Agenda
Minnetonka City Council
Regular Meeting, Monday, July 9, 2018
6:30 p.m.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
4. Approval of Agenda
5. Approval of Minutes: May 14, June 4 and June 18, 2018 regular council meetings
6. Special Matters:
   A. Recognition of City Councilmember Tony Wagner
      Recommendation: Recognize Tony Wagner
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. Twelve month extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat at 13929 Spring Lake Road
    B. Resolution approving a conditional use permit for an educational institution at 18707 Old Excelsior Blvd.
    C. Ordinance and resolution approving the Master Development Plan amendment and Site and Building Plan Review with drive aisle and stall length variances for a proposed parking ramp addition at 12700 Whitewater Drive
    D. Order for tobacco license violation at Freedom Valu Center #57, 17516 State Hwy 7
    E. Resolution providing for the issuance and sale of $10,000,000 General Obligation Utility Revenue Bonds, Series 2018A
11. Consent Agenda - Items Requiring Five Votes:
   A. Resolution approving a conditional use permit, with a parking variance, to expand an existing medical clinic at 10653 Wayzata Blvd.

12. Introduction of Ordinances: None

13. Public Hearings: None

14. Other Business:
   A. Conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run
      Recommendation: Adopt the resolution approving the conditional use permit (4 votes)
   
   B. Items concerning Ridgedale Executive Apartments located at 12501 Ridgedale Drive:
      1) Rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD);
      2) Master development plan; and
      3) Final site and building plan.
      Recommendation: Adopt the resolution denying the request (4 votes)

15. Appointments and Reappointments: None

16. Adjournment
1. **Call to Order**  
Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

2. **Pledge of Allegiance**  
All joined in the Pledge of Allegiance.

3. **Roll Call**  
Council Members Tim Bergstedt, Tony Wagner, Patty Acomb, Mike Happe, Deb Calvert, and Mayor Wiersum were present. Bob Ellingson was present at 6:34 p.m.

4. **Approval of Agenda**  
Bergstedt moved, Calvert seconded a motion to accept the agenda with addenda to items 14B and 14C. All voted “yes.” Motion carried.

5. **Approval of Minutes: April 2 and 16, 2018 regular council meetings; and April 16, 2018 LBAE meeting**  
Bergstedt moved, Calvert seconded a motion to approve the minutes of the April 2, 2018 regular council meeting, as presented. Bergstedt, Wagner, Acomb, Calvert and Wiersum voted “yes.” Happe abstained. Ellingson was absent. Motion carried.

Bergstedt moved, Calvert seconded a motion to approve the minutes of the April 16, 2018 regular council meeting, as presented. Bergstedt, Acomb, Calvert and Wiersum voted “yes.” Wagner and Happe abstained. Ellingson was absent. Motion carried.

Bergstedt moved, Calvert seconded a motion to approve the minutes of the April 16, 2018 Local Board of Appeal and Equalization meeting, as presented. Bergstedt, Acomb, Calvert and Wiersum voted “yes.” Wagner and Happe abstained. Ellingson was absent. Motion carried.

6. **Special Matters:** None

7. **Reports from City Manager & Council Members**  
City Manager Geralyn Barone reported on upcoming city events and council meetings.

Wiersum said he attended a meeting of the Metropolitan Legislative Commission. The commission met with the governor’s Chief of Staff Joanna Dornfeld and Deputy Chief of Staff Erin Campbell. They discussed legislative priorities including bills that relate to local control and long term transportation funding. He also reported on the accomplishments of four members of the Williston running club of which he is a member.
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 approving a conditional use permit for a graduate school within the industrial district at 10225 Yellow Circle Drive

      Ellingson moved, Wagner seconded a motion to adopt resolution 2018-055 approving a conditional use permit for a graduate school within the industrial district at 10225 Yellow Circle Drive. All voted “yes.” Motion carried.

   B. Legal services agreement

      Ellingson moved, Wagner seconded a motion to authorize execution of a legal services agreement with Weitz & Luxenberg, P.C., Super Law Group, and Gray Plant Mooty Mooty & Bennett, P.A. regarding litigation. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

   A. Resolution approving a preliminary plat of ARUNDEL ADDITION, a three-lot residential subdivision with variances, at 15500 Minnetonka Blvd.

      Ellingson moved, Calvert seconded a motion to adopt resolution 2018-056 approving the preliminary plat of ARUNDEL ADDITION, a three-lot residential subdivision with variances, at 15500 Minnetonka Blvd. All voted “yes.” Motion carried.

12. Introduction of Ordinances:

   A. Ordinance relating to diseased and hazard trees

      City Attorney Corrine Heine gave the staff report.

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

13. Public Hearings:

   A. Temporary on-sale liquor license for The Rotary Club of Minnetonka Foundation, 14600 Minnetonka Blvd.

      Barone gave the staff report.

      Wiersum opened the public hearing at 6:49 p.m.
Chris Rosenlund from the Rotary Club of Minnetonka provided details of the event.

Wiersum said the Rotary Club was a vitally important organization in the community and he thanked them for all the work they do.

Wiersum closed the public hearing at 6:51 p.m.

Acomb moved, Happe seconded a motion to grant the temporary liquor license in connection with a fundraising event for The Rotary Club of Minnetonka Foundation. All voted “yes.” Motion carried.

**B. Temporary on-sale liquor licenses for Unmapped Brewing, LLC, 14625 Excelsior Blvd.**

Barone gave the staff report.

Megan Park from Unmapped Brewing provided information about the event.

Acomb congratulated Park on the success of the business. She said Unmapped was a fabulous draw for the Glen Lake area. Wiersum said Unmapped had really connected with the community.

Wiersum opened the public hearing at 6:55 p.m. No one spoke. He closed the public hearing at 6:55 p.m.

Bergstedt moved, Calvert seconded a motion to grant the temporary liquor licenses in connection with both events. All voted “yes.” Motion carried.

**C. Ordinance granting an electric franchise to Northern States Power Company**

Heine gave the staff report.

Wiersum opened the public hearing at 6:59 p.m. No one spoke. He closed the public hearing at 6:59 p.m.

Wagner moved, Calvert seconded a motion to adopt ordinance 2018-04. All voted “yes.” Motion carried.

**14. Other Business:**

**A. Amendment to resolution 2018-015, as it pertains to an expansion permit for a restaurant with outdoor eating area at 5445 Eden Prairie Road**

City Planner Loren Gordon gave the staff report.

Bob Zappa, the general contractor on the project, said he was brought in after the initial bids were received. He said the bids were quite misleading in terms of
the engineering. He proposed going to the full roof which would bring symmetry to the building and would dramatically reduce costs.

Bergstedt moved, Wagner seconded a motion to adopt resolution 2018-057 for an amendment to resolution 2018-015, as it pertains to an expansion permit for a restaurant with outdoor eating area at 5445 Eden Prairie Road. All voted “yes.” Motion carried.

B. Items concerning Solbekken Villas, a residential development at 5740 and 5750 Shady Oak Road

Gordon gave the staff report.

Happe said it looked like a great plan and the project area sorely needed development. He said there seemed to be a lot more slope than was shown on the renderings. He asked what the distance was between the buildings and the hill and if there was any concern about the slope. Gordon said the slope on the backside of the property ranged from 21 to 30 percent. He said the plans were a little bit misleading because of the one foot contours. A two foot contour topography map is more typical and that might make looking at the slope on this map seem a lot taller and steeper. The distance from the cut in the slope to the retaining wall was about 20 feet.

Wagner said he continued to have significant concerns with the looks of the townhomes on Shady Oak Road.

Ed Briesemeister, the applicant, said in terms of the slope he loved the initial designs but when the site work bids were received the price was too expensive. He still thought it was a good idea to pay the park dedication fees but also to dedicate the strip of land to the city as part of Lone Lake Park. People already assume the strip is a part of the park. Dedicating the property would create a better long term boundary.

Mike St. Martin, the project civil engineer from Loucks, said there was a 20 foot swath of land behind the buildings that would handle the drainage. There would be storm sewer between the building and the retaining wall.

Briesemeister said they may not be able to satisfy Wagner’s concerns but the goal was to have something that looks good from Shady Oak Road. Driving from the south a person really won’t see the development but driving from the north the look would be something elegant with a nicely proportioned look. If the project was approved he and the builder would meet with the city’s planning staff to address some of their concerns which were consistent with Wagner’s concerns.

Jason Aune, the project’s landscape architect, said the screening of the units had been a hot topic. From a landscape architectural point of view what was being done was to create some variation of pattern and screening along the back. For the gateway area there would be a country style fence mixed with varieties of
evergreens and deciduous plants. There would be an effort to ensure that upon installation there would be significant plant material. Perennial plants would also be used.

Calvert said she shared Wagner’s concerns about the appearance of homes built along the roadways. She said the landscaping plan helped in this situation. The development had an elegant look and feel. It appeared to have adequate parking. The engineering addressing the steep slope also seemed adequate. She said it was a very unique and much needed project.

Wagner said he absolutely commended the developer on the entire project. The look from Shady Oak Road was not acceptable and the landscaping was inadequate. For six months of the year the look would be an issue. He said it took so much away from how beautiful the rest of the development was. A little more work to make this piece look better would lead to his support of the project. Shady Oak Road was such a busy road that the development should be showcased as a jewel.

Acomb said she thought the project was exciting and she commended the creativity of the single level living. She thought the unit buildings were full of character and charm. She shared Wagner’s concern about the plainness of the detached homes. She would like to see some more work to make it look better.

Barone noted that the deadline for a decision was July 21 so there would be time for the applicant to work further with staff if that was the council’s decision.

Wagner noted he had given the same comments three times before, so he was skeptical that changes would be made. He didn’t want to hold up the development but he could not vote to approve without seeing more detailed designs.

Calvert said she agreed with Wagner that this was the one time to get things right. Shady Oak Road was a major thoroughfare and there may be a way to make it look more attractive with a little more work.

Happe said it was a challenging site in terms of the physical space. Currently the area was a blighted area in sore need of development. He thought the project was great.

Ellingson said he didn’t want to hold up the project and the council didn’t have the authority to make aesthetic decisions. He appreciated the concerns but he did not want to hold up the project based on the concerns.

Bergstedt said it was a nice project and the applicant could work with staff to tweak it to make it look a little more appealing.

Wiersum said he understood the concerns about the look from Shady Oak Road but overall the project was very attractive. It was a bit of a conundrum because he also wanted the homes to look good to potential buyers. The view to Shady
Oak Road was not the preferred view for large windows. He encouraged the developer to work with staff to see if further improvements could be made. He said it was possible to have a landscaping plan that would pretty much make the homes invisible from Shady Oak Road but over time trees grow and if they were too close together would die. To require a landscaping plan where the trees would need to be thinned out was not a responsible solution. He encouraged the developer to put in landscaping that was meant to be sustainable with perhaps some fencing or other types of architectural elements that could improve the view for both the homeowners and traffic going by. He wanted to be mindful of the costs the city was requiring from the developer.

Calvert moved, Bergstedt seconded a motion to adopt ordinance 2018-05 and resolution 2018-058 approving final site and building plans and resolution 2018-059 approving preliminary and final plats. Bergstedt, Ellingson, Happe, Calvert, and Wiersum voted “yes.” Wagner and Acomb voted “no.” Motion carried.

C. Conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run

Gordon gave the staff report.

Wagner asked for information about how the home and the facility would coexist. If the home went away in the future, what would that mean for the conditional use permit? Gordon said the application showed the three lots in a combined fashion. If the residence did not exist the site was not more impactful than what was approved. The driveway that was part of the residence could not be used for access to the Chabad site. Wagner asked if language was needed to clarify this. Gordon said there was a condition in the resolution that basically states the application as submitted is what was being approved. Any changes would need council review.

Wagner said he really liked the area graded for a trail. Hopkins Crossroad has been on the list of unfunded road improvements since before 2004. He asked if the area graded for the trail was dedicated right of way for city or county use. Gordon said the area graded for the trail was outside the property boundary and was currently right of way area. Wagner asked if in the future Hopkins Crossroad became a three lane road with trails, should the city be planning for more right of way acquisition and incorporate that as a consideration for the council given it was known a trail was coming. Gordon said there wasn’t a plat as a part of this project. The three lots were expected to be combined in order to meet all the building setback requirements. City Engineer Will Manchester said the trail was scheduled for 2023 and there should be adequate space as the current configuration exists.

Calvert said information in the council packet indicated 39 percent high priority tree loss. This was beyond the ordinance with a much higher percentage of significant tree loss. She said this concerned her. She asked if this was being allowed because it was a private development. Gordon said the application did not trigger the tree ordinance. If there was a re-platting the ordinance would
apply. Calvert noted she lived near her own synagogue which was much larger than this one. She was acutely aware of traffic issues during certain times of the year and on certain times on certain days. She asked if it was possible to have a right turn only exit on to Hopkins Crossroad to mitigate some of the left turn on left turn issue. Gordon said for a right turn only exit two features were needed. One was a pork chop type of island. The other feature was a median separating the lanes of traffic on the road. He said this would require a permit from the county to put the median in and he doubted if the county would approve it for this type of use given the traffic. Another issue related to enforcement.

Acomb noted the staff indicated they had a discussion with Hennepin County on what the county would find to be acceptable. The county indicated it would be acceptable to have an exit onto Mill Run or an exit further to the north. She asked how much further to the north an exit might be. Gordon said the county’s first preference would be to have access onto Mill Run. They would like to consolidate vehicles from this project at an intersection. The county indicated the second option would be an exit as far north as possible to get halfway between Mill Run and Hillside Lane.

Calvert said all the renderings included space for a mikveh, or bathing area, in the far eastern side of the building. This appeared very close to the back property line. She said staff told her the mikveh was not enclosed but was an outdoor mikveh. Gordon confirmed it was an outdoor space so there was no setback requirement.

Wagner asked if the south court and north court were all impervious pavers. Gordon said staff looked at them as impervious.

Rabbi Mordechai Grossbaum, 3301 Robinwood Lane, said Chabad Center for Jewish Life was an international organization of about 4,000 centers around the world with six local centers. For many years Chabad had been looking for a place to call home. He said the synagogue was a small piece of the programs they do. He clarified the mikveh would be indoors at the side of the building and not the back. There were a number of other changes that had been made during the process. He said 15,000 square feet sounded like a large number but put in perspective with a 9,000 square foot house for two people it wasn’t really that large. The 15,000 square feet allow the center to have classroom and office space eliminating the need to constantly convert one into the other.

Aaron Parker, the project architect, showed the plan that was presented to the planning commission and the revised plan. He said Wagner was correct about the permeable pavers in the north and south courts. He noted the library had been moved from the east wing allowing the wing to be shortened up. The height had been reduced as well. Additional trees had been saved.

Calvert said she appreciated the work that was put in to address concerns that had been raised.
Acomb asked where the playground would be located. Parker pointed to the area that would likely be the playground area. The actual playground area was not yet determined.

Calvert said she had concerns about pedestrian safety. She said many people walk and bike on this stretch of Hopkins Crossroad and she thought the area was dangerous. The council’s purview however was on the land use. She asked what the congregation planned to do to keep the people walking to the shul safe. Grossbaum said the safety of those walking was clearly important. Walking would occur once a week for Friday night services. He said reflective vests would be available.

Calvert said her congregation on high holy days has an agreement with West Junior High for parking. There’s a shuttle bus available. She asked if similar arrangements had been made by Chabad. Grossbaum noted he had an email from the Ackerberg Group indicating Cedar 73 had parking available and was agreeable to provide shuttle service.

Lori Fritz, 11111 Mill Run, said she and her husband are Jewish and are actively involved in the Jewish community so any objections she had were certainly not religiously motivated. She said if the development was completed in the right way with the right principles applied, taking into considerations some suggestions, then she could be supportive. The highest responsibility the council had as elected officials was the safety and quality of life for residents. As proposed the center did not fit into the existing landscape, community and neighborhood. She asked the council not to approve the conditional use permit.

Jo Soo, 2391 Vernon Circle, said the proposed 15,000 square feet was big enough to fit many more than 125 people. He said the neighbors kept hearing the impact on traffic would be small. Activities would be minimal. But the size of the building indicated something larger would occur. With growth, current issues would be magnified and new issues would arise. The proposal was just too big. He said a building half the size would fit in more harmoniously with the neighborhood. Reducing the height wasn’t enough because the proposal was still too dense. He showed a picture of vehicle stacking on Hopkins Crossroad and a video of a bicyclist trying to cross the road and having to wait several minutes. He showed another video of a car attempting to make a left turn onto the property with cars stacking behind it. He said building a religious institution on the property was not the issue. Safety and harmony were the real issues. The size and intensity were the root issues of all the concerns.

Vernon Swing, CEO of Swing Traffic Solutions, said he was a licensed engineer with the state of Minnesota and had practiced traffic engineering for 33 years. He said he was representing the neighborhood group regarding the traffic access issues. He said the traffic study indicated currently there was an average 22 second delay for traffic on Hillside Lane trying to exit onto Hopkins Crossroad. With the development the average time increased by 33 percent to 29 seconds. He said staff misspoke at the Planning Commission hearing by saying the development would only add 7/10ths of one percent to the traffic on Hopkins
Crossroad. The number was taking an hourly number and comparing it to a daily number. The traffic study indicated the development would add approximately four percent to the a.m. peak traffic on Hopkins Crossroad and five percent to the Friday evening peak. He said this doesn’t accurately portray the impact the proposed development would have. The arrivals to a religious service do not come evenly throughout an hour. Rather they start to arrive 15 to 20 minutes prior to the beginning of the service. The impact would be magnified over the 15 to 20 minute period. He said this was not a safe access when there was the amount of queuing that would build up. The location of the proposed access was in the decision zone of the vehicles trying to get out from Fetterly Road and Mill Run. He urged the council not to approve the proposal until the access issue was resolved.

Jim Moscowitz, 11120 Mill Run, said throughout the staff report the staff used the applicant’s religious customs and practices to make an assessment of usage, parking and capacity. He said that made sense but the staff, city attorney, and planning commission had opined to the neighbors that the applicant’s religious customs and practices could not be used in determining whether the application met the conditional use permit standards. The staff accepted the applicant’s seating plan of tables and chairs which was less dense than chairs only in the sanctuary space to arrive at parking ratio. He said this was critical and had to do with density and also impacts of overflow parking in the neighborhood. The staff report referenced 21 other religious institutions in the city. He questioned if staff investigated the seating arrangements in the sanctuaries of the other religious institutions. Staff visited the St. Louis Park Chabad location to study the parking. Close to half of the cars were parked away from the sanctuary even with parking spaces available. One possible explanation for this was non-Orthodox Jews will often park offsite when attending an Orthodox synagogue out of respect for the religious practices of the congregation. Mill Run and Vernon Circle could suffer from nuisance parking every Saturday and on holidays no matter how many parking spaces the synagogue had. He said the neighbors opposed any project that would compromise the safety on Hopkins Crossroad. There were no life cycle events referenced in the application. Most Bar and Bat Mitzvahs were community events which include regular worshipers and invited guests.

Wiersum asked Heine to comment on the laws relating to how the city could evaluate the application. Heine said there was a federal law known as the Religious Land Use and Institutionalized Persons Act. When the city was looking at an application for a religious institution it needed to treat it in the same manner as any place of assembly. She said in respect to the seating, the requirement was the city would not set a different standard for this particular applicant in determining the parking requirements than the standards that would have been used for a different religious institution that practices a different faith or for a different place of assembly.

Stu Silberman, 11123 Mill Run, said he and his wife were supportive of Chabad’s mission. It was not about the neighbors being against Chabad. Rather it was the neighbors expressing concern over the way the project was being proposed, specifically the safety. He showed a picture from the winter showing large piles of
snow. He said he was concerned about the overall impact the development would have on safety. There was no way there could be two way traffic if there was overflow parking on both sides of the street. Shifting the driveway access to Mill Run would cause difficulties for all those who lived on Mill Run. He said emergency vehicles needed to be able to get through. His daughter was a type one diabetic and he was concerned about her having access to emergency vehicles. He also was concerned about all the students driving to and from the high school.

Amy Weiss, 2308 Nottingham Court, said her children get on a bus at 8:03 a.m. at Hopkins Crossroad and Fetterly Road. There are at least four buses that stop at that corner. She said the previous Friday there were three parents waiting to put their kids on the bus. The bus was stopped with vehicles stacked behind it. Some drivers tried to use the right turn lane to try to pass the bus. There were vehicles heading north that were stacked up. There was a resident trying to cross the road to get on to the bus. Weiss said she was very concerned about the safety.

Michael Leirdahl, 2390 Vernon Circle, said he and his wife welcomed Chabad into the neighborhood but there were things in the proposal he’d like to see altered. He questioned the fairness of the limited time the neighbors and the council had to evaluate the new renderings that had been provided at the meeting. He said the changes to the library were an improvement but he would like to see a rendering of what it would look from the east side. He asked that the playground be relocated to somewhere other than 50 feet from his backyard. He also had concerns about the landscaping. The site plan showed all arborvitae. Staff had said something else should be looked at. The staff report indicated the landscape plan had not been finalized and he questioned how the proposal could be approved without a final landscape plan. He noted in 2008 for another project in the area the council required three rows of screening be put in along with a five foot berm. He asked why that wasn’t being required for this proposal. He said the existing fence was a rickety 25 year old fence and questioned why a new fence wasn’t being required. He asked that nothing be allowed in the 50 foot setback.

Kristin Soo, 2391 Vernon Circle, thanked Chabad for its work and mission. She said she was just as concerned about the view in as she was the view out. She said the changes made to break up the massive wall were appreciated. The lack of a rendering from the east side concerned her. The intensity of the east wing with six classrooms also concerned her because of the proximity to her property. She said there was no arborvitae tall enough to screen the second floor especially for the first few years.

David Segal, 2220 Cape Cod Place, said he supported the project. He said he bikes on Hopkins Crossroad all the time and he understood the safety concerns. He noted there had been a lot of development in the area over the past 25 years and the same concerns came up with those developments.

Tom Blackburn, 2333 Hopkins Crossroad, said when his house was built in 1979, there were not any concerns about traffic. He provided a history of how the
homes around him were built. He understood the concerns that had been expressed but as changes occur people learn how to deal with traffic changes.

Harvey Robbins, 2475 Ridgewater Drive, said a number of years ago he was driving north on Hopkins Crossroad, turning left on to Fetterly Road, when he caught the eyes of someone coming up behind him over the crest. That was the last thing he remembered before getting cut out of his car that was on the side of the road in a ditch.

Susan Flint, 2390 Vernon Circle, said the council needed to follow the conditional use permit standards. One of the standards relates to public safety. She said her son is also a type one diabetic. If an emergency vehicle cannot get through, it is a life or death situation.

Susan Wiens, 2346 Vernon Circle, said the impact of the building influenced the number of parking stalls needed. The facility will hold in its design capacity a lot more people than what staff said it would hold. The design capacity wasn’t 33 tables with three chairs at each table but rather the number of chairs that could fit in the space without tables. She said that standard was used for all other religious institutions that were granted a conditional use permit. She asked staff for other examples of removable walls and they could not provide other examples. Future growth had to be accounted for.

Marvin Liszt, 9701 Oak Ridge Trail, said three dispassionate entities had looked at the proposal. One was SRF Consulting who did a comprehensive traffic safety study and did not find it to be an issue. City staff analyzed both the pedestrian safety issues and also the harmony of the building within the neighborhood. The planning commission looked at all the issues as well. He noted the resolution provides that any change to the approved use that results in a significant increase in traffic or a significant change in character may require a revised conditional use permit. He said the design of the building was beautiful and was absolutely in harmony with the neighborhood.

Wiersum asked what the process was for triggering council review if the conditions changed. Heine said the condition in the resolution makes it clear that the approval being granted is for the use as represented by the applicant. If the actual use changed or there was an intensification, the council had the right to require the permit holder to submit an amended application to continue the expansion or intensification of the use beyond what was approved. The council could also deny the changes.

Calvert said she wanted clarification that what the council was voting on was the land use and not safety issues. Heine said the issue before the council was a specific application. The applicant needed to show they met all the requirements of the ordinance that applies to the conditional use permit. One of the standards involves a determination that the application for the proposed use does not adversely impact public health, safety, and welfare. Safety was a valid and required consideration.
Wagner noted one of the residents asked for a detailed landscaping plan. He said typically the council does not get into the details but directs staff to work the details out with the applicant. He asked the staff to comment on the landscaping plan. Gordon said the ordinance requires a minimum landscaping value based on the value of the project. The building permit is used to determine the value of the project. There will be a more detailed plan than what was shown in the council packet. Staff always reviews a final landscaping plan. He noted the neighbors had asked to work with the applicant on the landscaping plan and he thought that was a really good ask of the applicant. Wagner said for some previous projects, including Syngenta, the council had asked for more details about the landscaping.

Acomb asked if there had been any discussion with the applicant about a berm or if that was considered to be a part of the landscaping plan. Gordon said it could be part of the landscaping plan.

Wagner asked the traffic engineer to provide further perspective. He said he did not have concerns about the traffic count but he did have concerns about the stretch between Hillside Lane and Overlook Drive. His concerns were about stacking when making left hand turns into either Mill Run or the proposed development; stacking on Fetterly Road because of the hill and it being the only way out; and the stacking for turns would affect more than what was in the traffic report.

Matt Pacyna with SRF Consulting said Hopkins Crossroad in relation to Mill Run and Fetterly Road currently handles around 14,000 to 15,000 cars a day. It has fluctuated like that over the past 20 years. The traffic ebbs and flows due to different construction and development going on in the area. Currently there are bypass lanes at Mill Run and Fetterly Road. An alternative to this would be to install a left turn lane. This would create a conflict for those turning right. He said the stacking on Mill Run and Fetterly Road approaches and the volume of vehicles was fairly low and the proposed development would likely not change that much. This was one of the reasons the proposed access was where it was and not further to the north. Wagner noted SRF was correct with its analysis about the stacking for the Syngenta development. Pacyna said the left turn lane would be designed as a continuous southbound lane from Mill Run to Fetterly Road.

Wagner said he normally did not have concerns about working out traffic issues with Hennepin County in the future but for this development he did have a concern. The road did not seem wide enough. Normally when the council sees a development from a safety standpoint, there always was an improvement involved. In this case there was not a recommendation for an improvement. He was surprised by this. Pacyna said there was a preliminary recommendation for an improvement that looked at restriping to better utilize the bypass lane. He said there were conflicting messages from the county about what their preference was. From a traffic operations perspective, both options would work. Long term, the long term vision for Hopkins Crossroad was for three lanes. He said he
looked at the best way to functionally get to the same level as the three lane road without requiring a full reconstruction.

Wiersum said when a street is built to the city standards and there are cars parked on both sides of the street, a person rarely would want to drive a Chevy Tahoe down that street let alone a city fire truck. A driver would not want to do that on any residential street in the city. He asked if there was an ordinance or expectation regarding parking on both sides of a residential street. Manchester said the typical width of a residential street was 26 feet. The reason for this is there is room to allow for parking on both sides and still leave room for an emergency vehicle to get through. The city does not allow overnight parking. Some streets are signed for no parking. This typically was done by petition. Wiersum said cars parked on residential streets often are not parked very well and it is difficult to get through.

Wiersum asked how much latitude the council had on an application for a conditional use permit that met all the city’s ordinances. Heine said what the courts have said was if the requirements the city had set forth in the ordinance for a conditional use permit were met, then the applicant was entitled to have the permit issued. Whatever decision the council makes, whether to approve or deny, the council was required to support the decision with findings. She said staff had prepared a resolution with detailed findings. The basic standing the court looked at was if the council had set forth legally sufficient reasons for approving or denying the permit. Some of the standards in the ordinance were very objective and measurable and not subject to debate. For those standards there really was no council discretion. Other standards were somewhat more subjective and allowed the exercise of some discretion. The exercise of discretion had to be reasonable and founded in facts that the council determined to be credible.

