines that the I-394 District “incorrectly” applies to the Property under this exception, it would mean that a conflict exists between the Comp Plan’s designation of the Property within the I-394 Corridor/Ridgedale Area and the PID I-394 District. Minnesota law further requires that if the Comp Plan “is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the plan . . . and, if necessary, amendment of its comprehensive plan.”\(^6\) Thus, in order to approve the Project the Property must be rezoned, and to rezone the Property, the City must first amend the Comp Plan designation of the Property or amend this conflicting policy.

\(^2\) Comp Plan IV-32.
\(^3\) Comp Plan IV-31 (emphasis added).
\(^4\) Comp Plan IV-46.
\(^5\) City Code § 300.31, subd. 11 b (emphasis added).
\(^6\) Minn. Stat. § 473.858.
2. **Policy 4.A.2.** Definition of appropriate building heights and massing relative to the existing ridgelines and topography as part of project review to manage impacts on nearby low density residential neighborhoods.\(^7\)

The Project conflicts with this policy as the height and massing are grossly out of scale and character from existing structures, and will directly and adversely impact the low-density residential neighborhoods. This provision was explicitly written to protect the neighborhood immediately to the south of the Property from development that is too tall and out of scale with the single family residences to the south. This policy further demonstrates that the intent of the I-394 Corridor/Ridgedale Area was to concentrate density away from the neighborhoods to the south.

3. **Policy 4.A.33.** Provision of adequate buffering between differing land uses, as appropriate.\(^8\)

The Project conflicts with this policy as the Property is not adequately buffered from the residences to the south. The Project will substantially increase the noise, traffic, and intensity of the use of the Property that will detrimentally impact the neighboring residences. As proposed, the Project includes balconies for the units facing the neighborhood and a large outdoor recreation area oriented towards the neighborhood to the south. These features will result in increased noise and disturbance to the adjacent residential neighborhood. Very-high density residential and single-family homes are not compatible and such very-high density uses should be located away from the single-family residential neighborhood and towards the Ridgedale core.

**Excessive Floor Area Ratio**

Despite modifications to the concept plan, the Project still grossly exceeds the allowed scale and massing of the surrounding community and the City’s zoning code and Comp Plan. The proposed Project will retain a small office building, along with the five-story residential building. The effective Floor Area Ratio (FAR) of the Project purports to be a combined Floor Area Ratio (FAR) of 0.90. Under the PID I-394 District, office and high-density uses are both limited to a maximum FAR of 0.75.\(^9\) This increase of massing could be appropriate in the Ridgedale core or along the interstate, but is not appropriate immediately adjacent to the single-family neighborhood to the south.

**Adverse Traffic Impacts**

The proposed 93 dwellings and 250 parking spaces will dramatically increase the noise, pollution, and traffic. The proposed 93 additional dwelling units is the equivalent of a large residential neighborhood located on an approximately 2-acres site. The resulting increases in trip

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\(^7\) Comp Plan IV-46.  
\(^8\) Comp Plan IV-46.  
\(^9\) City Code § 300.31, subd. 5.d.
The Honorable Mayor Brad Wiersum  
and City Council Members  
January 8, 2017  
Page 4

 generation will be excessive, causing substantial impacts on traffic in the surrounding community.

For these reasons and others that will be stated at the Planning Commission meeting, we strongly object to the Project as currently proposed and urge the Planning Commission and City Council to direct the Applicant to work with staff to develop a project that is consistent with the City’s policies and the law, and will not adversely impact the immediately adjacent single-family neighborhood to the south.

Very truly yours,

Gary A. Van Cleve, for  
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: 952-896-3277  
Direct Fax: 952-842-1720  
Email: gvancleve@larkinhoffman.com

cc: Corrine Heine, City Attorney  
Dr. Mark and Heather Stesin  
Felix and Donna Ricco  
Andy and Zhanna Schectman