Calvert said the proposal was one of the more difficult decisions the council had faced in a while. She said her synagogue had a retractable wall. On high holy days chairs are placed in the additional space and there were more people than could be accommodated by the parking. This was why she suggested a shuttle be used. She said there were times when she served on the planning commission where she felt compelled to vote for something that she didn’t particularly like because the proposal met the city’s ordinances. She said there were things about this proposal she didn’t particularly like but still met the ordinance requirements. She liked that the height of the building was reduced and the mass was broken up significantly. The setback requirements and the landscaping had been met. She said she liked how the applicant indicated he would make people more visible to address her concerns about pedestrian safety. This was a chaotic area and she was disappointed the traffic study did not include Hillside Lane. Having a right turn only exit, even if it could not be enforced, might help a great deal. She thought there were tremendous advances to blend in with the neighborhood better.

Wagner said he agreed with Calvert that there were many dilemmas with this application. He applauded the neighborhood for being very well organized. He
said the applicant had made a number of adjustments to the proposal. The height was now much lower than a code permitted two or three story house. He thought the proposal that the planning commission reviewed had a better view in the front but the changes were to address neighbors’ concerns. This was the smallest site in the city. This was not addressed in the ordinance. There was no minimum lot size or floor area ratio in the ordinance. The building was 15,000 square feet and would be used for social gatherings. He questioned what would happen if there was an expansion of the building or there were more regular life cycle social events. The only option was offsite parking which may impact the stacking issues. His concerns were around scenarios for future use which got into site compatibility.

Wagner said he didn’t think the council should make a decision when the city and county were not aligned. The problem was now over 15 years old and he believed the city in alignment with the county should make sure the solution was the right one. Extra right of way was needed between Hillside Lane and Overlook Drive to satisfy the county’s view. He thought this should be dealt with now. He noted Pacyna had indicated striping had initially been recommended along with some other minor improvements. He said he didn’t at all disagree that Chabad had the right and would be a good neighbor. He wasn’t at all sure that the 1.96 parcel as it exists today with potential incremental use and no plan for Hopkins Crossroad was the solution the council should accept. He thought there were too many unanswered questions. He said he was not a “no” vote but he wasn’t a “yes” vote either. He didn’t want to micromanage staff but he thought it would be helpful for the item to come back to the council with more information about how the landscaping and fencing would actually look. He also didn’t want to require the neighborhood to go through the petition process and preferred instead to have the council approve no parking on one side of Mill Run.

Happe said religious institutions were generally pretty good neighbors. The conditional use permit gave the council the ability to change the permit if conditions changed. The flipside was this was a big facility shoehorned into a small area. The parking was established based on the conditional use at the time. If the center grows there simply would not be enough parking. He found the videos Jo Soo showed to be extremely compelling at demonstrating what the current issues were with Hopkins Crossroad. While the increase in traffic might not appear to be that great, it would occur in an area everyone knew was already a rough traffic area. Adding even a small amount of traffic would not make things better but would make it worse.

Acomb said the applicant had done a lot of work in making the building smaller and shorter and breaking it up. The neighborhood had clearly stated they are welcoming of this neighbor and she thought there could be a great relationship established. She said it would be helpful for the neighbors to have a better understanding of the look. She advocated for a strong landscaping plan. This development would change the character of the neighborhood. She shared Wagner’s concern about the lack of clarity from the county about the access. It felt premature to make a decision when access to the road had not been given
yet. She said the language in the conditional use permit gave her comfort in the council’s ability to reevaluate the permit if things changed.

Bergstedt said the facility likely would go in and they would be a good neighbor but the landscaping would be a huge issue. He would like more information about the landscaping. The road already was dangerous and he was uncomfortable approving the proposal until something was worked out with the county in terms of the access and options for improvement.

Ellingson said the difficulty was the proposal was for a permitted use. He thought it was odd that the ordinance required the street access had to be from a main artery. This was creating the issue with the county. He thought the proposal met the city’s ordinances but the ordinances didn’t fit the situation. He said the only thing that would satisfy the neighbors was to reduce the size of the building and the number of people who would attend the services. He didn’t believe this was something the city could require. He wasn’t sure what would come back if the council decided not to take action at the meeting and he wasn’t sure what the council was asking the applicant to do.

Heine said the 120 day deadline for the council to make a decision applied to this proposal. The maximum extension would be to July 9. Wiersum asked if the minor improvements like striping were what would be negotiated with the county, and if the county would likely be amenable to those changes. Manchester said there had been multiple discussions with the county. The county had been very firm with what they had communicated in an email. Wagner said the ordinance was written to not allow certain uses on a residential street. This was at the heart of the conflict. Improvements to Hopkins Crossroad were far down the list of the county’s priorities. He said for him, the city needed to ask the county about the minor improvements and this would give the applicant information about whether or not the county would approve the access.

Wiersum said Chabad had a great mission and would be very good neighbors but he wished they were not proposing this location because the location had some serious deficiencies. This was equal to the smallest piece of property in the city for this type of facility. The intensity of the building was greater than what was on the other equally small parcel. This wasn’t a reason to say “no,” but it made it more difficult to say “yes.” Another concern was Hopkins Crossroad was not a good access point and the city had no control on how good it was. The application was for a permitted use and it met the city’s ordinance requirements. He wished there was a better location. He said if the access for this facility could be to Hopkins Crossroad, he felt he had to vote yes. If the county said no, then the project would be over for this location because it no longer would meet the city’s ordinance. He didn’t think he would be doing his job if he didn’t say the city had to expend some effort in the interest of safety and appropriateness and honoring the ordinance as it was written.

Wischnack said the council had discussed two issues as the reason for tabling the item. The first was in order to get a more detailed landscaping plan. The other issue was working with the county to determine the detailed design for the
improvements to the road with the applicant’s commitment to doing those improvements.

Wagner said the issue for him was to come to an agreement with the county on what improvements were needed for the operations between Hillside Lane and the top of Overlook Drive. The county may not agree to provide access to Hopkins Crossroad but they could help identify the improvements needed to make the entrances from Mill Run, Hillside Lane, and the applicant’s property effectively work. He said the development would create more left hand turns so what he wanted the county to respond to was what would make left turns work better than the existing bypasses.

Wiersum said people are skeptical about striping but striping can be remarkably effective. He said he would like to know what could be done at a modest cost.

Wagner moved, Acomb seconded a motion to table the item, directing staff to work with the county to identify what the specific desired improvements would be reporting those back to the council along with more information about the proposed landscaping. Bergstedt, Wagner, Ellingson, Acomb, Calvert, and Wiersum voted “yes.” Happe voted “no.” Motion carried.

15. Appointments and Reappointments:

A. Reappointment to the senior citizens advisory board

Wiersum moved, Bergstedt seconded a motion to approve the appointments to the senior citizens advisory board. All voted “yes.” Motion carried.

16. Adjournment

Wagner moved, Calvert seconded a motion to adjourn the meeting at 11:10 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
1. **Call to Order**

Mayor Brad Wiersum 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 Tony Wagner, Bob Ellingson, Patty Acomb, Deb Calvert, Tim Bergstedt, and Mayor Wiersum were present. Mike Happe was excused.

4. **Approval of Agenda**

Wagner moved, Bergstedt seconded a motion to accept the agenda with an addendum to item 11A. All voted “yes.” **Motion carried.**

5. **Approval of Minutes: April 30, 2018 LBAE meeting and April 30, 2018 regular council meeting**

Acomb moved, Calvert seconded a motion to approve the minutes of the April 30, 2018 Local Board of Appeal and Equalization meeting, as presented. All voted “yes.” **Motion carried.**

Acomb moved, Calvert seconded a motion to approve the minutes of the April 30, 2018 regular council meeting, as presented. All voted “yes.” **Motion carried.**

6. **Special Matters: None**

7. **Reports from City Manager & Council Members**

City Manager Geralyn Barone reported on upcoming city events and council meetings.

Wagner announced he was resigning his seat effective mid-July. He and his wife found a home that’s closer to their children’s school. The new home is located outside Ward 2. He said it had been fabulous working with the other councilmembers. Much had been accomplished during his 15 years on the council in areas ranging from transportation and transit to environmental protections. There had been a lot of long term thinking on how to best make sure the city was well managed. Minnetonka was one of the most respected cities in the region. He said he will definitely miss being on the council and it had been an honor to serve and represent the voters.
Wiersum said it had been a singular pleasure of his to serve on the council with Wagner. He said Wagner was a clear and challenging thinker and had made himself and everyone who served on the council better.

Barone said the city charter allowed two options to fill the upcoming vacancy given how much time was left in Wagner’s term. The council could choose to either call for a special election or do an appointment. She said staff would prepare a report for the June study session with information about both options. The final determination would be made at the June 18 Council Meeting. She thanked Wagner on behalf of the staff. She said he was a big picture, long term thinker and the community had benefitted greatly from his leadership.

Acomb said she was sorry to see Wagner resign but was glad he was remaining in the city.

Calvert said Wagner had helped her personally over the past couple of years and truly was a brilliant thinker. She said he had already made her a better councilmember.

Wiersum reported he recently met with the Cargill’s head of government relations. He also attended the Corridor Management Committee for SWLRT meeting.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases:

A. Bids for the CSAH 101 N. Landscaping project

City Engineer Will Manchester gave the staff report.

Bergstedt said it was an exciting project. The project had been in the works for decades.

Wiersum said his recollection was the path was going under the bridge. Manchester confirmed this was correct.

Bergstedt moved, Wagner seconded a motion to award the contract for the CSAH 101 N. Landscaping Project No. 15503 to G Urban Companies, Inc. in the amount of $314,328.50. All voted “yes.” Motion carried.

B. Bids for Delton Avenue pedestrian improvements

Manchester gave the staff report.

Calvert said any safety improvement in the area was welcome.

Wiersum said the improvements were a good first step noting the city has applied for federal funding from the Safe Routes to School program. He said the new fence between the school and Highway 7 was a major safety improvement. He
hoped the city and school district could work together to help educate parents and students to pay attention to the signals.

Barone noted the city was not successful in obtaining federal funds but would continue to apply.

Calvert moved, Bergstedt seconded a motion to award the Delton Avenue pedestrian improvements Project No. 18408 to Midwest Civil Constructors, LLC in the amount of $100,872 and amend the CIP. All voted “yes.” Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

A. Resolution approving an interim use permit for temporary sale of fireworks at Westwind Plaza

Bergstedt asked that the item be pulled from the consent agenda. He said he didn’t have any major issues with the item, but could not recall another time when the council approved the sale of fireworks. He noted in Wisconsin it seemed like every other mile there was a huge place selling fireworks. Many of those fireworks are not legal in Minnesota but make their way back here. He said people driving buy Westwind Plaza might get the impression the law had changed. He thought the lines might get blurred some. He has noticed that in his neighborhood that the days before the 4th of July and on the holiday itself, there were more and more fireworks set off. A lot of times those fireworks end up in neighboring properties. Often, the fireworks continue after 10 p.m. when the city’s noise ordinance kicks in. He asked staff what residents should do if there are issues with fireworks in their neighborhood.

Community Development Director Julie Wischnack presented information from the Minnesota Department of Public Safety about what fireworks were legal in the state. The information indicated that fireworks that explode or shoot into the air are not legal in the state. She said if people notice fireworks after 10 p.m., they should call 911. The call would be routed to the city’s police department. She said the police department told her they receive a handful of calls around the 4th of July but had not seen a noticeable increase over the past couple of years.

Ellingson moved, Wagner seconded a motion to adopt resolution 2018-063 approving an interim use permit for temporary fireworks sales by TNT Fireworks at 4795 County Road 101. All voted “yes.” Motion carried.

B. Resolution approving a conditional use permit for an accessory apartment at 2920 Ellsworth Lane

Ellingson moved, Acomb seconded a motion to adopt resolution 2018-060 approving a conditional use permit for an accessory apartment at 2920 Ellsworth Lane. All voted “yes.” Motion carried.
C. Resolution approving a conditional use permit for an accessory structure at 4024 County Road 101

Ellingson moved, Acomb seconded a motion to adopt resolution 2018-061 approving a conditional use permit for an accessory structure exceeding 12 feet in height and aggregate accessory structures exceeding 1,000 square feet in total floor area at 4024 County Road 101. All voted “yes.” Motion carried.

D. Resolution supporting an application for a grant from Hennepin County’s Transit Oriented Development Program submitted by Newport Midwest, LLC, dba The Mariner for redevelopment at 10400,10500,10550 Bren Road East

Ellingson moved, Acomb seconded a motion to adopt resolution 2018-062 supporting the Newport Midwest, LLC’s application for grant funds through the Hennepin County TOD program. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Resolution approving a conditional use permit with parking variance for a medical clinic at 1700 Plymouth Road

Ellingson moved, Calvert seconded a motion to adopt resolution 2018-064 with the addendum approving a conditional use permit with parking variance for a medical clinic at 1700 Plymouth Road. All voted “yes.” Motion carried.

12. Introduction of Ordinances: None

13. Public Hearings: None

14. Other Business:

A. Items concerning Ridgedale Active Adult Apartments at 12421 Wayzata Blvd.:

1) Master Development Plan,
2) Site and Building Plan with variances, and
3) Preliminary and Final Plats

City Planner Loren Gordon gave the staff report.

Wagner said the staff report indicated the development likely would be constructed during the road reconstruction. He said it was his understanding this property would be used as a staging area for quite a period time until the road work was almost done or actually completed. Gordon confirmed that was correct. Wagner noted it might be 2020 until the building construction began.

Johnny Carlson from the Trammell Crow Company said the project had not changed a lot since the last time the council saw it. Most of the time has been
spent working on the definition of the design and infrastructure of the roundabout with staff. The park had grown some. He confirmed the project would be done in phases.

Dr. Mark Stesin, 2000 Norway Pine Circle, said he was speaking on behalf of coalition of neighbors. He said the neighbors were excited about the Ridgedale redevelopment and strongly supported high density housing as part of the development. Any new high density housing should be in compliance with the city’s comprehensive plan, should be north of Ridgedale Drive and should not encroach and intrude on existing neighborhoods in the area. He said the coalition strongly supported this proposal because it met all those requirements. The building was large but the mass, density and activity would not encroach on the neighborhoods. The building fit the space. The park would benefit the entire city. The price of the apartments was appropriate.

Calvert applauded the developer for adding additional insulation to meet the city’s energy efficiency goals.

Wagner said the proposal aligned with the city’s vision. It was exactly what was intended when the visioning plan was done. He said it would be an amenity to the varied housing stock in the area. There would likely be more to come in the area.

Bergstedt said he was excited about the proposed changes to Ridgedale Drive. He said the developer was high quality and this was an entirely appropriate use. He thought it would really start to transform that side of the mall which had been a dead space for quite a while.

Acomb said the developer did a nice job with the look of the building and it would be a nice addition to the Ridgedale parking lot. She appreciated the park which would be a nice amenity to the area. She was disappointed affordable housing was not included.

Ellingson congratulated the developer for making such good use of a parking lot.

Wiersum said it was an exciting project. He said Trammell Crow did a great job on the island property in the Carlson Towers area. He agreed with Bergstedt that this was the start of the real change of the nature of Ridgedale. This was exciting for the community. He saw Ridgedale becoming a destination complex for dining and entertainment and housing while retaining its retail component. This would make it unique in the Twin Cities. It would ensure that this very important part of the city remained vital. He agreed with Acomb’s comments about affordable housing. Affordable housing was something that was never easy to add but was always needed.

Wagner moved, Bergstedt seconded a motion to adopt ordinance 2018-06 adopting a master development plan; resolution 2018-065 approving final site and building plans with variances; and resolution 2018-066 approving preliminary and final plats. All voted “yes.” Motion carried.
B. **2019-2023 Capital Improvements Program (CIP)**

Barone gave the presentation.

Wagner said earlier in the meeting the council discussed the Ridgedale area and in other meetings had discussed the Opus area and there was some place making thinking being done for the two areas. The CIP includes looking into how to make a park in the Ridgedale area. The same was being looked at for the Opus area. He was proud of the work being done to expand the trail system in the city and coming up with a funding source. He was hopeful there would be a favorable bidding environment in order to do even more of the side trails. He said he was very excited about those items because they were big picture and longer term investments.

Calvert said as a wife of a retired firefighter, she understood the importance of public safety and it was wonderful to see the city pay attention to its fleet. Not only making sure it was in good working order but at the same time doing so in a fiscally prudent manner.

Bergstedt thanked staff for its work in putting together the CIP. He said the city always did a good job in long term thinking and finding ways to fund the CIP.

Wiersum agreed the staff did a great job. The CIP was $152.4 million. The city was very mindful of spending the money prudently and was always very careful about spending taxpayer dollars. Money was spent intelligently but the city was not afraid to invest when needed. He was very proud of the city’s Aaa bond rating. Taxes were not low, but were a very good value.

Wagner moved, Calvert seconded a motion to adopt resolution 2018-067 adopting the 2019-23 Capital Improvements Program and resolution 2018-068 declaring the intent to reimburse current expenditures for utility infrastructure improvements with the proceeds of utility revenue bonds to be issued in August 2018. All voted “yes.” Motion carried.

C. **2019-2023 Economic Improvement Program (EIP)**

Barone gave the staff report.

Wagner noted the EDAC discussed getting council feedback on the Hennepin County Land Trust. They also discussed the history of the Livable Communities Fund and if special legislation should be explored. He suggested if the city did go down that route that there should be a joint session with the EDAC.

Calvert said the EIP included several aspirational entries having to do with affordable housing and the tools to address it. She agreed a joint meeting with the EDAC made sense.
Wiersum noted he was a part of the Homes Within Reach board. He attended a strategic planning meeting and there certainly was a need for funding sources. He said the advantage to the program was it was very cost effective. This was a really important consideration for all the affordable housing programs in order to get as much bang for the buck as possible.

Calvert moved, Wagner seconded a motion to adopt resolution 2018-069 adopting the 2019-2023 Economic Improvement Program. All voted “yes.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Bergstedt moved, Calvert seconded a motion to adjourn the meeting at 7:55 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
1. **Call to Order**

   Mayor Brad Wiersum 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 Bob Ellingson, Patty Acomb, Mike Happe, Deb Calvert, Tim Bergstedt, Tony Wagner, and Mayor Wiersum were present.

4. **Approval of Agenda**

   Wagner moved, Calvert seconded a motion to accept the agenda with an addendum to item 14A. All voted “yes.” **Motion carried.**

5. **Approval of Minutes: None**

6. **Special Matters:**

   A. **Review of the 2017 financial report with the city’s audit firm of CliftonLarsonAllen LLP**

      Doug Host, partner with CliftonLarsonAllen, presented the report. He reported property tax revenue was under budget by $195,000. He said this was not a red flag at all. Wagner asked if part of this was due to the increase in the number of tax court appeals. Host said the appeals would not have an impact on the 2017 levy but would show up in later years.

      Wiersum noted all the enterprise funds covered the depreciation except for the ice arena. Host confirmed this was correct. Wiersum asked if this was typical for other cities. Host said generally it’s more of a mixed bag. Minnetonka took more of a proactive approach. He said he audited a city who absolutely refused to increase water and sewer rates even though the infrastructure was wearing out. When the sewer system eventually required repairs, the council then had to greatly raise the rates. In hindsight if they had raised the rates one and a half percent a year over a 12 year period, no one would have noticed.

   B. **Proclamation declaring July 2018 as Monarch and Pollinator Awareness Month**

      Calvert read the proclamation.
7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming city events and council meetings.

8. Citizens Wishing to Discuss Matters not on the Agenda

Tim Litfin, provided information about the upcoming Tour de Tonka.

Wiersum said the city often discusses building community and it was events like the Tour de Tonka that built community.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

   A. Resolution delegating authority for electronic fund transfers

      Ellingson moved, Acomb seconded a motion to adopt resolution 2018-070 delegating authority for electronic funds transfers to the city’s finance director or her designee. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances:

   A. Items concerning Villas of Glen Lake at 5517 and 5525 Eden Prairie Road:

      1) Rezoning from B-1 and R-1 to R-2
      2) Preliminary and Final Plats

      City Planner Loren Gordon gave the staff report.

      Wagner said he expressed his concern during the concept plan review and he continues to have a concern about patios and decks overlooking a county road.

      Acomb agreed with Wagner. She also encouraged the development of a sidewalk along County Road 4.

      Ellingson said he appreciated Wagner’s concern. He said the townhomes just east of the Gold Nugget all have their backs to Excelsior Boulevard. The solution used in that example was putting in a bunch of big evergreen trees. This landscaping helped block the view of the townhomes from the street. He said Eden Prairie Road had a lot of character. He was concerned about the tree loss. The council approved five houses on Williston Road near the daycare, and all the trees were removed. He was worried the same thing might happen with this development.
Calvert said she agreed with all the comments that had been made. She shared the concern about tree loss. The business to the north was concerned about buffer and the proximity of the actual construction as well as runoff from the property. She thought having the driveway go between the two homes to the west was a good use of space because it spaced the homes further apart. She shared Wagner’s concerns about the way the homes were oriented. All the other homes along that part of Eden Prairie were set further back and faced the road. Having the proposed homes much closer to the road with the back of the homes facing the road, would completely change the character of the neighborhood.

Wiersum said he was pleased that the five foot setback was now at least 10 feet. This was a significant improvement. Making the homes more rectangular made sense and he liked the driveway access. He said the applicant made some meaningful improvements. He did not disagree with the concerns about the back of the homes facing the road. He said if he were buying one of the homes it would give him pause to have his deck or patio facing a collector street. He encouraged the planning commission to look at the issue.

Blaine Waters, Quest Development, noted the pad sizes were reduced. The width and depth both were reduced. This was done to increase the setbacks specifically to the commercial properties to the north. Creating greater setback would also allow for more landscaping and potentially could save some trees. The setback to the west was originally 35 feet and now was 40 feet. He said he envisioned this site, as did the master plan, as a transitional site from commercial to residential. This was some of the reason for the configuration of the units.

Wiersum said there were always challenges to sites like this one and it was even more challenging as a transitional site.

Bergstedt moved, Calvert seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

**B. Ordinance amending the Minnetonka Corporate Center Master Development Plan to increase a parking ramp from five levels to seven levels at 12700 Whitewater Drive**

Gordon gave the staff report.

Wagner noted the current ramp was approved years back, and asked how the city’s current stormwater rules apply. Gordon said the stormwater management would be looked at as part of the approval for the project. Deficiencies in some of the design would be the number one thing staff would look for as far as how the stormwater left the ramp and where it went from there.

Calvert said she was sad that a cottonwood tree was being removed. She said cottonwood trees were a good stormwater management tool as they absorb a lot of water and prevent runoff. She noted the staff report indicated a deficiency in the number of handicap parking spaces. She asked for more information. Gordon said the number of handicap spaces was a building code issue. Anytime there
was a deficiency in handicap spaces, it would be addressed as part of the permit process. Calvert asked if there was a reason for not addressing the issue as part of the approval process. Gordon said the code had changed since the ramp was built. The deficiency wasn't something a variance would be given to.

Acomb said she also had questions about the deficiency in handicap spaces. She was keenly aware of handicap parking given her husband’s disability. She said often times there are not enough spaces for handicap parking. She didn’t want to see it under parked for this proposal.

Ed Farr with Edward Farr Architects said there would not be fewer accessible parking stalls than was required by the building code. The issue related to the two percent requirement for van accessible stalls. The structure of the parking deck, which was built to the requirements in 1997, wasn’t tall enough to allow van access. The van accessible stalls would be outside on grade. The requirement was to go from two to four van accessible stalls. He said the history of the ramp showed those stalls didn’t get used all that often. The minimum requirements would be met.

Wiersum said he appreciated the sensitivity related to handicap stalls. He was at an event about some work being done in one of the national parks to increase accessibility. With aging baby boomers the reality was everyone would deal with a disability at some point. It was important to look ahead and plan for accessible parking in facilities because there would be a major portion of the population that would not have access. He said the council needed to be ever mindful of the need because the need was only going to grow.

Wagner moved, Happe seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

13. Public Hearings:

A. Public hearing and Items relating to diseased and hazard trees

City Attorney Corrine Heine gave the staff report.

Wiersum opened the public hearing at 7:37 p.m. No one spoke. He closed the public hearing at 7:37 p.m.

Acomb moved, Happe seconded a motion to adopt ordinance 2018-07 relating to diseased and hazard trees. All voted “yes.” Motion carried.

Acomb moved, Calvert seconded a motion to conduct a public hearing and adopt resolution 2018-071 adopting Council Policy 8.3, regarding a plant pest program. All voted “yes.” Motion carried.

B. Dominium Apartments, 11001 Bren Road East

Barone gave the staff report.
Wiersum opened the public hearing at 7:41 p.m. No one spoke.

Bergstedt moved, Wagner seconded a motion to continue the public hearing to July 23, 2018. All voted “yes.” Motion carried.

14. Other Business:

A. Ward 2 City Council Vacancy

City Clerk David Maeda and Assistant City Manager Perry Vetter gave the staff report.

Wagner said since he announced his intention to resign, he received quite a few inquiries related to the role of a councilmember. Whether the decision was to call for a special election or for an appointment, he thought it would be valuable for the council to describe the role so that candidates knew what they were getting into. Being a councilmember was a great job but there was a pretty significant time commitment. He said he drafted things he’d be willing to share with staff and the rest of the council.

Wiersum said he thought Wagner’s idea was an excellent one and should be part of the application process. He said when his Ward 3 seat became vacant he received a call from a woman who indicated her mother was a mayor in the town she grew up in so she was interested in running for the seat. She asked about the time commitment and he told her what he thought was needed to do a good job. He never heard from her again. Laying out the expectations was important. Everyone wanted whoever was going to become the next Ward 2 councilmember to do a good job. It was important that the person knew what she/he was getting into and was prepared to fulfill the expectations.

Wagner said the job had a learning curve. He said if the council chose to appoint the first meeting for the councilmember would be the budget study session. There were a lot of developments in the ward. It was important to set expectations of what residents typically expect.

Calvert said for the boards and commissions appointment process the mayor was the one who made the appointment. She asked if the council chose the appointment process to fill the council vacancy, if the full council would take a vote. Barone said the full council would vote on who to appoint, not just the mayor. Calvert said that for the boards and commissions the council interviews the candidates one at a time. She said this makes it difficult to do a side by side comparison. She asked if it was possible to format the interview process to be similar to what the League of Women Voters do for candidates running for office. The League has a forum where all the candidates appear together and answer the same questions. Heine said the council could structure the process however it felt was best. Barone noted the staff report included information about the process that was used the last time the council made a councilmember appointment. The candidates were interviewed individually on camera by the
entire council. Calvert said it was important to treat all the candidates equally. This included asking all the candidates the same questions and to have a variety of questions dealing specifically with Ward 2. She also suggested applying some of the things the council learned about at a recent implicit bias presentation. She wanted to make sure the process was transparent enough where councilmembers own biases didn’t end up helping to select a person because he/she “fit in.”

Wiersum asked if there was anyone from the public that wished to make comments about whether the vacancy should be filled by special election or by appointment. No one spoke.

Calvert said there were pros and cons with either approach. She thought elections were extremely important and had heard the people who were asking for a special election. She said she was a “will of the people” person so she had strong feelings for the special election approach. Running for election helped demonstrate work ethic, which was really important trait for a councilmember because of the time commitment and discipline needed. She also understood the magnitude of the decisions that were before the council and there was a strong argument for appointment because there were so many upcoming decisions involving Ward 2. She didn’t want the residents in that ward to be without representation for such a long period of time. She was also concerned about partisanship affecting the election. She thought it would be really easy for political parties to provide certain kinds of help for candidates. Keeping the city council sacredly nonpartisan was one of the most useful things the council has done over the years. It had ensured decisions were made based on facts and not party based decisions. She thought it would be difficult for the council candidates to break through the noise of a State General Election only to have to run again the next year. She said her bottom line was a transparent process.

Happe said the timing of a special election, and having to wait until November was a concern as was making the person run in another election next year. The worst case scenario was having to wait until February to hold the Ward 2 special election based on the timing of the vacancy. He agreed with the concern about the potential for partisanship in the councilmember election. As long as there was an open and transparent appointment process, getting somebody as soon as possible to represent Ward 2 residents was important.

Bergstedt said the council discussed the item at the last study session, and as a couple of councilmembers mentioned one of the important things has been that city elections have been nonpartisan. The city has always had odd year city elections. Looking at what was on the November ballot, he was concerned the councilmember race would be lost in all the noise or it would be easy for someone to run under a party banner. He said all four wards had important issues going on but Ward 2 with Ridgedale and other things had a lot of important decisions that would be made in the near future. The sooner the council had a Ward 2 representative was better for everyone in Ward 2 and everyone in the city.
Ellingson said he favored having a special election primarily because it was an elected position. He said it was true the council appointed some excellent people in the past, including Wiersum and Bergstedt. The council also has excellent people who are on the council after winning a special election. He said the expectations of the people who live in the ward are they should decide who represents them. It reminded him of countries that did not have elections and then did have an election where people walk miles and wait for hours to be able to vote. Voting participation has been declining in the United States for several years. He noted there was a pretty good turnout, around 13 percent for the Ward 3 special election. When he last ran for election in 2015, the turnout was 15 percent. He said it was true there was a considerable drop off for cities with elections in the even years where voters vote for state and federal offices but choose not to vote for local offices. He wasn’t worried about the partisanship issues because like Minnetonka, Minneapolis and St. Paul have their city elections in the odd numbered years and those cites’ elections are very partisan. Having elections in an even or odd numbered year wasn’t the deciding factor on how partisan the elections were. Since the city had not seen partisanship up to now, he questioned why it would suddenly flare up for a special election.

Acomb said she had always been a strong proponent of special elections because that was how she originally became a councilmember and councilmembers are elected officials. She said this was a different set of circumstances. Some of the neighboring communities that have even year city elections have a more partisan city council. She thought the political parties were always pushing to be more involved. She supported the appointment process in this case. She agreed the city had good candidates when it used both the special election and appointment processes to fill vacancies. She said the possibility of partisan politics concerned her enough to support the appointment process.

Wagner said he waited until the end to share his thoughts because it would be the rest of the council’s job to fill the vacancy. The city had long legacy and history of protecting the odd number year election. If he were making the decision to fill the vacancy the partisanship issue would be the key determining factor he would weigh heavily. There were some other practical things that should be considered. When the council chose to call for a special election when the Ward 3 seat became vacant, Wiersum was the new mayor, and he still was a resident of the ward and was someone residents of the ward could reach out to. Because of changes to the state election law, there would be a four month gap before the special election could be held. During this time the council would have a budget study session, which was a deep dive into the proposed budget. There likely would be development that would come up in the Ridgedale area. There also would be constituent issues that needed to be addressed. He thought it was unfair for the rest of the council and for residents of Ward 2 not to have representation for over four months. The position would be up for election in November 2019, so residents would have the opportunity to vote on how they felt the appointed person was doing.

Wiersum said he was proud of the city and the council. He was proud the council was nonpartisan and was able to work together respectfully. The council
respected each other’s decisions whether they agreed with them or not. This was a legacy he was proud of. The city’s charter speaks specifically to this issue. If there was more than two years left in a term, the charter requires a special election when a vacancy occurs. The times he supported calling for a special election were the times when there was close to two years left in the departing councilmember’s term. In this circumstance there was substantially less than two years left in Wagner’s term. If the seat was filled by a special election, there would be less than a year left in the term. If the appointment process was used, the vacancy would either be 38 days or 53 days depending on when Wagner officially resigned. If there was a special election, the earliest the seat would be filled would be November 19. The vacancy would be for 129 days. The next available date for a special election would be in February, which would mean an additional 98 days, meaning the vacancy would be for 227 days. He said there were clear reasons for the charter provision and why an appointment made a lot of sense. The charter also provides for off year city elections. The intent of this provision was compelling for his support for doing an appointment.

Calvert moved, Happe seconded a motion to establish a process to fill the upcoming vacancy by appointment. Acomb, Happe, Calvert, Bergstedt, Wagner and Wiersum voted “yes.” Ellingson voted “no.” Motion carried.

Barone asked for feedback on the application and the appointment process that was included in the council packet.

Wagner said he never had been a big fan of the process used for the boards and commissions interviews. He said the last time the council used an appointment process for a council vacancy, it worked pretty well. The council scored the applicants in real time. He suggested articulating the attributes that the council was looking for in filling the position so that applicants would have a clearer understanding on what they were being rated on. This would help when thinking about what was a good score and what a bad score was. One possible area was how people think about decision making and how they balanced dilemmas.

Acomb said earlier in the day she asked Barone if staff could get applications other cities have used to fill council vacancies. The city of Plymouth provided one she felt got at some critical information in a different way. One question was about the philosophy of the appropriate function of a responsible government. Another was asking about the strengths and weaknesses of the city. She thought these were good, thought provoking questions. She said she liked Calvert’s suggestion about a format similar to the League of Women Voters candidate forums. This would eliminate the advantage of candidates being interviewed toward the end having the benefit of hearing what the candidates before them answered.

Calvert said one of things she would like to see achieved both in the application and the interview questions was to get to some level of objectivity so personal biases were removed and the decision was more data driven in determining how well an applicant might do as a councilmember. The idea was to find someone who would help fulfill the goals of the city and not the personal vision of individual
councilmembers. She also suggested using a rank choice voting system for the applicant scoring sheets.

Wiersum said having good questions on the application form was important so the council had a good measure on paper of the applicant. He noted a paper application favors those who are better writers. When Amber Greves was appointed to the council there were 34 applicants. When he was appointed in 2003 there were 29 applicants. He guaranteed that many people would not be interviewed. When he applied, there were seven finalists. He thought this was a reasonable number. His experience in interviewing for jobs was that the interviews were a day long process. The interview for the council vacancy would be 15-20 minutes. He said the boards and commissions interview process was pretty good given the limitations of the state’s open meeting law. The council couldn't require the applicants to leave the room while other applicants were being interviewed. They could ask the other applicants to do so voluntarily. He said when he interviewed he was the last person interviewed and it was an advantage to listen to all the other applicants first. The council also had to decide if there would be one round of interviews or two.

Acomb asked how and when the process would ultimately be determined. Barone said staff would immediately begin working on an application process. One option would be to wait to see how many people apply. The interviews were scheduled for July 30 so there was an opportunity to make changes to the scoresheets and modify the interview questions as needed.

Wiersum said he agreed with Calvert’s comments about reducing personal biases from the process. Everyone has biases and the key was recognizing what personal biases exist and work to be as objective and fair as possible. Everyone wanted to pick the best person to represent Ward 2 and the city well.

15. Appointments and Reappointments: None

16. Adjournment

Acomb moved, Calvert seconded a motion to adjourn the meeting at 8:35 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #6A
Meeting of July 9, 2018

Brief Description: Recognition of City Councilmember Tony Wagner

Recommended Action: Recognize Tony Wagner

Background

It is the practice of the city council to recognize the contributions of those that benefit the city.

Tony Wagner

Councilmember Tony Wagner is relocating outside of Ward 2 and therefore can no longer serve as the ward’s representative. Wagner was elected four times to the Minnetonka City Council, serving as the Ward 2 representative from 2003 to the present. Tony previously served on the Minnetonka Planning Commission from 2002 to 2003, which he subsequently chaired in 2003. In addition to his role on the city council, Tony currently represents the council on the Economic Development Advisory Commission (EDAC), the Southwest Light Rail (SWLRT) Community Works Committee, and the 169 Mobility Policy Advisory Committee.

During Council Member Wagner’s tenure he has been an advocate for the SWLRT Green Line extension, expanded trail connectivity, investments in natural resources, renewable energy and sustainability efforts, organics recycling and responsible development in and around the city’s many village centers including the Ridgedale area located in Ward 2.

Councilmember Wagner has brought critical and regional thinking to discussions, always willing to make decisions on key issues for the present and the future with the city’s values at the forefront. Councilmember Wagner ensured that everyone had an opportunity to be heard in the process and was always willing to listen to all sides of an issue before making a final decision.

Truly a big picture and well-rounded thinker, Councilmember Wagner has been a steward of the community’s financial resources and always vigilant about justifying the need for levy increases. He was instrumental in the creation of the city’s budget stabilization reserve policy and closely accounting for dollars above the reserve target. Listed below are just some of the major initiatives that Councilmember Wagner affected during his time on the council:

- Ridgedale area visioning and public realm guidelines
- Minnehaha Creek Corridor vision
- Imagine Minnetonka strategic planning
- Recreational Programming and Facility needs study
- Opus trip generation fee policy
- TIF policies
- Strategic communication and marketing initiatives
- Police and Fire Facility improvements
- Lake and pond management policy
- City’s Housing Plan
- Annual Capital and Economic Improvement Plans
During Councilmember Wagner’s tenure, major developments were influenced by his guidance, including:

- Syngenta
- United Health Group
- Applewood Pointe
- Cherrywood Pointe
- Highland Bank Redevelopment
- Ridgedale Center (Nordstrom, Macy’s, Kona Grill, New Redstone)
- Opus Headquarters
- Minnetonka Mills reinvestments
- Legacy Oaks
- The Rize
- The Ridge
- Glen Lake Redevelopment

On behalf of the residents of Minnetonka, the city council expresses its sincere appreciation for Tony’s outstanding contributions and years of service to the community.

**Recommendation**
Recognize Councilmember Tony Wagner.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Perry Vetter, Assistant City Manager
Julie Wischnack, Community Development Director
City Council Agenda Item #10A
Meeting of July 9, 2018

**Brief Description**

Twelve month extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat at 13929 Spring Lake Road

**Recommendation**

Approve the time extension

**Background**

On July 13, 2015, the city council approved the OAKHAVEN ACRES 2nd ADDITION preliminary plat. As approved, an existing single-family residential property would be divided into two, single-family residential lots.

On August 22, 2016, the city council approved a twelve month extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat.

On September 11, 2017, the city council approved a twelve month extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat.

**Extensions**

By city code, a preliminary plat approval is valid for one year. If the city does not approve a final plat within one year of preliminary approval, or receive a written application for a time extension, the preliminary approval is void.

The ordinance does not include any specific conditions under which preliminary plat approval may be extended. Nevertheless, the city has generally considered: (1) whether there have been changes to city code or policy that would affect the previous approval; and (2) whether such extension would adversely affect the interests of neighboring property owners.

The property owner recently requested an additional extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat.

**Staff Analysis**

- There have been no changes to city code or policy that would affect the previous approval.
- The extension would not adversely affect the interests of neighboring property owners.

Though recommending approval of this twelve-month time extension, staff is concerned that the public input process, including neighborhood comment forms and the formal public hearing, associated with the applicant’s request occurred three years ago. If a final plat application is not submitted to the city within the next twelve months, staff would be inclined to require the plat be reviewed through the full formal process again, such that the public input may be received and both staff and the planning commission may thoroughly review the project again.

**Staff Recommendation**

Approve the twelve-month time extension.
Submitted through:
  Geralyn Barone, City Manager
  Julie Wischnack, AICP, Community Development Director
  Loren Gordon, AICP, City Planner

Originated by:
  Susan Thomas, AICP, Assistant City Planner
Location Map

Project: OAKHAVEN 2nd ADDITION
Address: 13929 Spring Lake Road
Resolution No. 2015-052

Resolution approving the preliminary plat, with lot width variances, of OAKHAVEN ACRES 2nd Addition at 13929 Spring Lake Road

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

Section 1. Background.

1.01 Tim Thompkins and Lakewest Development have requested preliminary plat approval for OAKHAVEN ACRES 2nd ADDITION. The plat includes lot width at setback variances from 110 feet to 102 feet. (Project 15018.15a)

1.02 The property is located at 13929 Spring Lake Road. It is legally described as follows:

Lot 4, Oakhaven Acres, Hennepin County, Minnesota

1.03 On June 25, 2015, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council grant preliminary plat approval.

Section 2. Standards.

2.01 City Code §400.025 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution.

2.02 City Code §400.055 states that a variance may be granted, but is not mandated, when the applicant meets the burden of proving that:
1. the proposed variance is a reasonable use of the property, considering such things as:
   a) functional and aesthetic justifications for the variance; and
   b) improvement to the appearance and stability of the property and neighborhood.

2. the circumstances justifying the variance are unique to the property, are not caused by the landowner, are not solely for the landowner's convenience, and are not solely because of economic considerations; and

3. the variance would not adversely affect or alter the essential character of the neighborhood.

Section 3. Findings.

3.01 The proposed preliminary plat meets the design requirements as outlined in City Code §400.025.

3.02 The proposed preliminary plat meets the design requirements as outlined in City Code §400.055:

1. The effective width of the lots would meet the lot width requirements outlined in the ordinance. The lot width at the front yard setback is 102 feet as defined by the ordinance. However, the effective width, as measured along the setback requirement, is 114 feet. This would meet the lot width at setback requirement of 110 feet. The need for the variance is a result of an inconsistency in how lot width is measured by the ordinance. The variance is not a result of the lots actually having a reduced lot width.

2. While not necessarily unique to all residential properties in the community, the large size and width the existing lot is unique to the immediate Spring Lake Road area. In fact, the proposed lot division would result in lots more typical of the area.

3. The proposed variance would not adversely impact the character of the neighborhood. The effective width of the lots would meet the city's lot width requirement.

4.01 The above-described preliminary plat is hereby approved, subject to the following conditions:

1. Final plat approval is required. A final plat will not be placed on a city council agenda until a complete final plat application is received.
   a) The following must be submitted for a final plat application to be considered complete:

   1) A final plat drawing that clearly illustrates the following:
      a. A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way and minimum 7-foot wide drainage and utility easements along all other lot lines.
      b. Utility easements over existing or proposed public utilities, as determined by the city engineer.
      c. Drainage and utility easements over wetlands, floodplains, and stormwater management facilities, as determined by the city engineer.

   2) Documents for the city attorney’s review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
      a. Title evidence that current within thirty days before release of the final plat.
      b. Conservation easements over the 25-foot wetland buffer on both lots, and a drawing of the easements. The easement may allow removal of hazard, diseased, or invasive species.

2. Prior to final plat approval:
   a) This resolution must be recorded with Hennepin County.
   b) The documents outlined in section 4.01(1)(a)(2) above must be approved by the city attorney.

3. Prior to release of the final plat for recording:
a) Submit the following:

1) Two sets of mylars for city signatures.

2) An electronic CAD file of the plat in microstation or DXF.

3) Park dedication fee of $5,000.00

b) The existing house must be demolished.

4. Subject to staff approval, OAKHAVEN ACRES 2nd ADDITION must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

- Preliminary plat dated April 17, 2015

5. Prior to issuance of a building permit for any of the lots within the development:

a) Submit the following items for staff review and approval:

1) Final grading and tree preservation plan for the lot. The plan must:


   b. The floodplain elevation of 958.6 must be indicated on the plans, and the house must meet all floodplain setback requirements. No grading is allowed below the floodplain elevation.

   c. Comply with the city's tree preservation ordinance. Final house, driveway, utilities, and stormwater management must be located to maximize tree preservation on both lots. No more than five high priority trees may be removed from Lot 1, and no more than two high priority trees may be removed from Lot 2. City staff may administratively approve adjustment in the tree removal for each lot so long as the total tree removal does not exceed seven high priority trees.
d. Show sewer and water services to minimize impact to any significant or high priority trees. Utilities must be located within driveway areas where possible to minimize tree loss. No additional trees may be removed for installation of utility services.

e. No grading is permitted within the wetland buffer area, unless determined to be necessary by city staff.

2) Final utility plan must meet the following:

a. The existing services shall be removed to their respective mains, the sewer wye is to be cut out and sleeved and the water service pipe removed to the main and the corporation stop turned off.

b. The existing sewer main invert elevations must be confirmed, the proposed house to the east may not be able to be served via gravity sewer service.

c. The proposed sewer services need to connect to the main with a wye. A direct connection to the manhole will not be allowed.

3) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in ordinance. However, at the sole discretion of staff, mitigation may be decreased.

4) Stormwater management plan that meets the requirements of the city's water resources management plan.

5) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

6) Evidence of filing the final plat at Hennepin County and copies of all recorded easements and documents as required in section 4.01(1)(a)(2) of this resolution.
7) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

8) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

b) The driveway to Lot 2 must be roughed in with gravel prior to construction to avoid construction traffic over the sanitary sewer main.

c) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

d) Install heavy duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.

e) Submit all required hook-up fees.

6. All lots and structures within the development are subject to all R-1 zoning standards. In addition:

a) Minimum floor elevation is 960.6.
b) All lots within the development must meet all minimum access requirements as outlined in Minnesota State Fire Code Section 503. These access requirements include road dimension, surface, and grade standards. If access requirements are not met, houses must be protected with a 13D automatic fire sprinkler system or an approved alternative system.

c) Each of the homes must meet the requirements of the city's McMansion Policy. The floor area ratio (FAR) of each of the homes may not exceed the maximum FAR of properties within 400 feet, and 1,000 feet along Spring Lake Road, at the time the building permit is issued. The maximum FAR within the surrounding area is 0.24 as of the date of this resolution.

7. Permits may be required from other outside agencies including, Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant's or property owner's responsibility to obtain any necessary permits.

8. The city may require installation and maintenance of signs which delineate the edge of any required conservation easement. This signage is subject to the review and approval of city staff.

9. During construction, the streets must be kept free of debris and sediment.

10. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 13, 2015.

[Terry Schneider, Mayor]

Adtest:

David E. Maeda, City Clerk
Action on this resolution:

Motion for adoption: Acomb
Seconded by: Wagner
Voted in favor of: Wagner, Ellingson, Allendorf, Acomb, Bergstedt, Schneider
Voted against:
Abstained:
Absent: Wiersum
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 July 13, 2015.

__________________________________
David E. Maeda, City Clerk
assessment rolls, and scheduling a public hearing. All voted “yes.” Motion carried.

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-073 declaring costs for city court fines, Project No. 1020 (1-year), ordering the preparation of special assessment rolls, and scheduling a public hearing. All voted “yes.” Motion carried.

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-074 declaring costs for the trip generation fee for the property at 10401 Bren Road East, ordering the preparation of special assessment rolls. All voted “yes.” Motion carried.

B. Resolution approving a conditional use permit, with building plans, for a licensed daycare facility at 6030 Clearwater Drive.

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-075 approving a conditional use permit, with building plans, for a licensed daycare facility at 6030 Clearwater Drive. All voted “yes.” Motion carried.

C. Twelve-month extension of the Saville West final plat at 5290 and 5300 Spring Lane, 5325 County Road 101, 5301 and 5311 Tracy Lynn Terrace, and unassigned addresses.

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-076 approving the 12-month time extension of the Saville West finalplat at 5290 and 5300 Spring Lane, 5325 County Road 101, 5301 and 5311 Tracy Lynn Terrace, and unassigned addresses. All voted “yes.” Motion carried.

D. Twelve-month extension of the Oakhaven Acres 2nd Addition preliminary plat at 13929 Spring Lake Road.

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-077 approving the 12-month time extension of the Oakhaven Acres 2nd Addition preliminary plat at 13929 Spring Lake Road. All voted “yes.” Motion carried.

E. Resolution requesting MnDOT variance for Ridgehaven Lane/Ridgedale Drive.

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-078 approving the resolution requesting MnDOT variance for Ridgehaven Lane/Ridgedale Drive. All voted “yes.” Motion carried.
8. **Citizens Wishing to Discuss Matters not on the Agenda**

Robert Ashmun, 3529 Orchard Lane, said he was present to provide an update on an issue involving interest owed from a hookup fee. Schneider noted Ashmun had appeared numerous times before the council and had been told the council was not going to address the issue without him working through an agreeable solution with staff.

9. **Bids and Purchases: None**

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

   A. **Ordinance regarding recreational fires**

   Allendorf moved, Acomb seconded a motion to adopt ordinance 2017-12. All voted “yes.” Motion carried.

   B. **Resolution authorizing just compensation for easements of parcels for the Ridgehaven Lane/Ridgedale Drive improvements**

   Allendorf moved, Acomb seconded a motion to adopt resolution 2017-095 authorizing just compensation for the easements for the project. All voted “yes.” Motion carried.

   C. **Resolution approving a conditional use permit for a microdistillery at 6020 Culligan Way**

   Allendorf moved, Acomb seconded a motion to adopt resolution 2017-096 approving a conditional use permit for a microdistillery at 6020 Culligan Way. All voted “yes.” Motion carried.

   D. **Resolution approving a conditional use permit for a restaurant serving liquor at 17420 Minnetonka Blvd.**

   Allendorf moved, Acomb seconded a motion to adopt resolution 2017-097 approving the conditional use permit for a restaurant serving liquor at 17420 Minnetonka Blvd. All voted “yes.” Motion carried.

   E. **Twelve month extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat at 13929 Spring Lake Road**

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

This note contains two items:

- First-thank you again for taking the time to meet with me a couple weeks ago. As discussed, I would like to request another year’s extension for (potential) final plat filing.

- Second-can’t believe I overlooked this, when we visited. Given how red hot the market is: Is there ANY chance we could revisit my property’s layout, and find a way to get three lots out of it instead of two? Every builder and agent is asking me that question, after having walked every inch of the space. Naturally, they want to maximize their profit/investment, but they seem to see something that I haven’t dug deeply into with the City. Thoughts/ideas?

Thanks again!

Tim Tompkins
Ground Floor Packaging
Unique Mats
Brief Description
Resolution approving a conditional use permit for an educational institution at 18707 Old Excelsior Blvd.

Recommendation
Adopt the resolution approving the request

Proposal
The property at 18707 Excelsior Blvd. was developed in 2001. At that time, a roughly 9,180 square foot office building was constructed on the site and a second, “twin” office building was anticipated for future construction on the adjacent property. In the following years, plans for the adjacent property were changed and a senior assisted living facility was ultimately constructed on the site.

In 2016, the Minnetonka School District purchased the subject property with the intent to use the building for its VANTAGE programs. The programs offer learning and study opportunities in “real world/hands-on” settings. VANTAGE programs generally consist of morning and afternoon “blocks.” Students attend classes at the high school building proper in the a.m. and at a VANTAGE site in the p.m. or vice-versa.

The school district is now specifically proposing to remodel the interior to the existing building to house the VANTAGE Health Sciences program. Ninety-one students are enrolled in the program for the 2018-2019 school year. The students will be instructed by four to six teachers, depending on the day’s topic. In its first year, the health sciences program will have an afternoon “block” only. The school district will provide a shuttle bus between the school and the VANTAGE site. However, students will also be allowed to drive to and park on the property. Similar to rules at the high school itself, student drivers may bring one other student with them.

https://www.minnetonkaschools.org/academics/mhs/vantage/areas-of-study/health-science

Planning Commission Hearing
The planning commission considered the request on June 28, 2018. The commission report and associated plans are attached. Staff recommended approval of the request, finding:

- The proposed use would meet all general and specific conditional use permit standards.
- Parking requirements would be met on-site.
- Negative impacts to the surrounding area are not anticipated.

At the commission meeting, a public hearing was opened to take comment; no comments were received. The commission then asked the applicant general questions about enrollment and specific questions about the Health Science program.

Planning Commission Recommendation
On a 5-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes are attached.
Staff Recommendation

Staff recommends that the city council adopt the resolution approving a conditional use permit for an educational institution at 18707 Old Excelsior Blvd.

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

Originator: Susan Thomas, AICP, Assistant City Planner
Brief Description  A conditional use permit for an educational institution at 18707 Old Excelsior Boulevard.

Recommendation  Recommend the city council adopt the resolution approving the permit

Proposal

The property at 18707 Excelsior Boulevard was developed in 2001. At that time, a roughly 9,180 square foot office building was constructed on the site and a second, “twin” office building was anticipated for future construction on the property immediately adjacent to the east. In the following years, plans for the adjacent property were changed and a senior assisted living facility was ultimately constructed.

In 2016, the Minnetonka School District purchased the subject property with the intent to use the building for its VANTAGE programs. The programs offer learning and study opportunities in “real world/hands-on” settings. VANTAGE programs generally consist of morning and afternoon “blocks.” Students attend classes at the high school building proper in the a.m. and at a VANTAGE site in the p.m. or vice-versa.

The school district is now specifically proposing to remodel the interior to the existing building to house the VANTAGE Health Sciences program. Ninety-one students are enrolled in the program for the 2018-2019 school year. The students will be instructed by four to six teachers, depending on the day’s topic. In its first year, the health sciences program will have an afternoon “block” only. The school district will provide a shuttle bus between the school and the VANTAGE site. However, students will also be allowed to drive to and park on the property. Similar to rules at the high school itself, student drivers may bring one other student with them.

https://www.minnetonkaschools.org/academics/mhs/vantage/areas-of-study/health-science

Staff analysis

A land use proposal is comprised of many details. In evaluating the proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines the primary questions associated with the applicant’s request and staff’s findings.

- **Is the proposed use reasonable for the site?**

  Yes. Educational institutions are not specifically permitted in the B-1 zoning district. However, public buildings are conditionally-permitted, as are “other uses similar to those permitted”. Historically, the city has viewed schools as “similar” to public buildings and allowed them as conditional uses.

  The proposal would meet the conditional use permit standards associated with public buildings. These standards are outlined in the “Supporting Information” section of this report.
• Would parking standards be met?

Yes. By city code, the proposed use requires 36 parking stalls. This is similar to the requirement for an office use of the building. The site contains 65 stalls and at least 10 additional stalls could be constructed on the property.

<table>
<thead>
<tr>
<th></th>
<th>Parking Rate</th>
<th>Parking Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Office Use</td>
<td>1 stall/250 sq.ft.</td>
<td>37 stalls</td>
</tr>
<tr>
<td>Proposed School Use</td>
<td>1 stall/3 students + 1 stall/instructor</td>
<td>36 stalls</td>
</tr>
</tbody>
</table>

Staff suggests, as a condition of approval, that the school district provide VANTAGE Health Science enrollment numbers to the city each year. Based on those numbers, the city may require construction of additional parking or more specific off-site parking and shuttle service to ensure parking does not become an issue in the future.

• Would the proposed use negatively impact the surrounding area?

No. Staff does not anticipate the school program would negatively impact the surrounding area.

• The proposal would result in no immediate changes to the exterior of the building or the grounds.

• The Institute of Transportation Engineers suggest that the proposed school would generate slightly fewer vehicle strips than an office building with same employee population.

<table>
<thead>
<tr>
<th></th>
<th>Trip Generation Rate</th>
<th>Trips for 91 persons</th>
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<tbody>
<tr>
<td>Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.48 trips per employee – a.m. peak hour</td>
<td>44 trips</td>
</tr>
<tr>
<td></td>
<td>0.46 trips per employee – p.m. peak hour*</td>
<td>42 trips</td>
</tr>
<tr>
<td>High School</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.42 trips per student – a.m. peak hour</td>
<td>38 trips</td>
</tr>
<tr>
<td></td>
<td>0.29 trips per student – p.m. peak hour*</td>
<td>26 trips</td>
</tr>
</tbody>
</table>

* p.m. peak hour for an office is 4-6 p.m.
* p.m. peak hour for an office is 2-4 p.m.

Staff Recommendation

Recommend that the city council adopt the resolution approving a conditional use permit for educational institution at 18707 Old Excelsior Boulevard.

Originator: Susan Thomas, AICP, Assistant City Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

**Surrounding Land Uses**
- Northerly: Single-family homes, zoned R-1
- Easterly: Sunrise Assisted Living, zoned PUD
- Southerly: Highway 7
- Westerly: Single-family homes, zoned R-1

**Planning**
- Guide Plan designation: office
- Zoning: B-1, office

**CUP Standards**
The proposal would meet the general conditional use permit standards as outlined in City Code §300.21 Subd.2:

1. The use is consistent with the intent of this ordinance;
2. The use is consistent with the goals, policies and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;
4. The use is consistent with the city's water resources management plan;
5. The use is in compliance with the performance standards specified in section 300.28 of this ordinance; and
6. The use does not have an undue adverse impact on the public health, safety or welfare.

The proposal would meet the specific conditional use permit standards as outlined in City Codes §300.21 Subd.5(h) and §300.21 Subd.3(m):

1. Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;
   
   **Finding:** The proposed school has been reviewed by the city's building, engineering, planning, natural resources, and fire staff. Staff finds the proposal to be generally consistent with the city's development guides.

2. Consistency with this ordinance;
   
   **Finding:** The proposal would meet all minimum ordinance standards.

3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes
to be in keeping with the general appearance of neighboring developed or developing areas;

Finding: The proposed school would occupy an existing building on a developed site. At this time, no changes would be made to the exterior of the building or to the property.

4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

Finding: The proposed school would occupy an existing building on a developed site. At this time, no changes would be made to the exterior of the building or to the property.

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:

a. an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;

b. the amount and location of open space and landscaping;

c. materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and

d. vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

Finding: The proposed school would occupy an existing building on a fully developed site. At this time, no changes would be made to the exterior of the building or to the property.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and

Finding: Interior renovations would meet current building code requirements, including those pertaining to energy efficiency.

7. Protection of adjacent and neighboring properties through
reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

**Finding:** The proposed school would not negatively impact the surrounding area. The school occupancy would:

- Result in no immediate changes to the exterior of the building or the grounds.
- Generate fewer vehicle trips per day than an office building with similar number of employees.

**Neighborhood Comments**
The city sent notices to 52 area property owners and received no comments to date.

**Pyramid of Discretion**
The current proposal.

**Motion Options**
The planning commission has three options:

1. Concur with the staff recommendation. In this case a motion should be made recommending the city council approve the request.

2. Disagree with staff's recommendation. In this case, a motion should be made recommending the council deny request. This motion must include a statement as to why denial is recommended.

3. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

**Voting and Appeals**
The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request. Approval requires the affirmative vote of a simple majority.
Location Map

Project: Minnetonka ISD 276
Address: 18707 Old Excelsior Blvd
B. Conditional use permit for an educational institution at 18707 Old Excelsior Blvd.

Acting Chair Schack introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Sewall asked if there would be busing and a drop-off area. Thomas answered that the students would be high-school age, so students could drive themselves to the site. There would be a shuttle bus operating from the high school. Cross-parking agreements would be in place between the properties. The conditional use permit could be reviewed at any time an issue would become apparent. There would be an easement provision that would allow the city to step in if the property owners could not resolve a problem.

Acting Chair Schack asked how many students would participate in the program. Thomas answered that for the 2018-2019 academic year, 91 students are currently enrolled.

Powers asked if food would be prepared on site. Thomas explained that the program would not last a full day.

Paul Bourgeois, executive director of finance and operations for Minnetonka Public Schools, applicant, stated that the half-day program would not serve food. The students who complete the program would be able to be certified to work in health care positions at nursing homes and assisted-living care centers. Students would arrive after lunch and stay for three hours Monday through Thursday. Fridays would be spent doing labs in the back of the high school. Most students would drive themselves, but there would be a shuttle bus from the high school loading and dropping off at the driveway.

Acting Chair Schack asked for the ages of the students in the program. Mr. Bourgeois answered that only juniors and seniors would participate. Students would be required to dress professionally. There would be a lot of guest lecturers and mentors that meet with students.

Powers asked what the hands-on training would include. Mr. Bourgeois stated that medical mannequins and hospital beds would be used to practice procedures.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Powers thought it would be a great use of space and land use. He applauded the school district and Mr. Bourgeois for providing a needed program.
Knight supports the proposal. His biggest concern was the access for the students to arrive at the site, but that question was answered. He was comfortable with the proposal.

Sewall suggested directing students to use the west entrance and exit as much as possible as a courtesy to the neighbors.

Acting Chair Schack noted that the school district has been a good neighbor.

**Powers moved, second by Hanson, to recommend that the city council adopt the resolution approving a conditional use permit for an educational institution at 18707 Old Excelsior Blvd.**

**Hanson, Knight, Powers, Sewell, and Schack voted yes. Kirk was absent. Motion carried.**

Acting Chair Schack announced that this item is tentatively scheduled to be reviewed at the city council meeting on July 9, 2017.

C. **Items concerning the proposed parking ramp addition at 12700 Whitewater Drive.**

Acting Chair Schack introduced the proposal and called for the staff report.

Ingvalson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

In response to Sewall’s question, Gordon stated that the light rail Opus Station would be approximately one mile away. Staff likes adding height to the ramp better than surface parking to decrease hard surface coverage.

In response to Acting Chair Schack’s question, Ingvalson said that the entrance and exit would be the same. The area is expected to accommodate the increase in traffic.

Acting Chair Schack asked what type of trees would be removed. Colleran explained that nine significant trees and one high-priority tree, which is an 83-inch cottonwood, would be removed. Acting Chair Schack confirmed with Colleran that the priority is protecting the wetland.

Ed Farr, architect for the project, introduced himself and stated that staff did an excellent job presenting the project. He was available for questions.

Kyle Williams, representing RWR, the applicant, stated that RWR is a large asset-management company. He was available for questions.

Mr. Farr explained that sustainable features would be used. There would be a complete retrofit of the entire parking ramp to LED lighting. The additional parking space would be
Resolution No. 2018-

Resolution approving a conditional use permit for an educational institution at 18707 Old Excelsior Boulevard

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

Section 1. Background.

1.01 Minnetonka Independent School District #276, has requested a conditional use permit to operate an educational institution within the B-1 zoning district.

1.02 The subject property is located at 18707 Old Excelsior Boulevard. It is legally described as:

Lot 1, Block 1, MINNETONKA BUSINESS DEVELOPMENT

1.03 City Code §300.17 Subd.4(m) allows public buildings as conditional uses within the B-1 zoning district.

1.04 City Code §300.17 Subd.4(p) allows “other uses similar to those permitted within this section, as determined by the city” as conditional uses within the B-1 zoning district.

1.05 The proposed school would be similar to a public building, as it is a place where a group of people would gather at a specified time for a specific purpose.

1.06 On June 28, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the planning commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the permit.

Section 2. General Standards.

2.01 City Code §300.21 Subd. 2 lists the following general standards that must be met for granting a conditional use permit:

1. The use is consistent with the intent of the ordinance;

2. The use is consistent with the goals, policies and objectives of the
comprehensive plan;

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;

4. The use is consistent with the city's water resources management plan;

5. The use is in compliance with the performance standards specified in §300.28 of the ordinance; and

6. The use does not have an undue adverse impact on the public health, safety or welfare.

Section 3. Specific Standards.

3.01 City Codes §300.21 Subd.3(m) and §300.27 Subd.5(m) list the following specific standards that must be met for granting a conditional use permit for a public building within the B-1 zoning district.

1. Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;

2. Consistency with this ordinance;

3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;

4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:

   a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;

   b) the amount and location of open space and landscaping;

   c) materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and

   d) vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access
points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Section 4. Findings.

4.01 The proposal would meet the general conditional use permit standards as outlined in City Code §300.21 Subd. 2.

4.02 The proposal would meet the specific conditional use permit standards as outlined in City Code §300.21 Subd.3(m) and §300.27 Subd.5(m)

1. The proposed educational use has been reviewed by the city's building, engineering, planning, natural resources, and fire staff. Staff finds the proposal to be generally consistent with the city's development guides.

2. The proposed educational use would meet all minimum ordinance standards.

3. The proposed educational use would occupy an existing building on a developed site. At this time, no changes would be made to the exterior of the building or to the property.

4. Interior building renovations would meet current building code requirements, including those pertaining to energy efficiency.

5. The proposed educational use would not negatively impact the surrounding area. The school occupancy would:

   a) Result in no immediate changes to the exterior of the building or the grounds.

   b) Generate slightly fewer vehicle trips than an office building with the same employee population.
Section 5. City Council Action

5.01 The above-described conditional use permit is approved, subject to the following conditions:

1. Subject to staff approval, the property must be developed and maintained in substantial conformance with the following plans:
   • Building Permit Plan Set, dated May 23, 2018

2. Prior to issuance of a building permit:
   a) This resolution must be recorded with Hennepin County prior to issuance of a building permit.
   b) Submit a revised site plan, removing the sidewalk connection between Old Excelsior Boulevard and the building.
   c) Submit a landscape plan to bring the property into greater compliance with the approved 2001 landscape plan. The plan should include five small trees and some shrubs interspersed between existing trees adjacent to the Highway 7 right-of-way.

3. If food is provided by the school for the students, the kitchen must meet all food code requirements, including construction and equipment.

4. The building must be fire sprinkled or meet all minimum building and fire code requirements for schools.

5. The school district must provide enrollment numbers to the city in August of each year. The numbers must specifically note how many students are enrolled to attend classes on the subject property. Based on those numbers, the city may require construction of additional parking or more specific off-site shuttling to ensure parking does not become an issue in the future.

6. The city council may reasonably add or revise conditions to address any future unforeseen problems.

7. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 9, 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 meeting held on July 9, 2018.

_________________________________
David E. Maeda, City Clerk
City Council Agenda Item #10C
Meeting of July 9, 2018

Brief Description
Ordinance and resolution approving the Master Development Plan amendment and Site and Building Plan Review with drive aisle and stall length variances for a proposed parking ramp addition at 12700 Whitewater Drive

Recommendation
Adopt the ordinance and resolution approving the proposal

Proposal
Edward Farr, on behalf of the property owner, is proposing to increase an existing parking ramp from five levels to seven levels at 12700 Whitewater Drive. The subject property currently meets the ordinance with the number of parking spaces. However, the current leaseholder, United Health Group, has requested the property owner reconfigure the interior of the subject building to create a denser office environment. This interior change to the office building would allow additional workers on site, but would also necessitate additional parking. The existing site has 635 parking spaces (624 spaces required by city code). If approved, the number of parking spaces on site would increase to approximately 947 spaces.

The proposed parking ramp addition would be a vertical addition within the footprint of the existing ramp. If approved, the subject parking ramp height would increase from 42 feet to 66 feet.

The proposal includes the following requests:

1) Master development plan; and

2) Site and building plan with parking aisle width and stall length variances.

History
Since its approval, the Minnetonka Corporate Center master development plan has been amended on several occasions. In particular, the subject lot received an amendment in 1996 and 1997. (See below)

<table>
<thead>
<tr>
<th>MDP</th>
<th>Site 10 (Subject Property)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983 Original</td>
<td>Office</td>
</tr>
<tr>
<td></td>
<td>10-stories</td>
</tr>
<tr>
<td></td>
<td>200,000 SF</td>
</tr>
<tr>
<td>1996 Amendment</td>
<td>Office</td>
</tr>
<tr>
<td></td>
<td>6-stories, with a parking ramp</td>
</tr>
<tr>
<td></td>
<td>130,000 SF</td>
</tr>
<tr>
<td>1997 Amendment</td>
<td>Office</td>
</tr>
<tr>
<td></td>
<td>6-story, with a parking ramp</td>
</tr>
<tr>
<td></td>
<td>156,000 SF</td>
</tr>
</tbody>
</table>
Planning Commission Hearing

The planning commission considered the request on June 28, 2018. The commission report and associated plans are attached. Staff recommended approval of the proposal, finding:

1. The Master Development Plan Amendment request is reasonable. The proposed site design is logical, limits site impacts, and makes good use of existing structures on the site. Additionally, the proposed structure would maintain traffic and pedestrian patterns and impervious surface on the site as it would be within the existing footprint of the structure.

2. The proposed plan adequately addresses site impacts relating to the project. The applicant has proposed to replace landscaping lost during construction for the parking ramp. The applicant has also proposed staging for their construction as far away as possible from the wetland on the site with erosion control fencing to ensure protection of the wetland.

3. Third, the proposed variance is reasonable as the existing structure was approved with parking aisle width and stall length variances. The continuation of these variances on the upper levels would be appropriate as:
   - The parking ramp has existed over 20 years without complaints regarding the narrow aisles and short parking stalls; and
   - As stated in the previous variance, there is adequate maneuvering area within the ramp with the aisle width and stall length variances.

At the commission meeting, a public hearing was opened to take comment, but no one appeared to speak. Following the public hearing, the commission discussed and generally expressed support for the proposal. Meeting minutes are attached.

Planning Commission Recommendation

On a 5-0 vote, the commission recommended that the city council approve the request.

Since the Planning Commission Meeting

There have been no changes to the proposal or additional information received since the planning commission's meeting on this item.

Staff Recommendation

Recommend the city council adopt the ordinance and resolution approving the Master Development Plan amendment and Site and Building Plan Review with drive aisle and stall length variances.

Through: Geralyn Barone, City Manager
         Julie Wischnack, AICP, Community Development Director
         Loren Gordon, AICP, City Planner
Originator: Drew Ingvalson, Planner
**MINNETONKA PLANNING COMMISSION**  
June 28, 2018

**Brief Description**  
Items concerning the proposed parking ramp addition at 12700 Whitewater Drive:

1) Major amendment to an existing master development plan; and

2) Final site and building plans, with a parking aisle width and stall length variances.

**Recommendation**  
Recommend the city council approve the proposal

---

**Proposal**

Edward Farr, on behalf of the property owner, is proposing to increase an existing parking ramp from five levels to seven levels at 12700 Whitewater Drive. The subject property currently meets the ordinance with the number of parking spaces. However, the current leaseholder, United Health Group, has requested the property owner reconfigure the interior of the subject building to create a denser office environment. This interior change to the office building would allow additional workers on site, but would also necessitate additional parking. The existing site has 635 parking spaces (624 spaces required by city code). If approved, the number of parking spaces on site would increase to approximately 947 spaces.

The proposed parking ramp addition would be a vertical addition within the footprint of the existing ramp. If approved, the subject parking ramp would increase from 42 feet to 66 feet in height. With the parking ramp addition, the proposed ramp would be 17 feet shorter than the existing building on site, which is 83 feet in height. Within the application, the applicant has stated that the two added levels to the parking ramp would continue the same design as the existing ramp levels and no modifications would be made to the entrance or egress to the ramp, including the elevator and stair tower on the north side of the ramp.

**Proposal Summary**

The following is intended to summarize the applicant’s proposal. Additional information associated with the proposal can be found in the “Supporting Information” section of this report.

- **Existing Site Conditions.**

  The subject property is located on the northwest side of Whitewater Drive, adjacent to Interstate 494. Generally, the subject building and parking ramp are located on the highest points of the property, with grades sloping downward from both of them. To the west of the two structures is a low point that is classified as a wetland. Water from the subject buildings drain towards this point on the property and towards other low points along the west side of the property. (See attached.)
• **Planned Unit Development**

The property is located within the Minnetonka Corporate Center and is subject to the Minnetonka Corporate Center master development plan. The plan was approved in 1983 and originally envisioned a business park containing 15 development sites. A ten-story, 200,000 square foot office building was envisioned for Site 10, which is the subject property. (See attached.)

Since its approval, the Minnetonka Corporate Center master development plan has been amended on several occasions. In particular, the subject lot received an amendment in 1996 and 1997. (See below)

<table>
<thead>
<tr>
<th>MDP</th>
<th>SITE 9</th>
<th>SITE 10*</th>
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<tbody>
<tr>
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<td>Office 3-stories</td>
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<td></td>
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<td>Office 10-stories</td>
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<td>200,000 SF</td>
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<tr>
<td>1996 Amendment</td>
<td>Office 2-stories</td>
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</tr>
<tr>
<td></td>
<td>82,460 SF</td>
<td>Office 6-stories, with a parking ramp</td>
</tr>
<tr>
<td></td>
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<td>130,000 SF</td>
</tr>
<tr>
<td>1997 Amendment</td>
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<tr>
<td></td>
<td></td>
<td>156,000 SF</td>
</tr>
</tbody>
</table>

*Subject Property

• **1997 Site Plan Parking Variance**

In 1997, the city approved site and building plans with a parking aisle width and stall length variances. The city council approved a 2-foot variance (from 19 feet to 17 feet) for stall length and a 7-foot variance (from 23 feet to 16 feet) for aisle width. The city approved these variances as:

- The reduced parking aisle width and stall length allowed the parking ramp to maintain a smaller footprint, thereby, increasing tree preservation on the property; and

- Adequate maneuvering area would be accommodated within the ramp with the proposed variances.

There is mention in the applicant’s narrative that the parking structure would be built such that additional parking levels could be added in the future. However, the city approvals did not outright permit this type of expansion. As such, the currently proposed addition requires a master development plan amendment and site and building plan review, with parking aisle width and stall length variances. If approved, the parking ramp additions would have the same parking aisle and stall dimensions as the lower five levels.
• **Site Impacts.**

Construction of the proposed parking lot would require access for construction equipment. Based on the access and construction plan provided by the applicant, nine significant trees and one high priority tree would be lost due to crane access to build the parking ramp addition. The removal would be allowed under the tree ordinance, as this project is not considered a redevelopment project. The tree ordinance defines redevelopment projects as removing or increasing the square footage of the principal structure by more than 50 percent of the building footprint. However, if approved, the applicant would be required to mitigate for the landscaping that will be lost in order to provide crane access to the site, as shown in their submitted landscaping plan. (See attached.)

There is a wetland located on the northwest side of the parking ramp. The applicant has proposed construction activities on the southeast corner of the parking structure. Erosion control fencing would be installed along the west perimeter of that work area to minimize any potential impacts on the wetland and proposes to use platforms or chairs suspended from the structure to avoid disturbance of the subject wetland.

• **Approvals.**

The proposal includes the following requests:

1) Master development plan;

2) Site and building plan with parking aisle width and stall length variances.

**Primary Questions and Analysis**

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into primary questions or issues. The following outlines both the primary questions associated with the subject proposal and staff’s findings.

• **Is the variance for parking aisle width and stall length reasonable?**

Yes. The existing structure was approved with parking aisle width and stall length variances. The continuation of these variances on the upper levels would be appropriate as:

- The parking ramp has existed over 20 years without complaints regarding the narrow aisles and short parking stalls; and

- As stated in the previous variance, there is adequate maneuvering area within the ramp with the aisle width and stall length variances.

• **Does the construction plan adequately address site impacts?**

Yes. The applicant has proposed to replace landscaping lost during construction for the parking ramp. Additionally, the applicant has proposed staging for their construction as far away as possible from the wetland on the site. They have also proposed to install erosion control fencing to ensure protection of the wetland.
Is the proposed building and site design reasonable?

Yes. The proposed site design is logical, limits site impacts, and makes good use of existing structures on the site. The proposed parking ramp addition would be located within the same footprint as the existing parking ramp structure. Due to the addition being strictly vertical, the proposed two level addition onto the existing five level parking structure would maintain traffic and pedestrian patterns and impervious surface on the site.

The proposed structure would also maintain the character of the subject site and overall development. The proposed structure would increase the parking ramp height by 24 feet. However, the proposed structure would be 66 feet in height, still 17 feet shorter than the existing principal structure. (See attached).

The proposed parking structure addition would use acid washed panels with exposed aggregate accent stripes, the same design and materials as the existing parking ramp.

Summary Comments

The proposed parking structure addition would be an investment into the existing office property and would maintain the character of the existing development within the Minnetonka Corporate Center. Staff supports and recommends approval of the proposal, subject to conditions.

Staff Recommendation

Recommend the city council adopt the resolution approving the Master Development Plan amendment and Site and Building Plan Review

Originator: Drew Ingvalson, Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Project No.  96007.18a

Property  12700 Whitewater Drive

Applicant  Edward Farr, on behalf of the property owner

Surrounding Land Uses  
Northerly: Office Building, zoned I-1, and guided for mixed use
Northeasterly: Office building, zoned PUD, and guided for mixed use
Southeasterly: Office building, zoned PUD, and guided for mixed use
Southerly: Office building, zoned PUD, and guided for mixed use
Westerly: Interstate Highway 494

Planning  
Guide Plan designation: Mixed Use
Zoning: PUD, Planned Unit Development

Existing Site  
The subject site is improved with a 156,000 square foot, six story office building. The site also has a five story, 43-foot tall, parking ramp with 635 parking spaces.

Introduction  
The city council introduced the ordinance to amend the existing master development plan on June 18, 2018 and referred it to the planning commission. The council asked questions about accessible parking requirements.

City Actions  
The Minnetonka Corporate Center Parking Ramp proposal requires the following applications:

- **Major amendment to an existing master development plan.** By city code, any change to an approved master development plan that “substantially alters the location of buildings, parking areas or roads” is considered a “major” amendment that can only be approved by ordinance.

- **Final Site and Building Plan.** By city code, site and building plan review is required for any expansion of an accessory structure (parking ramp).

- **Parking Aisle Width and Stall Length Variances.** By City Code, 75 degree angle parking must have:
  - 9-foot wide stalls;
  - 19-foot long stalls; and
  - 23-foot wide aisles.

  Consistent with the 1997 approved variance, the proposed parking ramp would have:
  - 9-foot wide stalls;
  - 17-foot long stalls; and
  - 16-foot wide aisles.
Submitted Plan

The originally submitted plans show stall widths below the nine-foot stall width requirement and stall lengths below 17-foot requirement (see additional information below.) However, the applicant has agreed to meet the 1997 approved variance requirements for stall and aisle dimensions and all other parking requirements. With this agreement, the applicant submitted a diagram showing the proposed parking dimensions, meeting the variance approvals. A condition of approval has been added requiring the applicant to submit a revised striping plan for the entire structure that would meet the 1997 variance requirements prior to issuance of a building permit.

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*Variance Needed

Development Standards

The proposed parking ramp, if approved, would be within the footprint of the existing parking ramp, meeting all development standard setbacks.

Natural Resources

Natural Resources has provided the following comments regarding the proposal:

- **Trees.** The removal limits of the tree ordinance do not apply to the subject project since the project is not considered a redevelopment by ordinance definition.

  However, the applicant is required to mitigate for landscaping that is lost in order to provide for crane access to the site. The plan provided appears to meet this requirement, subject to conditions.

- **Wetland.** The wetland on the west side of the parking ramp would not be impacted. Additional protection would be required if any change in access is proposed.

  If approved, best management practices must be followed during the course of site preparation and construction activities. This would include, but not limited to, installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval the applicant must submit a construction management plan detailing these management practices.

Building Design

The proposed ramp addition from five-stories to seven stories building would have a maximum height of 66 feet, 17 feet shorter than the principal building. The subject ramp would have acid washed panels with exposed aggregate accent stripes, matching the existing parking ramp. (See attached).
Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with staff’s recommendation. In this case, a motion should be made recommending the city council adopt the ordinance and resolution approving the proposal.

2. Disagree with staff’s recommendation. In this case, a motion should be made recommending the city council deny the requested master development plan amendment and final site and building plans with parking aisle and stall length variance request. This motion must include a statement as to why denial is recommended.

3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Voting Requirement

The planning commission will make a recommendation to the city council on all aspects of the applicant’s proposal. A recommendation requires an affirmative vote of a simple majority.

The city council’s final approval requires affirmative votes as follows:

- Master Development Plan amendment: 4 votes
- Site and Building Plans: 5 votes, due to the parking variances.

Neighborhood Comments

The city sent notices to 41 area property owners and received no comments to date.

Deadline for Decision

September 17, 2018
Location Map

Project: Minnetonka Corp. Center ramp
Address: 12700 Whitewater Dr
Our team looks forward to working with the City of Minnetonka to obtain all required approvals for the addition of two levels of parking to an existing five level parking structure at 12700 Whitewater Drive (the “Property”). It is our goal to fully integrate this addition into the existing design and appearance of the building and office park, as if the structure was originally constructed to this new size.

Owner: SNH Medical Office Properties Trust
Architect: Ed Farr, Edward Farr Architects

Site Information
Site Area: 259,510 SF / 5.9575 acres
Current Zoning: PUD (Minnetonka Corporate Center)
Proposed Zoning: No change
Proposed Work: Addition of 2 levels of parking to the existing 5 level parking structure
Proposed Parking: 943 spaces within structure; 4 spaces on surface; 947 spaces total
Overview: The Property’s office building and adjacent parking structure were constructed in 1998, and is currently occupied by United Health Group. The current owner of the building, SNH Medical Office Properties Trust (“SNH”), is seeking to maintain this tenant. United Health Group’s lease renewal is dependent on their ability to reconfigure the office space into a state of the art service center to be used by a number of different business lines within their organization. The service center will have a denser work environment and a significant amount of collaboration space. This increased density requires additional parking which must be provided to maintain United Health Group’s presence in Minnetonka. Although the current parking provided at the Property fully complies with the requirements of the City’s zoning ordinance (a minimum of 4 spaces per 1000 SF), the increased density of the service center now demands a much higher ratio. Accordingly, this proposed parking structure expansion will provide a ratio of 6 spaces/1000 SF.

Design: The existing parking ramp structure is a 5 level precast concrete component assembly including integrally colored off white exterior spandrels with an acid wash texture and exposed aggregate accents. Level A is entered via Whitewater Drive and is primarily enclosed parking, with much of its exterior below grade. Levels B through E are entered on level B via an access drive within the site. This entry will serve the additional parking on levels F and G. These additional levels will match the original design of precast concrete component construction, and maintain the perimeter shape with no encroachments upon required building setbacks. No site modifications will be necessary to provide additional access to or egress from the structure. An existing brick veneer and glass enclosed stair and elevator tower serving the ramp structure will remain as is and end service and access at Level E; however, SNH is seeking approval to extend this feature 2 stories as well to accommodate potential future needs.

Building Size and Height: The office building meets all zoning requirements, and there are no changes proposed for the office building or site F.A.R. The expansion of the parking structure does not affect any building setbacks. The office building height remains at 83’-0”. The parking structure increases from 42’-0” to 63’-0”.

Signage: No additional exterior building signage is being proposed.
Parking: The office building measures 156,000 GSF. The zoning requirement is 1 space per 250 SF, or 4 per 1,000; therefore, the required parking is 624 spaces. The expanded parking structure will provide 80 spaces within the enclosed Level A, and 863 spaces among the open Levels B through G. 4 existing additional spaces are provided outside of the parking structure. This amounts to a total of 947 spaces. Per the Minnesota State Building Code 2% of the parking must be accessible; therefore, 19 spaces must be accessible. This accessible parking will be spread throughout the parking structure with 4 spaces on level A, 4 spaces on level B, and 3 spaces on each of levels C, D, and E for a total of 17 within the parking structure. The remaining 2 spaces are outside of the ramp and are designated as van accessible. It should be noted that 4 van accessible parking spaces are required per code; however, the existing ramp construction precludes the use of internal parking for van accessible parking due to the inability to provide the required 98” minimum vertical clearance. Acknowledgement is made that we are short 2 van accessible spaces; however, it is common today that accessible vans are modified mini-vans which do not require taller clearances. Accessible parking spaces on levels B and E will be provided with 8’ wide access aisles which are required for van accessible stalls.

Grading: The extent of grading is limited to restoration of the areas affected by construction, primarily the south side and southeast corner of the parking structure. This area will need to be modified to accommodate a large crane and for use as a staging area for unloading large precast concrete pieces. Some of this grading may need to occur on the adjacent property and SNH intends to work with that landowner with respect to access rights and construction management issues.

Landscaping: Proposed landscaping scope is limited to replacement / restoration of planting removed for construction purposes. This is limited to the south side and southeast corner of the parking structure, where construction activity is anticipated to occur. Per city requirements, significant trees that are removed will be replaced with a minimum 2” diameter B&B or 6’ evergreens. The one high priority tree to be removed and replaced at an inch for inch ratio requirement is a cottonwood clump with 11 trunks, ranging in size from 2.5” to 13” in diameter and totaling 85”. Efforts will be made to replace this tree with an inch per inch ratio, but we respectfully request that the City take into consideration the efforts made to preserve existing wooded areas during the initial development period in 1997. These tree preservation areas will be untouched by this project.

Wetland: A wetland exists on the west side of the property, northwest of the parking structure. Site disturbance work is concentrated at the southeast corner of the parking structure and erosion control will be provided at the west perimeter of that work to minimize any effect of this work on the wetland. Work required on the north and west sides of the structure such as joint sealant installation will be performed from platforms or bosun’s chairs suspended from the structure to avoid disturbance of the site in proximity to the wetland.

Sanitary Sewer and Storm Water: The additional ramp levels require the extension of internal floor drains to upper levels. New intake will be minimal and within the capacity of the current pipe sizing. There will be no storm water changes since there is no increase in impervious surface area.

Lighting: Existing lighting on covered parking levels has already been converted to LED from HID, and lighting on new covered levels will match. The top level will be lit by pole mounted lighting as it is currently, but the lamping will be converted to LED.
Parking Ramp Expansion
12700 Whitewater Drive
Minnetonka, MN

ARCHITECT:
EDWARD FARR ARCHITECTS
7710 GOLDEN TRIANGLE DRIVE
EDEN PRAIRIE, MN 55344
PHONE: 952-943-9660
CONTACT: MARC WILLIAMSON

STRUCTURAL:
ERIKSEN ROED & ASSOCIATES
2550 UNIVERSITY AVE. WEST
ST PAUL, MN 55114
PHONE: 651-251-7570
CONTACT: MIKE DESUTTER, PE

CIVIL ENGINEER:
EVS, INC.
10025 VALLEY VIEW RD.
SUITE 140
ST PAUL, MN 55114
PHONE: 651-251-7570
CONTACT: DAN BOWAR, PE

SURVEYOR:
HTRO
7101 MARKET PLACE DR.
EDEN PRAIRIE, MN 55344
PHONE: 952-824-0700
CONTACT: TIM SORENSON, LS

LANDSCAPE:
EDWARD FARR ARCHITECTS
7710 GOLDEN TRIANGLE DRIVE
EDEN PRAIRIE, MN 55344
PHONE: 952-943-9660
CONTACT: DAN BOWAR

CODE INFORMATION

ZONING DATA:
PERMITTED USES:
- OFFICE USE:
  - 156,000 GSF / 1000 = 156; 4 X 156 = 624 SPACES (635 EXIST)
- INCREASE FOR SEP. 2 SIDES 39,900 SF N/A
- PEDESTRIAN PARKING PROVIDED:
  - INCREASE FOR SEP. 2 SIDES 39,900 SF N/A
- SPRINKLERED 119,700 SF
- ADJUSTED ALLOWABLE AREA 239,400 SF
- ALLOWABLE NUMBER OF STORIES 12 10 TIERS
- AREA PER FLOOR 25,864 GSF
- TOTAL AREA 156,000 GSF
- # OCCUPANTS / FLOOR 259 215
- REQ. EXIT WIDTH AT STAIRWAYS 78" 65"
- ACT. EXIT WIDTH (#EXITS) 108" (3) 72" (2)

SPRINKLER RULES:
- REQUIRED 98" MINIMUM VERTICAL CLEARANCE
- NO ADDITIONAL VAN ACCESSIBLE STALLS MEETING THE MINIMUM HEIGHT REQUIREMENT CAN BE PROVIDED WITHIN THE STRUCTURE; HOWEVER, ADDED ACCESSIBLE STALLS WITHIN THE RAMP WILL PROVIDE 8' WIDE UNIVERSAL ACCESS

PARKING STRUCTURES:
- 1: 3,180 SF
- S2 (ENCLOSED): 25,800 SF
- S2 (OPEN): 246,500 SF
- LEVEL C (OPEN) 03 PROVIDED (EXISTING)
- LEVEL D (OPEN) 03 PROVIDED (EXISTING)
- LEVEL E (OPEN) 03 PROVIDED (NEW)
- LEVELS F AND G (OPEN) 00 PROVIDED
- TOTAL 19 PROVIDED (2 VAN ACCESSIBLE)

OVERALL AREA:
- TOTAL 947 SPACES TOTAL (6.07/1000 SF)

LOCATION:
- 12700 Whitewater Dr
- Minnetonka Corporate Center
- Minnetonka, MN

Issued For Date
CITY SUBMITTAL 05/24/2018

Sheet Title
COVER SHEET / CODE INFORMATION

Sheet Number
A01

Project Number
A0.1
Description of Property Surveyed

That part of Lot 4, Block 1, Minnetonka Corporate Center, as recorded in the recorded plat thereof, recorded as Document No. 657795, Hennepin County, Minnesota, lying northerly of the following described line, and the Easterly and Westerly extensions of said line:

Beginning at a point on the Western line of said Lot 4 distant 142.00 feet northerly from the road Southern corner of said Lot 4, as measured along said Western line; thence Easterly a distance of 142.00 feet to a point on the Western line of said Lot 4 distant 144.00 feet northerly from the Southern most corner of said Lot 4, as measured along said Western line, and there terminating.

Abstract Property

General Survey Notes

1. All distances are in US survey feet.
2. Bearings are based on the Hennepin County Coordinate System (NAD83 RAO).
3. Please note the boundary information shown herein is per an ALTA/NSPS Land Title Survey performed by HTPO dated August 16, 2017.
4. Site Address: 12700 Whitewater Drive, Minnetonka, MN 55345.
5. This survey was prepared for the purpose of showing the existing conditions for site design.
6. The curved Zoning for the subject property is MUD (Mixed Use Development) per a Zoning Letter from the City of Minnetonka dated August 8, 2017. The setback, height, and floor area restrictions for said zoning designation were obtained from a draft Zoning Amendment, dated August 31, 2017, conducted by Key Zoning Consultants, Inc., submitted to HTPO and are as follows:
   - Minimum Lot Frontage: 250 feet
   - Minimum Lot Area: 28,100 square feet
   - Minimum Parking: 1 space for each 200 square feet, 250 spaces minimum
7. Elevations are based on Minnesota DOT Geodetic Station Name: 2773 G which has an elevation of 936.88 (NAVD88).
8. The subsurface utility information in this plan is Utility Quality Level "D". This Utility Quality Level was determined according to the guidelines of CI-ASCE 38-02, and/or "Standard Practice for Collection and Display of Existing Subsurface Utility Data."
9. Please note this survey was prepared without the benefit of a title commitment. There may be easements of record that are not shown hereon.
10. The site has a total of 102 parking stalls: 40 inside and 62 outside. The following stalls are included in the parking ramp: 78 enclosed stalls; 4 Handicap spaces on level A, 3 Handicap spaces on level B, and 3 Handicap spaces on level D. Outside of the parking ramp, there are 2 Regular stalls and 2 Handicap spaces.

Monument Certification

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of Minnesota Certification.

Dated the 8th day of May, 2018.

Timothy L. Sorenson
Minnesota License No. 16507

Linetype & Symbol Legend

Existing Conditions Survey

12700 Whitewater Drive
Minnetonka, MN
**CONSTRUCTION ACTIVITY REQUIREMENTS**

- **PRECONSTRUCTION PREREQUISITES:**
  - All construction must begin on or after the date shown on the corner of LOT 4.
  - Ensure that the site is prepared before beginning construction.

- **PROJECT DELIVERY:**
  - All work must be completed within the time frame shown on the corner of LOT 4.

**SITE RESTORATION**

- **Sheet Title:** PLAN
- **Issued For:** Minnetonka, MN
- **Minnetonka Corporate Center**
- **12700 Whitewater Dr**

**DISTURBANCE**

- **Expansion Parking Ramp**

**APPROXIMATE**

- **DRAINAGE AND UTILITY EASEMENT PER PLAT**
- **WATER CONVEYANCES SUCH AS CURB AND GUTTER SYSTEMS, OR CONDUITS OR DITCHES.**
- **WATER FROM DEWATERING MUST BE DISCHARGED IN A MANNER THAT DOES NOT**
  - **EXPOSED SOIL AREAS WITH A POSITIVE SLOPE TO A CURB AND GUTTER SYSTEM, STORM**
  - **MINIMIZE EROSION. THE LOCATION OF AREAS NOT TO BE DISTURBED MUST BE**

**REPLACE MAINTENANCE STRIP AND EDGING MATERIAL IN KIND**

- **REPLACE MAINTENANCE STRIP AND EDGING MATERIAL IN KIND**
- **REPLACE MAINTENANCE STRIP AND EDGING MATERIAL IN KIND**

**REPAIR CURB AND ROAD IN KIND**

- **SEE ROAD REPAIR DETAIL**

**SITE BEFORE WORK BEGINS.**

- **CONSTRUCTION ACTIVITY REQUIREMENTS**
  - **SEDIMENT CONTROL PRACTICES MUST BE ESTABLISHED BEFORE THE ACTIVITY IS RAINDISCHARGED TO ANY SURFACE WATER (WITHIN 24 HOURS OF CONNECTING TO A**
  - **THE TIMING OF SEDIMENT CONTROL PRACTICES MAY BE ADJUSTED TO ACCOMMODATE**
  - **OVERLOADED, ADDITIONAL UPGRADE PRACTICES MUST BE INSTALLED, AND THE SWPPP**
  - **WATER LADEN DISCHARGE WATER MUST BE DISCHARGED TO AN APPROVED**
  - **DURING CONSTRUCTION UNTIL ALL SOURCES WITH POTENTIAL FOR DISCHARGING TO**
  - **THE NORMAL WETTED PERIMETER OF ANY DRAINAGE DITCH MUST BE STABILIZED**

**SITE BEFORE WORK BEGINS.**

- **CONSTRUCTION ACTIVITY REQUIREMENTS**
  - **MINIMIZE EROSION. THE LOCATION OF AREAS NOT TO BE DISTURBED MUST BE**
  - **CONSTRUCTION ACTIVITY REQUIREMENTS**
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- **CONSTRUCTION ACTIVITY REQUIREMENTS**
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**RIGHTS TO OWNERSHIP:**

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  - **RIGHTS TO OWNERSHIP:**
  - **RIGHTS TO OWNERSHIP:**
NOTES
1. PLANTING COUNTS ARE SHOWN ON THE LANDSCAPE LEGEND SHEET.
2. PLANTING REFLECT THE REPLACEMENT OF 2 SIGNIFICANT TREES AND
   ONE HIGH PRIORITY TREE.
3. ALL PLANTED TREES TO BE SODDED.
4. ALL PLANTED TREES TO BE IRRIGATED.

LANDSCAPE SYMBOLS

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QUERCUS BICOLOR

AMERICAN LINEN BONAVENTRE
Tilia americana 'Bonaventre'

MAPLE 'GREEN MOUNTAIN'
Acer saccharum 'Green Mountain'

BLACK HILLS SPRUCE
Picea glauca densata

SERVICEBERY
AMELANCHIER X GRANDIFLORA

**NOTES**

1. PLANTING DETAILS DO NOT REPEL THE TIGHT PLANTING ON THE ORDER OF THE LANDSCAPE LEGEND.
2. ALL PLANTED AREAS TO BE SODDED LAWN.
3. ALL DISTURBED AREAS TO BE SEEDED, ARE TO RECEIVE 4" TOP SOIL, THE PLANTING NOTES AND GENERAL NOTES.
4. ALL PLANTED AREAS TO BE IRRIGATED.

**LANDSCAPE LEGEND**

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**PLANTING NOTES**

1. ALL PLANTS MUST BE HEALTHY, VIGOROUS MATERIAL, FREE OF PESTS AND DISEASES, AND ADEQUATELY SUPPORTED BY STEEL FENCE POSTS 6' O.C. MAXIMUM SPACING.
2. ALL PLANT MATERIAL QUANTITIES, SHAPES OF BLOOM AND LOCATIONS COMMENZ WITH THE LANDSCAPE LEGEND AND ARE SHOWN ON THE LANDSCAPE PLAN. VERIFY ALL QUANTITIES SHOWN ON THE LANDSCAPE LEGEND.
3. THE LANDSCAPE ARCHITECT RESERVES THE RIGHT TO REJECT ANY PLANT MATERIAL NOT MEETING THE QUALITY SPECIFICATIONS AS SHOWN IN THE LANDSCAPE PLAN. VERIFY ALL QUANTITIES SHOWN ON THE LANDSCAPE LEGEND.
4. LOCATE AND IDENTIFY ALL UTILITIES, INCLUDING IRRIGATION LINES, WITH THE CONTRACTOR RESPONSIBILITY STATED AS COLORED DOT ON THE SITE PLAN. VERIFY ALL QUANTITIES SHOWN ON THE LANDSCAPE LEGEND.
5. PLANTING SOIL QUANTITIES TO COMPLETE THE WORK SHOWN ON THE LANDSCAPE LEGEND.
6. EXISTING TREES AND SHRUBS TO REMAIN SHALL BE PROTECTED TO BE FREE FROM HARDPACK SUBSOIL, STONES, CHEMICALS, NOXIOUS WEEDS OR OTHER DELETERIOUS MATERIAL, IN ALL MASS SPECIES, QUANTITY, AND SIZE AND MEETING ALL LANDSCAPE LEGEND REQUIREMENTS.
7. USE ANTI-DESICCANT (WILTPRUF OR APPROVED EQUAL) ON DECIDUOUS PLANTS MOVED IN LEAF AND FOR EVERGREENS MOVED ANYTIME. APPLY AS PER MANUFACTURER'S INSTRUCTION. ALL PLANTS SHALL BE HEELED IN IMMEDIATELY UPON DELIVERY.
8. PLANTING SOIL FOR TREES, SHRUBS AND GROUND COVERS: FERTILE, FRIBABLE LOAM CONTAINING A LIBERAL AMOUNT OF HUMUS AND CAPABLE OF WITHSTANDINGררHEAT STRESS SUCH AS WILTING LEAVES. CHECK MOISTURE UNDER HEAT STRESS SUCH AS WILTING LEAVES. CHECK MOISTURE UNDER HEAT STRESS SUCH AS WILTING LEAVES. CHECK MOISTURE UNDER HEAT STRESS SUCH AS WILTING LEAVES.
10. MAINTENANCE SHALL BEGIN IMMEDIATELY AFTER EACH PORTION OF PLANTING INSTALLATION.
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLYING WITH ALL REQUIREMENTS SPECIFIED.
12. THE CONTRACTOR SHALL BE FREE FROM HARDPACK SUBSOIL, STONES, CHEMICALS, NOXIOUS WEEDS OR OTHER DELETERIOUS MATERIAL, IN ALL MASS SPECIES, QUANTITY, AND SIZE AND MEETING ALL LANDSCAPE LEGEND REQUIREMENTS.
13. ANY PLANT MATERIAL WHICH DIES, TURNS BROWN, OR DEFOLIATES THOUGHOUT THE GUARANTEE PERIOD. MAINTENANCE SHALL INCLUDE EXCLUSIVE OF THE GUARANTEE.
15. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLYING WITH ALL REQUIREMENTS SPECIFIED.
16. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLYING WITH ALL REQUIREMENTS SPECIFIED.
17. USE ANTI-DESICCANT (WILTPRUF OR APPROVED EQUAL) ON DECIDUOUS PLANTS MOVED IN LEAF AND FOR EVERGREENS MOVED ANYTIME. APPLY AS PER MANUFACTURER'S INSTRUCTION. ALL PLANTS SHALL BE HEELED IN IMMEDIATELY UPON DELIVERY.
18. PLANTING SOIL FOR TREES, SHRUBS AND GROUND COVERS: FERTILE, FRIBABLE LOAM CONTAINING A LIBERAL AMOUNT OF HUMUS AND CAPABLE OF WITHSTANDINGรรHEAT STRESS SUCH AS WILTING LEAVES. CHECK MOISTURE UNDER HEAT STRESS SUCH AS WILTING LEAVES. CHECK MOISTURE UNDER HEAT STRESS SUCH AS WILTING LEAVES.
20. CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT AT LEAST 3 DAYS PRIOR TO PLANNED DELIVERY. THE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT AT LEAST 3 DAYS PRIOR TO PLANNED DELIVERY. THE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT AT LEAST 3 DAYS PRIOR TO PLANNED DELIVERY.
21. SEASONS/TIME OF PLANTING: NOTE THE CONTRACTOR MAY ELECT TO PLANT IN WINTER DEPENDING ON THE HOURLY RATE OF 2 SIGNIFICANT TREES AND 2 AT THE TIME OF PLANTING INSTALLATION.
22. MAINTENANCE SHALL BEGIN IMMEDIATELY AFTER EACH PORTION OF PLANT INSTALLATION.
23. Any plant material which dies, turns brown, or defoliates throughout the guarantee period. Maintenance shall include exclusive of the guarantee. Maintenance shall include exclusive of the guarantee. Maintenance shall include exclusive of the guarantee.
24. Watering: Maintain a watering schedule which will adjust to the exact conditions of the site. The necessary arrangements for water.
25. Contractor shall request in writing, a final acceptance inspection.
26. All disturbed areas to be seeded and to prepare for top soil, grass, mulch, and water until a healthy stand of grass is obtained.
27. Landscaping concept shown on landscaping legend reflect the total plan cost of all materials.
28. The contractor may elect to plant in winter depending on the hourly rate of 2 significant trees and 2 at the time of planting installation.
29. All disturbed areas to be seeded lawn.
30. All plants ordered to be planted.
Pole Mounted LED Light Fixtures

REINSTALL SPANDREL FROM LEVEL E DEMOLITION

EXISTING ROOFS BELOW

Parking Stall Dimensions Not to Scale
Parking Stall Dimensions

17' - 0"
9' - 0"
75.00°
5' - 0"
2' - 0"
4" WIDE PAINTED WHITE STRIPING
CURRENT 5 LEVEL

VIEW FROM I-494 SOUTHBOUND

CURRENT 5 LEVEL

EXPANDED TO 7 LEVELS

VIEW FROM WHITEWATER DRIVE

CURRENT 5 LEVEL

EXPANDED TO 7 LEVELS
Knight supports the proposal. His biggest concern was the access for the students to arrive at the site, but that question was answered. He was comfortable with the proposal.

Sewall suggested directing students to use the west entrance and exit as much as possible as a courtesy to the neighbors.

Acting Chair Schack noted that the school district has been a good neighbor.

Powers moved, second by Hanson, to recommend that the city council adopt the resolution approving a conditional use permit for an educational institution at 18707 Old Excelsior Blvd.

Hanson, Knight, Powers, Sewell, and Schack voted yes. Kirk was absent. Motion carried.

Acting Chair Schack announced that this item is tentatively scheduled to be reviewed at the city council meeting on July 9, 2017.

C. Items concerning the proposed parking ramp addition at 12700 Whitewater Drive.

Acting Chair Schack introduced the proposal and called for the staff report.

Ingvalson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

In response to Sewall’s question, Gordon stated that the light rail Opus Station would be approximately one mile away. Staff likes adding height to the ramp better than surface parking to decrease hard surface coverage.

In response to Acting Chair Schack’s question, Ingvalson said that the entrance and exit would be the same. The area is expected to accommodate the increase in traffic.

Acting Chair Schack asked what type of trees would be removed. Colleran explained that nine significant trees and one high-priority tree, which is an 83-inch cottonwood, would be removed. Acting Chair Schack confirmed with Colleran that the priority is protecting the wetland.

Ed Farr, architect for the project, introduced himself and stated that staff did an excellent job presenting the project. He was available for questions.

Kyle Williams, representing RWR, the applicant, stated that RWR is a large asset-management company. He was available for questions.

Mr. Farr explained that sustainable features would be used. There would be a complete retrofit of the entire parking ramp to LED lighting. The additional parking space would be
added vertically and eliminate an increase in hard surface coverage. He appreciated the commission’s consideration.

Powers drove the entire ramp. There were open spaces on the top. The stalls are narrow. The plan is a good idea.

Mr. Farr stated that the parking ramp addition is based on the Urban Land Institute’s Dimensional Parking Manual.

Knight asked if the foundation would support the addition. Mr. Farr explained that the ramp was constructed to support one additional level. Geotechnical borings determined that the weight of the vehicles and additional levels would be well within safe levels. All building code requirements would be met.

Mr. Williams stated that all of their ramps are inspected annually.

Sewall confirmed with Mr. Farr that the current tenant would remain.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Powers supports the proposal. It seems to be well thought out. His safety concerns were satisfied.

Sewall liked the idea of building up instead of adding more hard-surface coverage. He understood the need since the number of employees would be increasing by nearly 50 percent. He supports the proposal.

Acting Chair Schack thought the proposal would be the best way to provide more parking. It is a good plan.

Knight moved, second by Hanson, to recommend that the city council adopt the resolution approving the master development plan amendment and site and building plan review.

Hanson, Knight, Powers, Sewell, and Schack voted yes. Kirk was absent.

Acting Chair Schack announced that this item is tentatively scheduled to be reviewed at the city council meeting on July 9, 2017.

9. Adjournment

Sewall moved, second by Powers, to adjourn the meeting at 7:30 p.m. Motion carried unanimously.
Ordinance No. 2018-

An ordinance amending the existing master development plan of Minnetonka Corporate Center as it pertains to the property at 12700 Whitewater Drive

The City Of Minnetonka Ordains:

Section 1.

1.01 This ordinance hereby amends the Minnetonka Corporate Center master development plan as it pertains to the property at 12700 Whitewater Drive.

1.02 The site is located at 12700 Whitewater Drive. It is legally described on EXHIBIT A of this ordinance.

1.03 The amendment approves a two level parking ramp addition, from five stories to seven stories.

Section 2.

2.01 This ordinance is based on the following findings:

1. The proposal is consistent with the 2030 Comprehensive Guide Plan.

2. The amendment would not negatively impact the public health, safety, and welfare.

Section 3.

3.01 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:
   - Site Demolition Plan dated May 25, 2018
   - Site Staging Plan dated May 25, 2018
   - Site Restoration Plan dated May 25, 2018
   - Landscape Restoration Plan dated May 25, 2018
   - Architectural Site Plan dated May 25, 2018
   - Level E Plan and Level B Plan dated May 25, 2018
   - Level F Plan dated May 25, 2018
   - Level G Plan dated May 25, 2018
   - Exterior Elevation Plans dated May 25, 2018
• Parking Stall Dimensions dated June 21, 2018

The above plans are hereby adopted as the master development plan for the 12700 Whitewater Drive.

2. Development must further comply with all conditions as outlined in City Council Resolution No. 2018-____, adopted by the Minnetonka City Council on July 9, 2018.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on July 9, 2018.

__________________________
Brad Wiersum, Mayor

Attest:

__________________________
David E. Maeda, City Clerk

Action on this Ordinance:

Date of introduction: June 18, 2018
Date of adoption: July 9, 2018
Motion for adoption:  
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on July 9, 2018.

__________________________
David E. Maeda, City Clerk
EXHIBIT A

That part of Lot 4, Block 2, Minnetonka Corporate Center, according to the recorded plat thereof, recorded as Document No. 4876699, Hennepin County, Minnesota, lying Northerly of the following described line, and the Easterly and Westerly extensions of said line:

Beginning at a point on the Westerly line of said Lot 4 distant 142.00 feet Northerly from the most Southerly corner of said Lot 4, as measured along said Westerly line; thence Easterly a distance of 358.59 feet to a point on the Easterly line of said Lot 4 distant 114.51 feet Northerly from the Southeast corner of said Lot 4, as measured along said Easterly line, and there terminating.
Resolution No. 2018-

Resolution approving final site and building plans, with parking variances for aisle width and stall length, for a parking ramp at 12700 Whitewater Drive

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

Section 1. Background.

1.01 The subject property is located at 12700 Whitewater Drive. It is legally described on EXHIBIT A of this resolution.

1.02 Edward Farr, on behalf of the property owner, is proposing to increase an existing parking ramp on the property from five levels to seven levels.

1.03 The proposed parking ramp addition would be a vertical addition within the footprint of the existing ramp. If approved, the parking ramp would increase from 42 feet to 66 feet in height. The two added levels to the parking ramp would continue the same design as the existing ramp levels and no modifications would be made to the entrance or egress to the ramp, including the elevator and stair tower on the north side of the ramp.

1.04 City Code §300.27 provides standards and authorizes the city to grant site and building plans.

1.05 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the city to grant variances.

1.06 On June 28, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the final site plan, with parking aisle width and stall length variances, for a parking ramp addition.

Section 2. Standards.

2.01 City Code §300.27, Subd. 5, outlines that the following must be considered in the evaluation of site and building plans:
1. Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;

2. Consistency with this ordinance;

3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;

4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:
   a) An internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;
   b) The amount and location of open space and landscaping;
   c) Materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
   d) Vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

2.02 By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with
the ordinance. Practical difficulties means: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

Section 3. Findings.

3.01 The city has considered the items outlined in City Code §300.27, Subd. 5 and finds the following:

1. The proposal has been reviewed by city planning, engineering, natural resources, public works, fire, and legal staff and found to be generally consistent with the city’s development guides.

2. The proposal would be generally consistent with the zoning ordinance, as well as the original master development plan for the site.

3. The proposed ramp addition would be within the existing footprint of the parking ramp. As such, ground work and tree removal for the subject proposal would be minimal and only a result of construction staging and access for a crane. However, all landscaping lost due to construction would need to be replaced per a condition of approval.

4. The proposed site design is logical, limits site impacts, and makes good use of existing structures on the site.

   a) The proposed parking ramp addition would be located with the same footprint as the existing parking ramp structure. Due to the addition being strictly vertical, the proposed two level addition onto the existing five level parking structure would maintain traffic and pedestrian patterns and impervious surface on the site.

   b) The proposed structure would also maintain the character of the subject site and overall development. The proposal would increase the parking ramp height by 24 feet. The proposed structure would be 66 feet in height, 17 feet shorter than the existing principal structure.

   c) Traffic patterns, vehicular and pedestrian circulation, and the internal sense of order between structures would be unchanged as the ramp addition will be within the same footprint as the existing structure.

   d) Landscaping would need to be removed for construction access; however, the landscaping lost would be replaced per a condition of this resolution.
e) Building onto the existing structure to accommodate additional parking would promote energy conservation.

f) As new construction, the proposed ramp would meet all current building code standards including those pertaining to energy conservation.

g) The proposal would not negatively impact adjacent or neighboring properties.

3.02 Variance Standards: Staff finds that the proposal meets the variance standards, as:

1. The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to parking requirements, is to ensure adequate parking maneuvering space when driving through parking lots and between vehicles when parking. The subject ramp has function with the same widths and stall lengths as proposed for over 20 years without issue.

2. The proposed parking ramp addition would be an investment into an office property and would be consistent with the city’s comprehensive plan.

3. There are practical difficulties in complying with the ordinance.

   a) Reasonableness: The parking ramp has existed over 20 years without complaints regarding the narrow aisles and short parking stalls.

   b) Circumstance Unique to the Property: The subject property was approved with parking aisle and stall length variances in 1997. The added levels would continue the striping that is currently present on the existing five levels of the ramp. Requiring wider aisles and longer parking spaces would be problematic with attempting to build within the same footprint as the existing structure.

   c) Neighborhood Character: The parking variance would not adversely affect the character of the surrounding neighborhood as the parking variances are for interior requirements.

Section 3. City Council Action.

3.01 The above-described site and building plans are hereby approved subject to the following conditions:
1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   - Site Demolition Plan dated May 25, 2018
   - Site Staging Plan dated May 25, 2018
   - Site Restoration Plan dated May 25, 2018
   - Landscape Restoration Plan dated May 25, 2018
   - Architectural Site Plan dated May 25, 2018
   - Level E Plan and Level B Plan dated May 25, 2018
   - Level F Plan dated May 25, 2018
   - Level G Plan dated May 25, 2018
   - Exterior Elevation Plans dated May 25, 2018
   - Parking Stall Dimensions dated June 21, 2018

2. A building permit is required. Unless authorized by appropriate staff, no site work may begin until a complete building permit application has been submitted, reviewed by staff, and approved. Prior to issuance of a building permit the applicant must submit the following:
   a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
   b) A revised landscaping plan.
      1) The Linden trees proposed must be pulled back out of the drainage and utility easement.
      2) The proposed plan must mitigate for the landscaping lost in order to provide for crane access to the site. The plan they provided meets the required mitigation.
      3) All deciduous trees must be planted at least 15-feet behind the curb and 10-feet behind the sidewalk and all evergreen trees be planted at least 20-feet behind the curb and 15-feet behind the sidewalk.
      4) Tree protection fencing must be installed on the south and west edge of the limits of disturbance to protect the trees intended to be saved. Fencing adjacent to the Colorado spruce on the northeast corner of the neighboring property must be moved north 5-feet to protect the tree. The fencing must be inspected by city staff prior to issuance of the building permit.
   c) A traffic control plan.
d) A snow removal plan for the ramp addition. Snow on the ramp may not be plowed off the top tier into the wetland or onto the trees below.

e) A revised striping plan showing that it meets the following dimensions.

<table>
<thead>
<tr>
<th></th>
<th>2018 VAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stall Width</td>
<td>9 ft.</td>
</tr>
<tr>
<td>Stall Length</td>
<td>17 ft.*</td>
</tr>
<tr>
<td>Aisle Width</td>
<td>16 ft.*</td>
</tr>
</tbody>
</table>

*Variance

f) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

3. No impact to the wetland on the west side of the parking ramp is allowed to occur. If any change in access is proposed, the wetland must be protected and natural resource impacts will need to be re-evaluated.

4. The applicant must follow standard erosion control best management practices including inlet protection to prevent construction activity from impact surface waters.

5. During construction the street must be kept free of debris and sediment.

6. The property owner is responsible for replacing any required landscaping that dies.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 9, 2018.

Brad Wiersum, Mayor

Attest:
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 July 9, 2018.

David E. Maeda, City Clerk
EXHIBIT A

That part of Lot 4, Block 2, Minnetonka Corporate Center, according to the recorded plat thereof, recorded as Document No. 4876699, Hennepin County, Minnesota, lying Northerly of the following described line, and the Easterly and Westerly extensions of said line:

Beginning at a point on the Westerly line of said Lot 4 distant 142.00 feet Northerly from the most Southerly corner of said Lot 4, as measured along said Westerly line; thence Easterly a distance of 350.59 feet to a point on the Easterly line of said Lot 4 distant 114.51 feet Northerly from the Southeast corner of said Lot 4, as measured along said Easterly line, and there terminating.
Brief Description  Order for tobacco license violation at Freedom Valu Center #57, 17516 Hwy 7

Recommendation  Issue the order

Background

The city council has adopted a system of presumptive penalties to be applied when certain tobacco violations occur. Under the presumptive penalties schedule, tobacco licensees are subject to a fine, or a fine plus a license suspension, after the conclusion of criminal proceedings brought by the legal department. A form stipulating the penalty is sent to the licensee, who may agree to the penalty or request an administrative hearing before the city council. When the licensee agrees to the penalty, it must be brought back and acknowledged through issuance of an order by the city council.

Licensees are initially subject to a fine of at least $250, the second violation is at least a $500 fine, and the third and any subsequent offenses within a two-year period have penalties of a $600 fine and a minimum seven-day suspension. The violation described below is a first offense for the licensee.

As a reminder, the civil penalty phase cannot begin until the criminal proceedings have been completed. The employee was criminally charged and found guilty.

A stipulation form was sent to the licensee. The licensee has returned the stipulation form agreeing to the penalty listed below:

<table>
<thead>
<tr>
<th>Establishment</th>
<th>Licensee</th>
<th>Date of Violation</th>
<th>Offense</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom Valu Center #57</td>
<td>Erickson Oil Products Inc.</td>
<td>Aug. 16, 2017</td>
<td>1st Violation</td>
<td>$250</td>
</tr>
</tbody>
</table>

Recommendation

Staff recommends the city council approve issuing the enclosed Findings of Fact, Conclusion, and Order for the establishment listed above.

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

Originated by:
  Kathy Leervig, Community Development Coordinator
BEFORE THE CITY COUNCIL
CITY OF MINNETONKA, MINNESOTA

In the Matter of: STIPULATION

The Tobacco License of Erickson Oil Products Inc. (dba Freedom Valu Center #57)

Julie Wischnack, Community Development Director for the City of Minnetonka, and Erickson Oil Products, Inc., agree that without notice and a hearing, the City Council of the City of Minnetonka may issue Findings of Fact, Conclusion, and an Order that states as follows:

FINDINGS OF FACT

1. The licensee captioned above holds a license for the sale of tobacco products from the City of Minnetonka for the year 2018, and conducts its licensed activity at 17516 Highway 7 within the City.

2. Pursuant to Minn. Stat. §609.685 and Minnetonka City Code §625.040, a licensee must not sell tobacco products to a person under 18 years old.

3. On 8/16/17, Anthony Aspley, a person employed by the above-captioned licensee, sold a tobacco product to a person who was under 18 years old.

CONCLUSION

1. The tobacco licensee captioned above violated Minn. Stat. §609.685 and Minnetonka City Code §625.040 by selling a tobacco product to a juvenile on 8/16/17.

2. This is the first violation within a two-year period.
ORDER

IT IS HEREBY ORDERED, pursuant to Minnetonka City Code §625.055, that the licensee captioned above is subject to the following sanctions:

(1) A $250 civil penalty.

The penalty must be paid within 30 days of the date of this order.

Failure to comply with this order will subject the licensee to further sanctions.

Dated: 6/12/18

CITY OF MINNETONKA

By

Its Community Development Director

Dated: 6-18-18

ERICKSON OIL PRODUCTS, INC.

By

Its Dealer Support Director
City Council Agenda Item #10E  
Meeting of July 9, 2018

Brief Description: Resolution providing for the issuance and sale of $10,000,000 General Obligation Utility Revenue Bonds, Series 2018A

Recommended Action: Adopt the resolution

Background

Over the last four years, council has deliberated over a financial blueprint and taken actions to ensure the city’s aging water and sewer infrastructure will continue to serve the city well into the future. The city’s management plan for its water and sewer utilities incorporates needed capital improvements for the utility enterprise along with estimated user rates with the intention to sell city obligations to finance the work over the next 13 years. Execution of the plan began in 2015 and continues today, and staff has completed $17.5 million in capital improvements as part of the city’s adopted Capital Improvement Program (CIP) to date.

The city always seeks to meet its objectives regarding debt and secure the lowest cost for borrowing by securing bank qualification (“BQ”) status whenever possible. In addition, actual progress of capital construction is closely monitored to only issue debt at appropriate intervals to ensure construction cost needs are met without “over” subscribing. Utility debt proceeds from the 2016 bonds will be fully exhausted by the end of July, and the current adopted CIP anticipates additional utility construction of over $10 million through 2019. Despite some modest increases since our last issuance in 2016, the cost of municipal bonding continues to be low. Depending upon actual progress of the capital construction financed by the new debt, the city will likely delay the next planned utility bond issuance after this year until 2020.

Current forecasts for the utility fund assume annual rate increases of 3.75 percent to accommodate increasing costs to the fund including the new debt service and anticipated increases in charges from the Met Council for water treatment. As a result of regular analysis, the forecasted city rate increases reflect an adjustment down from initial plans, and staff will continue to work with our financial advisor to ensure proposed rate changes continue to be appropriate relative to actual and current needs.

Recommendation

Staff recommends the city council adopt the attached resolution providing for the issuance and sale of approximately $10 million General Obligation Utility Revenue Bonds, Series 2018A.

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

Originated by:
  Merrill King, Finance Director
Resolution No. 2018-________

Resolution providing for the issuance and sale of General Obligation Utility Revenue Bonds, Series 2018A, in the proposed aggregate principal amount of $10,000,000

Be it resolved by the City Council (the “Council”) of the City of Minnetonka, Minnesota (the “City”) as follows:

Section 1. Authorization.

1.01. The City engineer has recommended the construction of various improvements to the City’s water and sanitary sewer systems (the “Utility Improvements”), pursuant to Minnesota Statutes, Chapters 444 and 475, as amended (collectively, the “Act”).

1.02. It is necessary and expedient to the sound financial management of the affairs of the City to issue its General Obligation Utility Revenue Bonds, Series 2018A (the “Bonds”), in the proposed aggregate principal amount of $10,000,000, pursuant to the Act, in order to finance the construction of the Utility Improvements.

1.03. The City is authorized by Section 475.60, subdivision 2(9) of the Act to negotiate the sale of the Bonds, it being determined that the City has retained an independent municipal advisor in connection with such sale. The actions of the City staff and the City’s municipal advisor in negotiating the sale of the Bonds are ratified and confirmed in all aspects.

Section 2. Sale of Bonds.

2.01. The Council finds it necessary and expedient to the sound financial management of the affairs of the City to issue the Bonds in the proposed aggregate principal amount of $10,000,000, pursuant to the Act, to provide financing for the Utility Improvements. The Bonds will be issued, sold, and delivered in accordance with the Terms of Proposal attached hereto as EXHIBIT A (the “Terms of Proposal”).

Section 3. Authority of Municipal Advisor.

3.01. Springsted Incorporated is authorized and directed to negotiate the Bonds in accordance with the Terms of Proposal. The Council will meet at 6:30 P.M. on Monday, August 6, 2018, to consider proposals on the Bonds and take any other appropriate action with respect to the Bonds.
Section 4. Authority of Bond Counsel.

4.01. The law firm of Kennedy & Graven, Chartered, as bond counsel for the City, is authorized to act as bond counsel and to assist in the preparation and review of necessary documents, certificates and instruments relating to the Bonds. The officers, employees and agents of the City are hereby authorized to assist Kennedy & Graven, Chartered in the preparation of such documents, certificates, and instruments.

Section 5. Covenants.

5.01. In the resolution awarding the sale of the Bonds the Council will set forth the covenants and undertakings required by the Act.

Section 6. Official Statement.

6.01. In connection with the sale of the Bonds, the officers or employees of the City are authorized and directed to cooperate with Springsted Incorporated and participate in the preparation of an official statement for the Bonds and to execute and deliver it on behalf of the City upon its completion.

(The remainder of this page is intentionally left blank.)
Adopted by the City Council of the City of Minnetonka, Minnesota, on July 9, 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 meeting held on July 9, 2018.

_____________________________________________________
David E. Maeda, City Clerk
EXHIBIT A

TERMS OF PROPOSAL
THE CITY HAS AUTHORIZED SPRINGSTED INCORPORATED TO NEGOTIATE THIS ISSUE ON ITS BEHALF. PROPOSALS WILL BE RECEIVED ON THE FOLLOWING BASIS:

TERMS OF PROPOSAL

$10,000,000*

CITY OF MINNETONKA, MINNESOTA
GENERAL OBLIGATION UTILITY REVENUE BONDS, SERIES 2018A

(Book Entry Only)

Proposals for the above-referenced obligations (the “Bonds”) will be received by the City of Minnetonka, Minnesota (the “City”) on Monday, August 6, 2018, (the “Sale Date”) until 10:00 A.M., Central Time at the offices of Springsted Incorporated (“Springsted”), 380 Jackson Street, Suite 300, Saint Paul, Minnesota, 55101, after which time proposals will be opened and tabulated. Consideration for award of the Bonds will be by the City Council at its meeting commencing at 6:30 P.M., Central Time, of the same day.

SUBMISSION OF PROPOSALS

Springsted will assume no liability for the inability of a bidder to reach Springsted prior to the time of sale specified above. All bidders are advised that each proposal shall be deemed to constitute a contract between the bidder and the City to purchase the Bonds regardless of the manner in which the proposal is submitted.

(a) **Sealed Bidding.** Proposals may be submitted in a sealed envelope or by fax (651) 223-3046 to Springsted. Signed proposals, without final price or coupons, may be submitted to Springsted prior to the time of sale. The bidder shall be responsible for submitting to Springsted the final proposal price and coupons, by telephone (651) 223-3000 or fax (651) 223-3046 for inclusion in the submitted proposal.

**OR**

(b) **Electronic Bidding.** Notice is hereby given that electronic proposals will be received via PARITY®. For purposes of the electronic bidding process, the time as maintained by PARITY® shall constitute the official time with respect to all proposals submitted to PARITY®. Each bidder shall be solely responsible for making necessary arrangements to access PARITY® for purposes of submitting its electronic proposal in a timely manner and in compliance with the requirements of the Terms of Proposal. Neither the City, its agents, nor PARITY® shall have any duty or obligation to undertake registration to bid for any prospective bidder or to provide or ensure electronic access to any qualified prospective bidder, and neither the City, its agents, nor PARITY® shall be responsible for a bidder’s failure to register to bid or for any failure in the proper operation of, or have any liability for any delays or interruptions of or any damages caused by the services of PARITY®. The City is using the services of PARITY® solely as a communication mechanism to conduct the electronic bidding for the Bonds, and PARITY® is not an agent of the City.

If any provisions of this Terms of Proposal conflict with information provided by PARITY®, this Terms of Proposal shall control. Further information about PARITY®, including any fee charged, may be obtained from:

PARITY®, 1359 Broadway, 2nd Floor, New York, New York 10018
Customer Support: (212) 849-5000

* Preliminary; subject to change.
DETAILS OF THE BONDS

The Bonds will be dated as of the date of delivery and will bear interest payable on February 1 and August 1 of each year, commencing August 1, 2019. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Bonds will mature February 1 in the years and amounts* as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>$335,000</td>
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<tr>
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<tr>
<td>2027</td>
<td>$440,000</td>
</tr>
<tr>
<td>2028</td>
<td>$455,000</td>
</tr>
</tbody>
</table>

* The City reserves the right, after proposals are opened and prior to award, to increase or reduce the principal amount of the Bonds or the amount of any maturity or maturities in multiples of $5,000. In the event the amount of any maturity is modified, the aggregate purchase price will be adjusted to result in the same gross spread per $1,000 of Bonds as that of the original proposal. Gross spread for this purpose is the differential between the price paid to the City for the new issue and the prices at which the proposal indicates the securities will be initially offered to the investing public.

Proposals for the Bonds may contain a maturity schedule providing for a combination of serial bonds and term bonds. All term bonds shall be subject to mandatory sinking fund redemption at a price of par plus accrued interest to the date of redemption scheduled to conform to the maturity schedule set forth above. In order to designate term bonds, the proposal must specify “Years of Term Maturities” in the spaces provided on the proposal form.

BOOK ENTRY SYSTEM

The Bonds will be issued by means of a book entry system with no physical distribution of Bonds made to the public. The Bonds will be issued in fully registered form and one Bond, representing the aggregate principal amount of the Bonds maturing in each year, will be registered in the name of Cede & Co. as nominee of The Depository Trust Company (“DTC”), New York, New York, which will act as securities depository for the Bonds. Individual purchases of the Bonds may be made in the principal amount of $5,000 or any multiple thereof of a single maturity through book entries made on the books and records of DTC and its participants. Principal and interest are payable by the registrar to DTC or its nominee as registered owner of the Bonds. Transfer of principal and interest payments to participants of DTC will be the responsibility of DTC; transfer of principal and interest payments to beneficial owners by participants will be the responsibility of such participants and other nominees of beneficial owners. The lowest bidder (the “Purchaser”), as a condition of delivery of the Bonds, will be required to deposit the Bonds with DTC.

REGISTRAR

The City will name the registrar which shall be subject to applicable regulations of the Securities and Exchange Commission. The City will pay for the services of the registrar.

OPTIONAL REDEMPTION

The City may elect on February 1, 2026, and on any day thereafter, to redeem Bonds due on or after February 1, 2027. Redemption may be in whole or in part and if in part at the option of the City and in such manner as the City shall determine. If less than all Bonds of a maturity are called for redemption, the City will notify DTC of the particular amount of such maturity to be redeemed. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interests in such maturity to be redeemed. All redemptions shall be at a price of par plus accrued interest.
SECURITY AND PURPOSE

The Bonds will be general obligations of the City for which the City will pledge its full faith and credit and power to levy direct general ad valorem taxes. In addition, the City will pledge net revenues of the City’s water utility and sanitary sewer utility funds for repayment of the Bonds. The proceeds of the Bonds will be used to finance various improvements to the City’s water system and sanitary sewer system.

BIDDING PARAMETERS

Proposals shall be for not less than $10,000,000 (Par) plus accrued interest, if any, on the total principal amount of the Bonds. No proposal can be withdrawn or amended after the time set for receiving proposals on the Sale Date unless the meeting of the City scheduled for award of the Bonds is adjourned, recessed, or continued to another date without award of the Bonds having been made. Rates shall be in integral multiples of 1/100 or 1/8 of 1%. The initial price to the public for each maturity as stated on the proposal must be 98.0% or greater. Bonds of the same maturity shall bear a single rate from the date of the Bonds to the date of maturity. No conditional proposals will be accepted.

ESTABLISHMENT OF ISSUE PRICE

In order to provide the City with information necessary for compliance with Section 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder (collectively, the “Code”), the Purchaser will be required to assist the City in establishing the issue price of the Bonds and shall complete, execute, and deliver to the City prior to the closing date, a written certification in a form acceptable to the Purchaser, the City, and Bond Counsel (the “Issue Price Certificate”) containing the following for each maturity of the Bonds (and, if different interest rates apply within a maturity, to each separate CUSIP number within that maturity): (i) the interest rate; (ii) the reasonably expected initial offering price to the “public” (as said term is defined in Treasury Regulation Section 1.148-1(f) (the “Regulation”)) or the sale price; and (iii) pricing wires or equivalent communications supporting such offering or sale price. Any action to be taken or documentation to be received by the City pursuant hereto may be taken or received on behalf of the City by Springsted.

The City intends that the sale of the Bonds pursuant to this Terms of Proposal shall constitute a “competitive sale” as defined in the Regulation based on the following:

(i) the City shall cause this Terms of Proposal to be disseminated to potential bidders in a manner that is reasonably designed to reach potential bidders;
(ii) all bidders shall have an equal opportunity to submit a bid;
(iii) the City reasonably expects that it will receive bids from at least three bidders that have established industry reputations for underwriting municipal bonds such as the Bonds; and
(iv) the City anticipates awarding the sale of the Bonds to the bidder who provides a proposal with the lowest true interest cost, as set forth in this Terms of Proposal (See “AWARD” herein).

Any bid submitted pursuant to this Terms of Proposal shall be considered a firm offer for the purchase of the Bonds, as specified in the proposal. The Purchaser shall constitute an “underwriter” as said term is defined in the Regulation. By submitting its proposal, the Purchaser confirms that it shall require any agreement among underwriters, a selling group agreement, or other agreement to which it is a party relating to the initial sale of the Bonds, to include provisions requiring compliance with the provisions of the Code and the Regulation regarding the initial sale of the Bonds.

If all of the requirements of a “competitive sale” are not satisfied, the City shall advise the Purchaser of such fact prior to the time of award of the sale of the Bonds to the Purchaser. In such event, any proposal submitted will not be subject to cancellation or withdrawal. Within twenty-four (24) hours of the notice of award of the sale of the Bonds, the Purchaser shall advise the City and Springsted if 10% of any maturity of the Bonds (and, if different interest rates apply within a maturity, to each separate
CUSIP number within that maturity) has been sold to the public and the price at which it was sold. The City will treat such sale price as the “issue price” for such maturity, applied on a maturity-by-maturity basis. The City will not require the Purchaser to comply with that portion of the Regulation commonly described as the “hold-the-offering-price” requirement for the remaining maturities, but the Purchaser may elect such option. If the Purchaser exercises such option, the City will apply the initial offering price to the public provided in the proposal as the issue price for such maturities. If the Purchaser does not exercise that option, it shall thereafter promptly provide the City and Springsted the prices at which 10% of such maturities are sold to the public; provided such determination shall be made and the City and Springsted notified of such prices whether or not the closing date has occurred, until the 10% test has been satisfied as to each maturity of the Bonds or until all of the Bonds of a maturity have been sold.

GOOD FAITH DEPOSIT

To have its proposal considered for award, the Purchaser is required to submit a good faith deposit to the City in the amount of $100,000 (the “Deposit”) no later than 1:00 P.M., Central Time on the Sale Date. The Deposit may be delivered as described herein in the form of either (i) a certified or cashier’s check payable to the City; or (ii) a wire transfer. The Purchaser shall be solely responsible for the timely delivery of its Deposit whether by check or wire transfer. Neither the City nor Springsted have any liability for delays in the receipt of the Deposit. If the Deposit is not received by the specified time, the City may, at its sole discretion, reject the proposal of the lowest bidder, direct the second lowest bidder to submit a Deposit, and thereafter award the sale to such bidder.

Certified or Cashier’s Check. A Deposit made by certified or cashier’s check will be considered timely delivered to the City if it is made payable to the City and delivered to Springsted Incorporated, 380 Jackson Street, Suite 300, Saint Paul, Minnesota 55101 by the time specified above.

Wire Transfer. A Deposit made by wire will be considered timely delivered to the City upon submission of a federal wire reference number by the specified time. Wire transfer instructions will be available from Springsted following the receipt and tabulation of proposals. The successful bidder must send an e-mail including the following information: (i) the federal reference number and time released; (ii) the amount of the wire transfer; and (iii) the issue to which it applies.

Once an award has been made, the Deposit received from the Purchaser will be retained by the City and no interest will accrue to the Purchaser. The amount of the Deposit will be deducted at settlement from the purchase price. In the event the Purchaser fails to comply with the accepted proposal, said amount will be retained by the City.

AWARD

The Bonds will be awarded on the basis of the lowest interest rate to be determined on a true interest cost (TIC) basis calculated on the proposal prior to any adjustment made by the City. The City’s computation of the interest rate of each proposal, in accordance with customary practice, will be controlling.

The City will reserve the right to: (i) waive non-substantive informalities of any proposal or of matters relating to the receipt of proposals and award of the Bonds, (ii) reject all proposals without cause, and (iii) reject any proposal that the City determines to have failed to comply with the terms herein.

CUSIP NUMBERS

If the Bonds qualify for the assignment of CUSIP numbers such numbers will be printed on the Bonds; however, neither the failure to print such numbers on any Bond nor any error with respect thereto will constitute cause for failure or refusal by the Purchaser to accept delivery of the Bonds. Springsted will apply for CUSIP numbers pursuant to Rule G-34 implemented by the Municipal Securities Rulemaking Board. The CUSIP Service Bureau charge for the assignment of CUSIP identification numbers shall be paid by the Purchaser.
SETTLEMENT

On or about September 5, 2018, the Bonds will be delivered without cost to the Purchaser through DTC in New York, New York. Delivery will be subject to receipt by the Purchaser of an approving legal opinion of Kennedy & Graven, Chartered of Minneapolis, Minnesota, and of customary closing papers, including a no-litigation certificate. On the date of settlement, payment for the Bonds shall be made in federal, or equivalent, funds that shall be received at the offices of the City or its designee not later than 12:00 Noon, Central Time. Unless compliance with the terms of payment for the Bonds has been made impossible by action of the City, or its agents, the Purchaser shall be liable to the City for any loss suffered by the City by reason of the Purchaser's non-compliance with said terms for payment.

CONTINUING DISCLOSURE

In accordance with SEC Rule 15c2-12(b)(5), the City will undertake, pursuant to the resolution awarding sale of the Bonds, to provide annual reports and notices of certain events. A description of this undertaking is set forth in the Official Statement. The Purchaser's obligation to purchase the Bonds will be conditioned upon receiving evidence of this undertaking at or prior to delivery of the Bonds.

OFFICIAL STATEMENT

The City has authorized the preparation of a Preliminary Official Statement containing pertinent information relative to the Bonds, and said Preliminary Official Statement has been deemed final by the City as of the date thereof within the meaning of Rule 15c2-12 of the Securities and Exchange Commission. For copies of the Preliminary Official Statement or for any additional information prior to sale, any prospective purchaser is referred to the Municipal Advisor to the City, Springsted Incorporated, 380 Jackson Street, Suite 300, Saint Paul, Minnesota 55101, telephone (651) 223-3000.

A Final Official Statement (as that term is defined in Rule 15c2-12) will be prepared, specifying the maturity dates, principal amounts, and interest rates of the Bonds, together with any other information required by law. By awarding the Bonds to the Purchaser, the City agrees that, no more than seven business days after the date of such award, it shall provide without cost to the Purchaser up to 25 copies of the Final Official Statement. The City designates the Purchaser as its agent for purposes of distributing copies of the Final Official Statement to each syndicate member, if applicable. The Purchaser agrees that if its proposal is accepted by the City, (i) it shall accept designation and (ii) it shall enter into a contractual relationship with its syndicate members for purposes of assuring the receipt of the Final Official Statement by each such syndicate member.

Dated July 9, 2018

BY ORDER OF THE CITY COUNCIL

/s/ David Maeda
City Clerk
City Council Agenda Item #11A  
Meeting of July 9, 2018

**Brief Description**  
Resolution approving a conditional use permit, with a parking variance, to expand an existing medical clinic at 10653 Wayzata Blvd.

**Recommendation**  
Adopt the resolution approving the conditional use permit and parking variance

**Background**

Shawn Dahl of BTR Voyager, LLC is proposing to expand an existing medical clinic (Odom Health and Wellness) on the second floor of the building at 10653 Wayzata Blvd. The proposed addition would be over the existing bank drive thru. (See attached.) There is currently an approved conditional use permit for this medical clinic. However, the proposal would expand the medical clinic from 3,800 square feet to 4,885 square feet in size, requiring an amendment to the conditional use permit. Subsequently, a parking variance is also required as the subject site is currently under parked and the addition would increase the site’s parking demand, per city code.

**Planning Commission Hearing**

The planning commission considered the proposal on June 28, 2018. The staff report from that meeting and various plans and documents describing the proposal are attached. Staff recommended approval, noting:

1) With the exception of the parking requirements, the proposal meets the general and specific requirements for a conditional use permit for a medical clinic.

2) The parking study submitted by the applicant provides evidence that the site is adequately accommodating the current parking demand and that the site could accommodate the additional demand created by the proposed addition.

3) The city can demand that the applicant install up to 10 additional parking spaces if there is evidence that the demand on site is exceeding the parking available on site.

During the meeting, the planning commission members asked questions regarding the process for requiring proof of parking spaces to be installed. Staff noted that the city staff could administratively require these stalls to be installed after documenting parking issues on site.

A public hearing was opened to take comment. However, no comments were received. Following the public hearing, the commission discussed and generally expressed support for the proposal.

**Planning Commission Recommendation**

On a 5-0 vote, the commission recommended that the city council approve the request. Meeting minutes are attached.
Staff Recommendation

Staff recommends that the city council adopt the resolution approving a conditional use permit for a medical clinic, with parking variance, at 10653 Wayzata Blvd.

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

Originator: Drew Ingvalson, Planner
MINNETONKA PLANNING COMMISSION
June 28, 2018

Brief Description
Conditional use permit, with a parking variance, to expand an existing medical clinic at 10653 Wayzata Blvd.

Recommendation
Recommend the city council approve the request

Proposal
Shawn Dahl of BTR Voyager, LLC is proposing to expand an existing medical clinic (Odom Health and Wellness) on the second floor of the building at 10653 Wayzata Blvd. The proposed addition would be over the existing bank drive thru. (See attached.) There is currently an approved conditional use permit for this medical clinic. However, the Odom Health and Wellness proposal would expand the medical clinic from 3,800 square feet to 4,885 square feet in size.

Proposal Requirements
The proposal requires:

- **Conditional use permit:** The property is zoned PID/Planned I-394 District. Medical clinics are a conditional use in this zoning district. The expansion of the medical clinic requires an amendment of the existing conditional use permit.

- **Variance:** The property is currently under-parked and the expansion of the medical office area would increase the parking non-conformity.

Staff Analysis
Staff finds that the applicant’s proposal is reasonable and would meet the conditional use permit standards (general and specific) and variance standards outlined in the zoning ordinance.

Staff finds that the proposal meets the general conditional use permit standards, as the use:

1) Is consistent with the intent of the ordinance;

   **Finding:** Medical clinics are a conditionally permitted use within the Planned I-394 District (PID). As proposed, the addition would meet all ordinance requirements, with the exception of parking.

2) Is consistent with the goals, policies and objectives of the comprehensive plan;

   **Finding:** The use is consistent with the goals, policies and objectives of the comprehensive plan. The subject site is guided for office use. Medical clinic uses are consistent with the uses within this land use category.
3) Does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;

**Finding:** The proposal has been reviewed by the city’s building, engineering, planning, natural resource, and fire staff. It is not anticipated to have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.

4) Is consistent with the city’s water resources management plan;

**Finding:** The use is consistent with the city’s water resources management plan. The proposed addition would be located over an existing overhang with impervious surface below and would not create additional stormwater runoff.

5) Is in compliance with the performance standards specified in §300.28 of the ordinance; and

**Finding:** The proposal is for a small addition within the footprint of an existing building. With the exception of the parking variance to allow a reduction of parking, the proposal would meet the standards outlined.

6) Does not have an undue adverse impact on the public health, safety or welfare.

**Finding:** The use is not anticipated to have an undue adverse impact on the public health, safety or welfare.

Staff finds that the proposal meets the specific conditional use permit standards, as the use:

1) Shall not be adjacent to low density residential areas;

**Finding:** All of the surrounding land uses are office and medical uses, and all of the surrounding properties are guided for office use in the comprehensive plan. The site is not adjacent to any low-density residential properties.

2) Shall have direct access from the site to a collector or arterial street as defined in the comprehensive plan;

**Finding:** The site has direct access from Wayzata Blvd., which is defined as an arterial street in the comprehensive plan.

3) Shall not have emergency vehicle access adjacent to or located across a street from any residential use; and

**Finding:** The proposed medical use is a sports medicine and health clinic. It is not anticipated that the use would require
emergency vehicle access. Additionally, the site access locations are not located adjacent to or across the street from any residential use properties.

4) May be required to submit a detailed parking analysis for uses exceeding 10,000 square feet. Additional parking may be required based on this analysis.

Finding: The proposed clinic would be expanded to 4,885 square feet in size, a 1,060 square foot expansion from the previously approved clinic area. The applicant completed a parking utilization study covering a two-week period, Monday through Friday, in April and May 2018. The observation noted that over the two-week period there was an average of 13.3 parking spaces available in the 58-stall parking lot, or 23 percent. Per city ordinance, the expansion of the medical clinic would require the site to have 74 parking spaces. Staff finds that there is adequate parking available to meet the increased parking need that would result from the expanded medical clinic.

Staff previously created a proof-of-parking plan with the 2017 conditional use permit approval indicating how ten additional parking stalls, resulting in the required 68 stalls, could be constructed if needed in the future. (See attached). Per the conditions of approval, these stalls would need to be installed if there is an observed parking issue in the future.

Staff finds that the proposal meets the variance standards, as:

1) Purpose and Intent of the Zoning Ordinance:

Finding: The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to parking requirements, is to ensure adequate parking is provided to meet the anticipated parking demand of the subject site. A parking utilization study completed over two weeks in April and May 2018. This study found that, on average, there were 13 parking spaces (23 percent) available on site. With this consideration, staff finds that the proposed reduction in parking spaces would meet the intent of the ordinance because, based on the parking utilization study, the proposed use would demand less parking than required by ordinance.

2) Consistent with the Comprehensive Plan:

Finding: The proposal would be consistent with the city’s comprehensive plan. The subject property is guided for office use. A medical clinic is a conditionally permitted use within this land use designation.
3) Practical Difficulties:

**Findings:** There are practical difficulties in complying with the ordinance.

Reasonableness: Staff finds that the request for a variance from the required number of parking spaces is reasonable. Based on parking analysis in the Institute of Transportation Engineers (ITE) Parking Generation manual, the office and clinic building uses would require an average peak period parking demand of 54 parking spaces. The proposed parking variance would meet the intent of the ordinance. Based on the ITE information, the proposed use would actually demand less parking than what is currently on site.

Circumstance Unique to the Property: The applicant submitted parking utilization information for a two-week period in April and May 2018. The observation noted that, on average, there were 13 parking spaces available in the 58-stall parking lot.

Neighborhood Character: The parking variance would not adversely affect the character of the surrounding neighborhood as the site should meet the anticipated peak parking demand on site.

**Staff Recommendation**

Recommend that the city council adopt the resolution, which approves a conditional use permit for a medical clinic, with parking variance, at 10653 Wayzata Blvd.

Originator: Drew Ingvalson, Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Project No.: 98054.18a

Property: 10653 Wayzata Blvd.

Applicant: Shawn Dahl, BTR Voyager I, LLC

Surrounding Land Uses:
- North: Wayzata Blvd and Highway I-394
- South: Office building, zoned PID and guided for office use
- East: Office building, zoned PID and guided for office use
- West: Medical office building, zoned PID and guided for office use

Planning:
- Guide Plan designation: Office
- Zoning: PID/Planned I-394 District

Site Features:
The site is located on Wayzata Blvd., just east of Archwood Road. The site is 1.7 acres in size and contains a 2-story, 15,200 square foot office building which was constructed in 2004.

History:
In 2003, the city approved a site and building plan for a two-story building on the subject property.

In January 2013, the city received a building permit application for a chiropractor clinic within the office building. By city code, medical clinics over 2,000 square feet in size are conditionally permitted uses. A medical clinic that is 2,000 square feet or less in size is considered a standard office use, which is a permitted use in the PID zoning district. Since the building permit was for a 2,000 square foot clinic, the city issued the permit.

In February 2014, the city approved a request to expand the medical clinic to 3,500 square feet in size, requiring a conditional use permit. The increase in medical clinic space increased the parking requirement for the site. Staff did not require additional parking to be constructed due to proof-of-parking and parking utilization information.

In February 2017, the city approved a request to add a second sign on the north elevation of the existing 2-story office building. The request required a variance as the proposed wall signage would exceed the maximum number and graphic area allowed by city ordinance on the north elevation.

In March 2017, the city approved a request to expand the medical clinic to 3,800 square feet in size, requiring an amendment to their conditional use permit. The increase in medical clinic space increased the parking requirement for the site. Staff did not require additional parking to be constructed due to proof-of-parking and parking utilization information.
Proposed Addition

The applicant is proposing to add a 26.5-foot by 40-foot (1,060 square foot), second story addition over an existing drive thru overhang. This will increase the building size from 15,200 square feet to 16,260 square feet, a seven percent increase. This addition would be for a patient training area and a private conference room for patient consultation and staff meetings. (See attached).

The proposed addition would maintain the same footprint as the overhang and would thus meet all setback requirements. Additionally, the impervious surface of the site would not be increased, as the addition will be over the existing overhang, which is over concrete and asphalt. The floor area ratio would be increased from 0.20 to 0.22.

Parking

In 2014, the subject property was granted a conditional use permit for a medical clinic. The property needed additional parking stalls to meet parking ordinance requirements. As a part of this request, the applicant provided parking utilization information from a one-week period in January 2014 (which included operation of a chiropractor clinic, see attached) and a proof-of-parking document. In turn, the city added a condition that required that these stalls be installed if there was a demonstrated need for additional parking.

In 2017, the subject property was granted an amendment to their conditional use permit to expand the medical clinic 300 square feet. The request was reviewed based on the January 2014 parking study, a generation study completed by the Institute of Transportation Engineers (ITE), and a proof of parking document. Again, the city added a condition that required that these stalls be installed if there was a demonstrated need for additional parking.

The subject site currently has 58 parking spaces. As proposed, city parking ordinance would require that the site have 74 parking spaces. However, ITE suggests that the uses on the site would require only 54 parking spaces to meet the average peak period parking demand. Additionally, the April and May 2018 parking utilization review showed that the lot on average had 13.3 parking spaces, or 23 percent, available during the weekdays. There was a low parking availability day of three parking spaces on Monday, April 30, 2018. However, the applicant informed staff that there was a meeting this day with six typically off-site, rehabilitation trainers. The applicant informed staff that their presence most likely caused in the increase for this day, as the following Monday had eight empty spaces. (See attached.) Due to these findings, staff has found it reasonable for the applicant to request a parking variance, subject to conditions.

Staff has drafted a proof-of-parking plan for the subject site and added a condition of approval that allows the city to require installation of up to ten proof-of-parking spaces if there is a demonstrated need for additional parking. Additional parking must meet all zoning code requirements.
Meeting of June 28, 2018
Subject: CUP, 10653 Wayzata Blvd.

Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with the staff’s recommendation. In this case a motion should be made recommending the city council approve the conditional use permit with parking variance.

2. Disagree with staff’s recommendation. In this case, a motion should be made recommending the city council deny the request. The motion must include a statement as to why the denial is recommended.

3. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Voting Requirement

The planning commission will make a recommendation to the city council on the applicant’s proposal. A recommendation for approval requires an affirmative vote of four members. The city council’s final approval requires affirmative votes of five members.

Neighborhood Comments

The city sent notices to 87 area property owners and received no comments.

Deadline for Decision

September 17, 2018
Location Map

Project: BTR Voyager I
Address: 10653 Wayzata Blvd
Description of Request:  Odom Sports Medicine, PA/dba/Odom Health and Wellness (OHW) and the building ownership, BTR Voyager I, LLC are proposing to amend the existing Conditional Use Permit and request a parking variance in conjunction with the proposed expansion of Odom Health and Wellness.

OHW is a clinic which provides physician directed Health and Wellness Services: Sports Medicine, Physical Therapy, Massage Therapy, Nutrition, Personal Training, and other wellness services. The normal hours of operation are Monday – Friday 6 a.m. to 8 p.m., Saturdays 6 a.m. to 6 p.m.

Proposed Conditional Use Permit Amendment:  OHW and the BTR Voyager I, LLC would like to propose to amend the existing Conditional Use Permit to expand the Odom Health and Wellness Medical Office by approximately 1058 Square feet. The proposed expansion would consist of a patient training area and a private conference room for patient consultation and organizational staff meetings for Odom Health and Wellness and would be located directly overhead of the existing bank teller drive through window canopy located on the south side of the building. The expansion architectural design and building materials will match the existing building façade.

Proposed Parking Variance:  Currently, the property consists of 58 parking stalls. For a two week period (4/30/18- 5-11-18) a parking study was performed during the peak business hours from 8:30 am to 4:00 p.m., Monday through Friday. (Please see attached parking study data) The results indicate that vehicle parking never reaches capacity. On average there are at least 13 parking spots open at any time. This equates to 23% parking vacancy on average during the peak business hours. Additionally, the first floor of the building is occupied by Mill City Bank which includes a service teller window so a portion of the bank customers do not utilize parking spaces when visiting the bank. Attached is a proof of parking plan which depicts the ability to expand the parking lot up to an additional 10 stalls if warranted. The applicant would like to propose that the parking lot remains at its current capacity to allow for the preservation of existing green space to be enjoyed by Mill City Credit Union and Odom Health and Wellness management and to maintain buffer between the building and parking areas. The applicant will continuously monitor the parking availability and will also communicate with the building occupants frequently to determine if there is a need for additional parking at which time the applicant would agree to expand the parking lot as needed.
## PARKING STUDY

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#### 2 week Average

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Friday 4 PM
11 empty
A. Resolution approving an expansion permit for construction of a deck at 11624 Minnetonka Mills Road.

Adopt the resolution approving an expansion permit for construction of a deck at 11624 Minnetonka Mills Road.

_Hanson, Knight, Powers, Sewell, and Schack voted yes. Kirk was absent. Motion carried and the item on the consent agenda was approved as submitted._

Acting Chair Schack stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

8. Public Hearings

A. Conditional use permit with a parking variance to expand an existing medical clinic at 10653 Wayzata Blvd.

Acting Chair Schack introduced the proposal and called for the staff report.

Ingvalson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Jim Dahlberg, architect for the applicant, stated that Ingvalson did a great job explaining the project. He was available for questions. He did not foresee a parking issue because the applicant would utilize the proof of parking if it would be needed. The building is fully occupied.

Sewall asked if the use would increase the number of vehicle trips. Mr. Dahlberg answered in the negative.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Powers felt the use would be appropriate for the space. He supports the proposal.

Acting Chair Schack stated that the project is straightforward.

_Hanson moved, second by Powers, to recommend that the city council adopt the resolution which approves a conditional use permit for a medical clinic with a parking variance at 10653 Wayzata Blvd._

_Hanson, Knight, Powers, Sewell, and Schack voted yes. Kirk was absent. Motion carried._

Acting Chair Schack announced that this item is tentatively scheduled to be reviewed at the city council meeting on July 9, 2017.
Resolution No. 2018-

Resolution approving a conditional use permit, with parking variance for a medical clinic at 10653 Wayzata Blvd.

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

Section 1. Background.

1.01 The property is located at 10653 Wayzata Blvd. It is legally described as:

Lot 1, Block 2, Colonial Oaks, Hennepin County, Minnesota

1.02 Shawn Dahl of BTR Voyager, LLC is proposing to expand an existing medical clinic (Odom Health and Wellness) on the second floor of the building on the site. The proposed addition would be over the existing bank drive thru.

1.03 There is currently an approved conditional use permit for this medical clinic. However, this proposal would expand the medical clinic from 3,800 square feet to 4,885 square feet in size. This expansion requires an amendment of the existing conditional use permit.

1.04 The subject site currently has 58 parking spaces. However, by ordinance, the site requires 68 parking spaces, but a ten space, proof-of-parking was provided with the previous approval. The proposed request would require an additional six parking spaces on the site, creating a total requirement of 72 parking spaces. This requires a parking variance.

1.05 City Code §300.31 Subd. 4(b)(2)(d) allows hospitals and medical clinics on property designated for office, retail or service commercial uses within the Planned I-394 District (PID).

1.06 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the city to grant variances.

1.07 On June 28, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the planning commission. The planning commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The
Section 2. Standards.

2.01 City Code §300.21 Subd. 2 lists the following general standards that must be met for granting a conditional use permit:

1. The use is consistent with the intent of the ordinance;
2. The use is consistent with the goals, policies and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;
4. The use is consistent with the city's water resources management plan;
5. The use is in compliance with the performance standards specified in §300.28 of the ordinance; and
6. The use does not have an undue adverse impact on the public health, safety or welfare.

2.02 City Code §300.31 Subd. 4(b)(2)(d) lists the following specific standards that must be met for granting a conditional use permit for hospitals and medical clinics uses:

1. Shall not be adjacent to low density residential areas;
2. Shall have direct access from the site to a collector or arterial street as defined in the comprehensive plan;
3. Shall not have emergency vehicle access adjacent to or located across a street from any residential use; and
4. May be required to submit a detailed parking analysis for uses exceeding 10,000 square feet. Additional parking may be required based on this analysis.

2.03 By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties means: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.
Section 3. Findings

3.01 General CUP Findings: The proposal meets the general conditional use permit standards.

1. Medical clinics are a conditionally permitted use within the Planned I-394 District (PID). As proposed, the addition would meet all ordinance requirements, with the exception of parking.

2. The use is consistent with the goals, policies and objectives of the comprehensive plan. The subject site is guided for office use. Medical clinic uses are consistent with the uses within this land use category.

3. The proposal has been reviewed by the city’s building, engineering, planning, natural resource, and fire staff. It is not anticipated to have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.

4. The use is consistent with the city’s water resources management plan. The proposed addition would be located over an existing overhang with impervious surface below and would not create additional stormwater runoff.

5. The proposal is for a small addition within the footprint of an existing building. With the exception of the parking variance to allow a reduction of parking, the proposal would meet the standards outlined.

6. The use is not anticipated to have an undue adverse impact on the public health, safety or welfare.

3.02 Specific CUP Findings: The proposal meets the conditional use permit standards.

1. All of the surrounding land uses are office and medical uses, and all of the surrounding properties are guided for office use in the comprehensive plan. The site is not adjacent to any low-density residential properties.

2. The site has direct access from Wayzata Blvd, which is defined as an arterial street in the comprehensive plan.

3. The proposed medical use is a sports medicine and health clinic. It is not anticipated that the use would require emergency vehicle access. Additionally, the site access locations are not located adjacent to or across the street from any residential use properties.

4. The proposed clinic would be expanded to 4,885 square feet in size, a 1,060 square foot expansion from the previously approved clinic area. The applicant completed a parking utilization study covering a two-week period, Monday through Friday, in April and May 2018. The observation noted that over the two-week period there was an average of 13.3 parking
spaces available in the 58-stall parking lot, or 23 percent. Per city ordinance, the expansion of the medical clinic would require the site to have 74 parking spaces. Staff finds that there is adequate parking available to meet the increased parking need that would result from the expanded medical clinic.

Staff previously created a proof-of-parking plan with the 2017 conditional use permit approval indicating how ten additional parking stalls, resulting in the required 68 stalls, could be constructed if needed in the future. Per the conditions of approval, these stalls would need to be installed if there is an observed parking issue in the future.

3.03 Variance Standards: The proposal meets the variance standards, as:

1. Intent of the Ordinance. The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to parking requirements, is to ensure adequate parking is provided to meet the anticipated parking demand of the subject site. A parking utilization study was completed over two weeks in April and May 2018. This study found that, on average, there were 13 parking spaces (23 percent) available on site. With this consideration, the proposed reduction in parking spaces would meet the intent of the ordinance. Based on the parking utilization study, the proposed use would demand less parking than required by ordinance.

2. Comprehensive Plan. The proposal would be consistent with the city’s comprehensive plan. The subject property is guided for office use. A medical clinic is a conditionally permitted use within this land use designation.

3. Practical Difficulties. There are practical difficulties in complying with the ordinance.

a) Reasonableness: The request is reasonable. Based on the Institute of Transportation Engineers (ITE) Parking Generation manual, the office and clinic building uses would require an average peak period parking demand of 54 parking spaces. This is less parking than is currently on site.

b) Circumstance Unique to the Property: The applicant submitted parking utilization information for a two-week period in April and May 2018. The observation noted that, on average, there were 13 parking spaces available in the 58-stall parking lot.

c) Neighborhood Character: The parking variance would not adversely affect the character of the surrounding neighborhood as the site should meet the anticipated peak parking demand on site.
Section 4. City Council Action.

4.01 The above-described conditional use permit, with variance, is approved subject to the following conditions:

1. Subject to staff approval, the property must be developed and maintained in substantial conformance with the following documents:
   - Floor plans dated May 25, 2018.
   - Site plan dated May 25, 2018.

2. Prior to issuance of a building permit:
   a) This resolution must be recorded with Hennepin County prior to the issuance of a building permit.
   b) The applicant must provide erosion control best management practices to prevent the construction activity from impacting the wetland and storm water pond; this includes inlet protection.

3. The building must comply with all requirements of the Minnesota state building code, fire code, and health code and appropriate permits must be obtained.

4. Canopy clearance height must be labeled on both sides of the canopy.

5. Sign permits are required for any exterior signs.

6. The city may require installation of proof-of-parking spaces if there is a demonstrated need for additional parking. Additional parking must meet all zoning code requirements.

7. The city council may reasonably add or revise conditions to address any future unforeseen problems.

8. Any change to the approved use that results in a significant increase in traffic, parking or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 9, 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 July 9, 2018.

David E. Maeda, City Clerk

Seal
Brief Description: Conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run

Recommendation: Adopt the resolution approving the conditional use permit

Background

On May 14, 2018, the city council considered a conditional use permit request from Chabad Center for Jewish Life. The plan contemplated construction of a religious institution on the 1.95 acre site comprised of the 2333 and 2339 Hopkins Crossroad and 11170 Mill Run properties. A new religious institution building would be constructed at the center of the combined site. The building would have a footprint of roughly 11,000 square feet and total floor area of roughly 15,000 square feet. The building would contain a worship space, social hall, kitchen, offices, classrooms, library, and ritual bath area. The exterior of the building would be comprised of a variety of materials, including glass, limestone, natural wood and terracotta clay. The building would have a code-defined height of 31 feet; in the case of a flat roof, height is measured from grade to the highest point of the roof. An existing single-family residential home located adjacent to Mill Run would remain. The applicant plans to remodel and continue to use it as a home. [Link](#) to the project page on the city’s website.

At the meeting, 13 people addressed the city council stating concerns about safety and compatibility. Meeting minutes are attached. The city council deliberated the proposal at length, ultimately tabling the item and directing staff to bring back information on the following items at a future meeting:

1. Information about what specific improvements the county desires on Hopkins Crossroad, and

2. More information about the landscaping plan, specifically along the east property line.

Since the City Council Meeting

Staff has continued to work on the council’s two requests for additional information in the last number of weeks. Staff has met with neighbors, Chabad and Hennepin County staff on a number of occasions since the May 14, 2018 meeting. Staff believes that the proposed solutions for roadway improvements and landscaping are adequate and reasonable.

- **Hopkins Crossroad (CSAH 73) Improvements** – The city requested its consulting traffic engineer, SRF, to develop a plan to improve Hopkins Crossroad traffic operations in the immediate area. The proposed Hopkins Crossroad improvements are intended to improve safety and overall traffic operations, based on county comments, from Hillside Lane W. to Overlook Drive. The improvements consist of the addition of a continuous left turn lane and a widened shoulder (5 – 11 feet). Site access would remain on Hopkins Crossroad with the specific location to be approved through the permitting process by Hennepin County.
Staff views the proposed restriping as a significant improvement to the current road geometry providing better operations and increased safety for motorists and pedestrians. It is anticipated that the improvement cost would be shared by the city, county and Chabad. Although the timing of the roadway improvements has not been determined, it is anticipated that they would be completed commensurate with the Chabad’s construction schedule. If there is a change in timing of the roadway improvements, staff will inform the neighborhood.

- **Landscaping/Fence Plan** – The applicant has provided an updated landscaping plan that incorporates evergreen plantings and a fence six feet in height. As proposed, the fence would serve as additional buffering and screening for the neighboring properties extending from the north property line south approximately 285 feet. The fence would be located six feet west of the property line.

  Through two on-site meetings involving the neighbors, Chabad and city staff, a columnar-type arborvitae/cedar tree was agreed upon to soften the view of the fence from neighboring properties. The landscape plan includes the following:

  - A row of these arborvitae trees would be planted on the east side of the fence, on Chabad property, along the length of the eastern property line to soften the fence as viewed from the adjacent residential properties.
  
  - On the west side of the fence adjacent to the parking lot, no trees would be planted to allow for snow storage.
  
  - At the southeastern corner of the parking lot, arborvitae trees would be planted and extend to the south property line.
  
  - In the area south of the Chabad parking lot between the building and fence, overstory maples and hickory trees would be planted to soften and somewhat screen the building from neighboring properties.

  City staff will provide oversight and guidance for the landscape implementation. Adjustments may be necessary in-field to adapt to existing conditions and trees.

  The neighboring property owners, Leardahl/Flint and Soo’s, generally agree with the Chabad landscape proposal but wish to have a taller fence and have the “good” side face their properties. As noted in their email, a 10-foot high fence is requested along the Leardahl/Flint property and an eight-foot high fence is requested along the Soo property.

- **Trail** – The proposed plans indicate a 10-foot wide trail easement along Hopkins Crossroad which would accommodate a future trail which is programmed in the city’s capital improvement program for 2023. Easement documents will need to be drafted, reviewed by the city and recorded.

The attached letters from neighboring residents have been received.
Summary Comments

Staff continues to acknowledge that the proposed Chabad Center for Jewish Life would visually alter the Hopkins Crossroad/Mill Run area. Further, the proposal would result in a different level of activity than was historically observed while the site contained occupied single-family homes. However, staff recommends approval of the request, as: (1) religious use of the site is contemplated by the zoning ordinance; (2) the proposal would meet CUP requirements; (3) similar uses exist in residential areas throughout the community; and (4) no significant operational impacts to Hopkins Crossroad are expected as a result of the proposed development.

Staff Recommendation

Staff recommends the city council adopt the resolution approving a conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run.

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

Originator: Loren Gordon, AICP, City Planner
Location Map

Project: Chabad Center for Jewish Life
Address: 2339 Hopkins Xrd
Proposed Hopkins Crossroad (CSAH 73) Restriping Plan (SRF)
Mr. Will Manchester, P.E.  
Director of Engineering/City Engineer  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55343

June 28, 2018

Re: County Review – Chabad Center (received 03/28/2018)  
Hopkins Crossroad (County State Aid Highway 73) @ Mill Run/Fetterly Road  
Hennepin County Review ID #3681 (reviewed 04/03/2018)  
Residential lot combination to redevelop proposed site

Dear Mr. Manchester:

Please consider the following in your review of this proposal:

Following discussions related to this review, Hennepin County and City of Minnetonka staff have worked together on improvements to Hopkins Crossroad based on concerns received from residents in the area in years past and more recently as part of the proposed development.

The county is agreeable to the proposed three-lane restriping proposal for Hopkins Crossroad from Overlook Drive to Hillside Lane per the “Hopkins Crossroad (CSAH 73) – Restriping, continuous left turn lane” drawing dated 6/8/2018 as prepared by SRF Consulting. The drawing provides for restriping a three-lane section on Hopkins Crossroad from south of Overlook Drive to Hillside Lane and maintains a minimum five-foot wide shoulder on the east side with proposed widening of approximately two feet or less in two areas.

The county agrees to participate financially for the safety improvement costs of widening and striping pending board approval. In lieu of finances, the county may consider labor from county crews as their portion of the contribution.

Access

Request
The proposed Chabad access be relocated as far north (away from the Mill Run intersection) as possible – this is preferred over the current location shown. Additionally, the applicant approach the north property owner at 2327 Hopkins Crossroad (drive access immediately north of Chabad site) to propose to eliminate their driveway access to Hopkins Crossroad with a replaced access through the site via private agreement.
Right-of-Way

Requests
A future trail area on the site's western boundary (adjacent to Hopkins Crossroad) be graded and easements provided to avoid impacts to the city's future planned trail construction along Hopkins Crossroad.

Storm Water and Drainage

Requirement
Please ensure discharge rates remain less than existing flow rates. The county storm water system will not take water from new drainage areas. Additional treatments may be necessary if flow rates cannot match existing. Storm water and drainage questions can be directed to Drew McGovern at 612-596-0208, drew.mcgovern@hennepin.us.

Permits

Requirements
Please inform the developer that all construction within county right-of-way requires an approved Hennepin County permit prior to beginning construction. This includes, but is not limited to, driveway and street access, drainage and utility construction, trail development, and landscaping. Permit questions can be directed to Michael Olmstead at 612-596-0336, michael.olmstead@hennepin.us.

More information
Please contact us for any further discussion of these items.
- Bob Byers at 612-596-0354, robert.byers@hennepin.us
- Jason Gottfried at 612-596-0394, jason.gottfried@hennepin.us

Sincerely,

Chad Ellos, PE
Transportation Planning Division Manager

Minneapolis Statutes 505.03, 505.021, and 462.358, Plats and Surveys, allow up to 30 days for county review of preliminary plats abutting county roads.
No results

Comments:

This data is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering, or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

COPYRIGHT © HENNEPIN COUNTY 2018
Hopkins Crossroad (CSAH 73) - Restriping, continuous left turn lane
Chabad Center Site Plan - CSAH 73 Improvements
Minnetonka, MN
Landscaping/Fence Plan
Fence - 6 ft. in height
- 6 ft. from property line
Loren and Julie,

Thank you again for meeting with Mordechai, Aaron and myself and Mike Leirdahl and Jo and Kristin Soo on June 18 to discuss suitable landscaping plans between the Chabad and the Flint and Soo properties. I left the meeting feeling that we made good progress and seemed to reach a consensus on the outline of a plan that could work for all concerned. The following is an outline of that plan:

1. Chabad would construct and pay for a fence that would be situated 6’ on its property running north-south between its property and the Flint/Soo properties. The fence would start where the existing fence is located on the north side of the Flint property and run to a point which is 130’ south of the Flint/Soo property line.

2. As to the area between the Chabad and Soo property, Chabad would plant and pay for two rows of American Arborvitae trees (Thuja occidentalis) situated on the Chabad property, one on each side of the fence separating the Chabad and Soo properties. These trees are significantly wider than the typical columnar arborvitaes and within a few years will create a visual and safety barrier between the properties.

3. As to the area between the Chabad and Flint property, Chabad would plant and pay for one row of Thuja occidentalis trees situated on the Chabad property on the east side of the fence. Again, within a few years this row of trees will create a visual and safety barrier between the properties.

4. The concessions made by Chabad in No. 1-3 provide the owners of the Flint and Soo properties with additional square footage since the fence is 6’ on the Chabad property and provides them with a visual and safety barrier on the border of their properties all at the expense of Chabad.

5. As previously stated, upon the advice and dictates of its engineers and City Staff, Chabad will, of course, take measures to ensure storm water management on the site.

At the end of our meeting there did not seem to be a consensus regarding the height of the fence. Chabad believes a 6’ fence is more than adequate for safety and visual purposes. In retrospect, a fence is probably not even necessary given the fact that the type of arborvitae planted will grow to at least 20’ high thereby dwarfing any fence. In addition, these trees will ultimately be 10’ to 12’ wide creating a dense hedge obstructing the view of the fence on both sides of the Chabad-Soo properties. An example of how these trees create this effect can be seen along the driveway of the Adath Jeshurun Synagogue a few blocks away from the subject properties. In spite of these factors, Chabad will abide by the 6’ fence proposal since it
previously agreed to this point as a part of a total landscaping plan. Jo and Kristin mentioned an 8´ fence and Mike even suggested a 10´ one. Chabad strongly asserts that a fence greater than 6´ is totally unnecessary for several reasons. First, within a few years, the arborvitaes will exceed the height of each of these fences. Two, a fence will block light from reaching these trees and the taller the fence the greater likelihood that the trees will not adequately grow inhibiting their intended purpose. Third, since 8´ and 10´ fences must withstand significantly greater wind loads than a 6´ fence, the cost of the foundation for the posts, the cost of the superstructure (the portion of the fence structure above grade -- not the fence boards), and the cost of labor will increase dramatically. Fourth, a higher fence between the Chabad and Flint fence will not impact light spillage as Chabad has already assured the neighbors that the lighting design will prevent light spillage onto their properties. Finally, the suggestion of increasing the height of the fence strikes me as being somewhat punitive considering all the above. I am hopeful that the above outline and suggestions will get us to the “finish line.” Thank you for your input and perseverance on this.

Marvin A. Liszt
Attorney at Law

Bernick Lifson, P.A.
5500 Wayzata Boulevard Suite 1200, The Colonnade
Minneapolis, MN 55416
Phone: (763) 546-1200
Fax: (763) 546-1003
BERNICKLIFSON.COM
May 24, 2018 City Council Meeting Minutes
C. **Conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run**

Gordon gave the staff report.

Wagner asked for information about how the home and the facility would coexist. If the home went away in the future, what would that mean for the conditional use permit? Gordon said the application showed the three lots in a combined fashion. If the residence did not exist the site was not more impactful than what was approved. The driveway that was part of the residence could not be used for access to the Chabad site. Wagner asked if language was needed to clarify this. Gordon said there was a condition in the resolution that basically states the application as submitted is what was being approved. Any changes would need council review.

Wagner said he really liked the area graded for a trail. Hopkins Crossroad has been on the list of unfunded road improvements since before 2004. He asked if the area graded for the trail was dedicated right of way for city or county use. Gordon said the area graded for the trail was outside the property boundary and was currently right of way area. Wagner asked if in the future Hopkins Crossroad became a three lane road with trails, should the city be planning for more right of way acquisition and incorporate that as a consideration for the council given it was known a trail was coming. Gordon said there wasn’t a plat as a part of this project. The three lots were expected to be combined in order to meet all the building setback requirements. City Engineer Will Manchester said the trail was scheduled for 2023 and there should be adequate space as the current configuration exists.

Calvert said information in the council packet indicated 39 percent high priority tree loss. This was beyond the ordinance with a much higher percentage of significant tree loss. She said this concerned her. She asked if this was being allowed because it was a private development. Gordon said the application did not trigger the tree ordinance. If there was a re-platting the ordinance would apply. Calvert noted she lived near her own synagogue which was much larger than this one. She was acutely aware of traffic issues during certain times of the year and on certain times on certain days. She asked if it was possible to have a right turn only exit on to Hopkins Crossroad to mitigate some of the left turn on left turn issue. Gordon said for a right turn only exit two features were needed. One was a pork chop type of island. The other feature was a median separating the lanes of traffic on the road. He said this would require a permit from the county to put the median in and he doubted if the county would approve it for this type of use given the traffic. Another issue related to enforcement.

Acomb noted the staff indicated they had a discussion with Hennepin County on what the county would find to be acceptable. The county indicated it would be
acceptable to have an exit onto Mill Run or an exit further to the north. She asked how much further to the north an exit might be. Gordon said the county's first preference would be to have access onto Mill Run. They would like to consolidate vehicles from this project at an intersection. The county indicated the second option would be an exit as far north as possible to get halfway between Mill Run and Hillside Lane.

Calvert said all the renderings included space for a mikveh, or bathing area, in the far eastern side of the building. This appeared very close to the back property line. She said staff told her the mikveh was not enclosed but was an outdoor mikveh. Gordon confirmed it was an outdoor space so there was no setback requirement.

Wagner asked if the south court and north court were all impervious pavers. Gordon said staff looked at them as impervious.

Rabbi Mordechai Grossbaum, 3301 Robinwood Lane, said Chabad Center for Jewish Life was an international organization of about 4,000 centers around the world with six local centers. For many years Chabad had been looking for a place to call home. He said the synagogue was a small piece of the programs they do. He clarified the mikveh would be indoors at the side of the building and not the back. There were a number of other changes that had been made during the process. He said 15,000 square feet sounded like a large number but put in perspective with a 9,000 square foot house for two people it wasn't really that large. The 15,000 square feet allow the center to have classroom and office space eliminating the need to constantly convert one into the other.

Aaron Parker, the project architect, showed the plan that was presented to the planning commission and the revised plan. He said Wagner was correct about the permeable pavers in the north and south courts. He noted the library had been moved from the east wing allowing the wing to be shortened up. The height had been reduced as well. Additional trees had been saved.

Calvert said she appreciated the work that was put in to address concerns that had been raised.

Acomb asked where the playground would be located. Parker pointed to the area that would likely be the playground area. The actual playground area was not yet determined.

Calvert said she had concerns about pedestrian safety. She said many people walk and bike on this stretch of Hopkins Crossroad and she thought the area was dangerous. The council's purview however was on the land use. She asked what the congregation planned to do to keep the people walking to the shul safe. Grossbaum said the safety of those walking was clearly important. Walking would occur once a week for Friday night services. He said reflective vests would be available.
Calvert said her congregation on high holy days has an agreement with West Junior High for parking. There’s a shuttle bus available. She asked if similar arrangements had been made by Chabad. Grossbaum noted he had an email from the Ackerberg Group indicating Cedar 73 had parking available and was agreeable to provide shuttle service.

Lori Fritz, 11111 Mill Run, said she and her husband are Jewish and are actively involved in the Jewish community so any objections she had were certainly not religiously motivated. She said if the development was completed in the right way with the right principles applied, taking into considerations some suggestions, then she could be supportive. The highest responsibility the council had as elected officials was the safety and quality of life for residents. As proposed the center did not fit into the existing landscape, community and neighborhood. She asked the council not to approve the conditional use permit.

Jo Soo, 2391 Vernon Circle, said the proposed 15,000 square feet was big enough to fit many more than 125 people. He said the neighbors kept hearing the impact on traffic would be small. Activities would be minimal. But the size of the building indicated something larger would occur. With growth, current issues would be magnified and new issues would arise. The proposal was just too big. He said a building half the size would fit in more harmoniously with the neighborhood. Reducing the height wasn’t enough because the proposal was still too dense. He showed a picture of vehicle stacking on Hopkins Crossroad and a video of a bicyclist trying to cross the road and having to wait several minutes. He showed another video of a car attempting to make a left turn onto the property with cars stacking behind it. He said building a religious institution on the property was not the issue. Safety and harmony were the real issues. The size and intensity were the root issues of all the concerns.

Vernon Swing, CEO of Swing Traffic Solutions, said he was a licensed engineer with the state of Minnesota and had practiced traffic engineering for 33 years. He said he was representing the neighborhood group regarding the traffic access issues. He said the traffic study indicated currently there was an average 22 second delay for traffic on Hillside Lane trying to exit onto Hopkins Crossroad. With the development the average time increased by 33 percent to 29 seconds. He said staff misspoke at the Planning Commission hearing by saying the development would only add 7/10ths of one percent to the traffic on Hopkins Crossroad. The number was taking an hourly number and comparing it to a daily number. The traffic study indicated the development would add approximately four percent to the a.m. peak traffic on Hopkins Crossroad and five percent to the Friday evening peak. He said this doesn’t accurately portray the impact the proposed development would have. The arrivals to a religious service do not come evenly throughout an hour. Rather they start to arrive 15 to 20 minutes prior to the beginning of the service. The impact would be magnified over the 15 to 20 minute period. He said this was not a safe access when there was the amount of queuing that would build up. The location of the proposed access was in the decision zone of the vehicles trying to get out from Fetterly Road and Mill Run. He urged the council not to approve the proposal until the access issue was resolved.
Jim Moscowitz, 11120 Mill Run, said throughout the staff report the staff used the applicant’s religious customs and practices to make an assessment of usage, parking and capacity. He said that made sense but the staff, city attorney, and planning commission had opined to the neighbors that the applicant’s religious customs and practices could not be used in determining whether the application met the conditional use permit standards. The staff accepted the applicant’s seating plan of tables and chairs which was less dense than chairs only in the sanctuary space to arrive at parking ratio. He said this was critical and had to do with density and also impacts of overflow parking in the neighborhood. The staff report referenced 21 other religious institutions in the city. He questioned if staff investigated the seating arrangements in the sanctuaries of the other religious institutions. Staff visited the St. Louis Park Chabad location to study the parking. Close to half of the cars were parked away from the sanctuary even with parking spaces available. One possible explanation for this was non-Orthodox Jews will often park offsite when attending an Orthodox synagogue out of respect for the religious practices of the congregation. Mill Run and Vernon Circle could suffer from nuisance parking every Saturday and on holidays no matter how many parking spaces the synagogue had. He said the neighbors opposed any project that would compromise the safety on Hopkins Crossroad. There were no life cycle events referenced in the application. Most Bar and Bat Mitzvahs were community events which include regular worshipers and invited guests.

Wiersum asked Heine to comment on the laws relating to how the city could evaluate the application. Heine said there was a federal law known as the Religious Land Use and Institutionalized Persons Act. When the city was looking at an application for a religious institution it needed to treat it in the same manner as any place of assembly. She said in respect to the seating, the requirement was the city would not set a different standard for this particular applicant in determining the parking requirements than the standards that would have been used for a different religious institution that practices a different faith or for a different place of assembly.

Stu Silberman, 11123 Mill Run, said he and his wife were supportive of Chabad’s mission. It was not about the neighbors being against Chabad. Rather it was the neighbors expressing concern over the way the project was being proposed, specifically the safety. He showed a picture from the winter showing large piles of snow. He said he was concerned about the overall impact the development would have on safety. There was no way there could be two way traffic if there was overflow parking on both sides of the street. Shifting the driveway access to Mill Run would cause difficulties for all those who lived on Mill Run. He said emergency vehicles needed to be able to get through. His daughter was a type one diabetic and he was concerned about her having access to emergency vehicles. He also was concerned about all the students driving to and from the high school.

Amy Weiss, 2308 Nottingham Court, said her children get on a bus at 8:03 a.m. at Hopkins Crossroad and Fetterly Road. There are at least four buses that stop at that corner. She said the previous Friday there were three parents waiting to
put their kids on the bus. The bus was stopped with vehicles stacked behind it. Some drivers tried to use the right turn lane to try to pass the bus. There were vehicles heading north that were stacked up. There was a resident trying to cross the road to get on to the bus. Weiss said she was very concerned about the safety.

Michael Leirdahl, 2390 Vernon Circle, said he and his wife welcomed Chabad into the neighborhood but there were things in the proposal he’d like to see altered. He questioned the fairness of the limited time the neighbors and the council had to evaluate the new renderings that had been provided at the meeting. He said the changes to the library were an improvement but he would like to see a rendering of what it would look from the east side. He asked that the playground be relocated to somewhere other than 50 feet from his backyard. He also had concerns about the landscaping. The site plan showed all arborvitae. Staff had said something else should be looked at. The staff report indicated the landscape plan had not been finalized and he questioned how the proposal could be approved without a final landscape plan. He noted in 2008 for another project in the area the council required three rows of screening be put in along with a five foot berm. He asked why that wasn’t being required for this proposal. He said the existing fence was a rickety 25 year old fence and questioned why a new fence wasn’t being required. He asked that nothing be allowed in the 50 foot setback.

Kristin Soo, 2391 Vernon Circle, thanked Chabad for its work and mission. She said she was just as concerned about the view in as she was the view out. She said the changes made to break up the massive wall were appreciated. The lack of a rendering from the east side concerned her. The intensity of the east wing with six classrooms also concerned her because of the proximity to her property. She said there was no arborvitae tall enough to screen the second floor especially for the first few years.

David Segal, 2220 Cape Cod Place, said he supported the project. He said he bikes on Hopkins Crossroad all the time and he understood the safety concerns. He noted there had been a lot of development in the area over the past 25 years and the same concerns came up with those developments.

Tom Blackburn, 2333 Hopkins Crossroad, said when his house was built in 1979, there were not any concerns about traffic. He provided a history of how the homes around him were built. He understood the concerns that had been expressed but as changes occur people learn how to deal with traffic changes.

Harvey Robbins, 2475 Ridgewater Drive, said a number of years ago he was driving north on Hopkins Crossroad, turning left on to Fetterly Road, when he caught the eyes of someone coming up behind him over the crest. That was the last thing he remembered before getting cut out of his car that was on the side of the road in a ditch.

Susan Flint, 2390 Vernon Circle, said the council needed to follow the conditional use permit standards. One of the standards relates to public safety. She said her
son is also a type one diabetic. If an emergency vehicle cannot get through, it is a life or death situation.

Susan Wiens, 2346 Vernon Circle, said the impact of the building influenced the number of parking stalls needed. The facility will hold in its design capacity a lot more people than what staff said it would hold. The design capacity wasn’t 33 tables with three chairs at each table but rather the number of chairs that could fit in the space without tables. She said that standard was used for all other religious institutions that were granted a conditional use permit. She asked staff for other examples of removable walls and they could not provide other examples. Future growth had to be accounted for.

Marvin Liszt, 9701 Oak Ridge Trail, said three dispassionate entities had looked at the proposal. One was SRF Consulting who did a comprehensive traffic safety study and did not find it to be an issue. City staff analyzed both the pedestrian safety issues and also the harmony of the building within the neighborhood. The planning commission looked at all the issues as well. He noted the resolution provides that any change to the approved use that results in a significant increase in traffic or a significant change in character may require a revised conditional use permit. He said the design of the building was beautiful and was absolutely in harmony with the neighborhood.

Wiersum asked what the process was for triggering council review if the conditions changed. Heine said the condition in the resolution makes it clear that the approval being granted is for the use as represented by the applicant. If the actual use changed or there was an intensification, the council had the right to require the permit holder to submit an amended application to continue the expansion or intensification of the use beyond what was approved. The council could also deny the changes.

Calvert said she wanted clarification that what the council was voting on was the land use and not safety issues. Heine said the issue before the council was a specific application. The applicant needed to show they met all the requirements of the ordinance that applies to the conditional use permit. One of the standards involves a determination that the application for the proposed use does not adversely impact public health, safety, and welfare. Safety was a valid and required consideration.

Wagner noted one of the residents asked for a detailed landscaping plan. He said typically the council does not get into the details but directs staff to work the details out with the applicant. He asked the staff to comment on the landscaping plan. Gordon said the ordinance requires a minimum landscaping value based on the value of the project. The building permit is used to determine the value of the project. There will be a more detailed plan than what was shown in the council packet. Staff always reviews a final landscaping plan. He noted the neighbors had asked to work with the applicant on the landscaping plan and he thought that was a really good ask of the applicant. Wagner said for some previous projects, including Syngenta, the council had asked for more details about the landscaping.
Acomb asked if there had been any discussion with the applicant about a berm or if that was considered to be a part of the landscaping plan. Gordon said it could be part of the landscaping plan.

Wagner asked the traffic engineer to provide further perspective. He said he did not have concerns about the traffic count but he did have concerns about the stretch between Hillside Lane and Overlook Drive. His concerns were about stacking when making left hand turns into either Mill Run or the proposed development; stacking on Fetterly Road because of the hill and it being the only way out; and the stacking for turns would affect more than what was in the traffic report.

Matt Pacyna with SRF Consulting said Hopkins Crossroad in relation to Mill Run and Fetterly Road currently handles around 14,000 to 15,000 cars a day. It has fluctuated like that over the past 20 years. The traffic ebbs and flows due to different construction and development going on in the area. Currently there are bypass lanes at Mill Run and Fetterly Road. An alternative to this would be to install a left turn lane. This would create a conflict for those turning right. He said the stacking on Mill Run and Fetterly Road approaches and the volume of vehicles was fairly low and the proposed development would likely not change that much. This was one of the reasons the proposed access was where it was and not further to the north. Wagner noted SRF was correct with its analysis about the stacking for the Syngenta development. Pacyna said the left turn lane would be designed as a continuous southbound lane from Mill Run to Fetterly Road.

Wagner said he normally did not have concerns about working out traffic issues with Hennepin County in the future but for this development he did have a concern. The road did not seem wide enough. Normally when the council sees a development from a safety standpoint, there always was an improvement involved. In this case there was not a recommendation for an improvement. He was surprised by this. Pacyna said there was a preliminary recommendation for an improvement that looked at restriping to better utilize the bypass lane. He said there were conflicting messages from the county about what their preference was. From a traffic operations perspective, both options would work. Long term, the long term vision for Hopkins Crossroad was for three lanes. He said he looked at the best way to functionally get to the same level as the three lane road without requiring a full reconstruction.

Wiersum said when a street is built to the city standards and there are cars parked on both sides of the street, a person rarely would want to drive a Chevy Tahoe down that street let alone a city fire truck. A driver would not want to do that on any residential street in the city. He asked if there was an ordinance or expectation regarding parking on both sides of a residential street. Manchester said the typical width of a residential street was 26 feet. The reason for this is there is room to allow for parking on both sides and still leave room for an emergency vehicle to get through. The city does not allow overnight parking. Some streets are signed for no parking. This typically was done by petition.
Wiersum said cars parked on residential streets often are not parked very well and it is difficult to get through.

Wiersum asked how much latitude the council had on an application for a conditional use permit that met all the city’s ordinances. Heine said what the courts have said was if the requirements the city had set forth in the ordinance for a conditional use permit were met, then the applicant was entitled to have the permit issued. Whatever decision the council makes, whether to approve or deny, the council was required to support the decision with findings. She said staff had prepared a resolution with detailed findings. The basic standing the court looked at was if the council had set forth legally sufficient reasons for approving or denying the permit. Some of the standards in the ordinance were very objective and measurable and not subject to debate. For those standards there really was no council discretion. Other standards were somewhat more subjective and allowed the exercise of some discretion. The exercise of discretion had to be reasonable and founded in facts that the council determined to be credible.

Calvert said the proposal was one of the more difficult decisions the council had faced in a while. She said her synagogue had a retractable wall. On high holy days chairs are placed in the additional space and there were more people than could be accommodated by the parking. This was why she suggested a shuttle be used. She said there were times when she served on the planning commission where she felt compelled to vote for something that she didn’t particularly like because the proposal met the city’s ordinances. She said there were things about this proposal she didn’t particularly like but still met the ordinance requirements. She liked that the height of the building was reduced and the mass was broken up significantly. The setback requirements and the landscaping had been met. She said she liked how the applicant indicated he would make people more visible to address her concerns about pedestrian safety. This was a chaotic area and she was disappointed the traffic study did not include Hillside Lane. Having a right turn only exit, even if it could not be enforced, might help a great deal. She thought there were tremendous advances to blend in with the neighborhood better.

Wagner said he agreed with Calvert that there were many dilemmas with this application. He applauded the neighborhood for being very well organized. He said the applicant had made a number of adjustments to the proposal. The height was now much lower than a code permitted two or three story house. He thought the proposal that the planning commission reviewed had a better view in the front but the changes were to address neighbors’ concerns. This was the smallest site in the city. This was not addressed in the ordinance. There was no minimum lot size or floor area ratio in the ordinance. The building was 15,000 square feet and would be used for social gatherings. He questioned what would happen if there was an expansion of the building or there were more regular life cycle social events. The only option was offsite parking which may impact the stacking issues. His concerns were around scenarios for future use which got into site compatibility.
Wagner said he didn’t think the council should make a decision when the city and county were not aligned. The problem was now over 15 years old and he believed the city in alignment with the county should make sure the solution was the right one. Extra right of way was needed between Hillside Lane and Overlook Drive to satisfy the county’s view. He thought this should be dealt with now. He noted Pacyna had indicated striping had initially been recommended along with some other minor improvements. He said he didn’t at all disagree that Chabad had the right and would be a good neighbor. He wasn’t at all sure that the 1.96 parcel as it exists today with potential incremental use and no plan for Hopkins Crossroad was the solution the council should accept. He thought there were too many unanswered questions. He said he was not a “no” vote but he wasn’t a “yes” vote either. He didn’t want to micromanage staff but he thought it would be helpful for the item to come back to the council with more information about how the landscaping and fencing would actually look. He also didn’t want to require the neighborhood to go through the petition process and preferred instead to have the council approve no parking on one side of Mill Run.

Happe said religious institutions were generally pretty good neighbors. The conditional use permit gave the council the ability to change the permit if conditions changed. The flipside was this was a big facility shoehorned into a small area. The parking was established based on the conditional use at the time. If the center grows there simply would not be enough parking. He found the videos Jo Soo showed to be extremely compelling at demonstrating what the current issues were with Hopkins Crossroad. While the increase in traffic might not appear to be that great, it would occur in an area everyone knew was already a rough traffic area. Adding even a small amount of traffic would not make things better but would make it worse.

Acomb said the applicant had done a lot of work in making the building smaller and shorter and breaking it up. The neighborhood had clearly stated they are welcoming of this neighbor and she thought there could be a great relationship established. She said it would be helpful for the neighbors to have a better understanding of the look. She advocated for a strong landscaping plan. This development would change the character of the neighborhood. She shared Wagner’s concern about the lack of clarity from the county about the access. It felt premature to make a decision when access to the road had not been given yet. She said the language in the conditional use permit gave her comfort in the council’s ability to reevaluate the permit if things changed.

Bergstedt said the facility likely would go in and they would be a good neighbor but the landscaping would be a huge issue. He would like more information about the landscaping. The road already was dangerous and he was uncomfortable approving the proposal until something was worked out with the county in terms of the access and options for improvement.

Ellingson said the difficulty was the proposal was for a permitted use. He thought it was odd that the ordinance required the street access had to be from a main artery. This was creating the issue with the county. He thought the proposal met the city’s ordinances but the ordinances didn’t fit the situation. He said the only
thing that would satisfy the neighbors was to reduce the size of the building and the number of people who would attend the services. He didn’t believe this was something the city could require. He wasn’t sure what would come back if the council decided not to take action at the meeting and he wasn’t sure what the council was asking the applicant to do.

Heine said the 120 day deadline for the council to make a decision applied to this proposal. The maximum extension would be to July 9. Wiersum asked if the minor improvements like striping were what would be negotiated with the county, and if the county would likely be amenable to those changes. Manchester said there had been multiple discussions with the county. The county had been very firm with what they had communicated in an email. Wagner said the ordinance was written to not allow certain uses on a residential street. This was at the heart of the conflict. Improvements to Hopkins Crossroad were far down the list of the county’s priorities. He said for him, the city needed to ask the county about the minor improvements and this would give the applicant information about whether or not the county would approve the access.

Wiersum said Chabad had a great mission and would be very good neighbors but he wished they were not proposing this location because the location had some serious deficiencies. This was equal to the smallest piece of property in the city for this type of facility. The intensity of the building was greater than what was on the other equally small parcel. This wasn’t a reason to say “no,” but it made it more difficult to say “yes.” Another concern was Hopkins Crossroad was not a good access point and the city had no control on how good it was. The application was for a permitted use and it met the city’s ordinance requirements. He wished there was a better location. He said if the access for this facility could be to Hopkins Crossroad, he felt he had to vote yes. If the county said no, then the project would be over for this location because it no longer would meet the city’s ordinance. He didn’t think he would be doing his job if he didn’t say the city had to expend some effort in the interest of safety and appropriateness and honoring the ordinance as it was written.

Wischnack said the council had discussed two issues as the reason for tabling the item. The first was in order to get a more detailed landscaping plan. The other issue was working with the county to determine the detailed design for the improvements to the road with the applicant’s commitment to doing those improvements.

Wagner said the issue for him was to come to an agreement with the county on what improvements were needed for the operations between Hillside Lane and the top of Overlook Drive. The county may not agree to provide access to Hopkins Crossroad but they could help identify the improvements needed to make the entrances from Mill Run, Hillside Lane, and the applicant’s property effectively work. He said the development would create more left hand turns so what he wanted the county to respond to was what would make left turns work better than the existing bypasses.
Wiersum said people are skeptical about striping but striping can be remarkably effective. He said he would like to know what could be done at a modest cost.

Wagner moved, Acomb seconded a motion to table the item, directing staff to work with the county to identify what the specific desired improvements would be reporting those back to the council along with more information about the proposed landscaping. Bergstedt, Wagner, Ellingson, Acomb, Calvert, and Wiersum voted “yes.” Happe voted “no.” Motion carried.
Planning Commission Report -
April 26, 2018
MINNETONKA PLANNING COMMISSION
April 26, 2018

Brief Description
Conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run

Recommendation
Recommend the city council adopt the resolution approving the conditional use permit

Introduction
Chabad Center for Jewish Life is requesting a conditional use permit (CUP) to operate a religious institution from the combined site and 2333 and 2339 Hopkins Crossroad and 11170 Mill Run. As proposed, the three properties would be combined, all but one of the several existing buildings removed, and a new religious building with associated parking lot would be constructed.

Proposal Summary
The following is intended to summarize the applicant’s proposal. Additional information associated with the proposal can be found in the “Supporting Information” section of this report.

- **Existing Site Conditions.** The combined site has a total area of 1.95 acres. It contains two houses, three detached garage structures and one large shed. The houses are situated at the highest points of the larger site; grade falls in all directions from these points. There is a roughly 20 foot change in elevation over the entirety of the property. Mature trees are located throughout the site, including several pine, spruce, maple and oak.

- **Proposed Buildings.** As proposed, an existing single-family home located adjacent to Mill Run would be remodeled. The building, which would be accessed via a residential driveway to Mill Run, would continue to be used as a home. A new religious institution building would be constructed at the center of the combined site. The building would have a footprint of roughly 11,000 square feet and total floor area of roughly 15,000 square feet. The building would contain a worship space, social hall, kitchen, offices, classrooms, library, and ritual bath area. The exterior of the building would be comprised of a variety of materials, including glass, limestone, natural wood and terracotta clay. The building would have a code-defined height of 31 feet; in the case of flat roof, height is measured from grade to the highest point of the roof.

- **Proposed Site Design.** As proposed, vehicular access to the religious site would be via a new driveway onto Hopkins Crossroad; the driveway would be located 135 feet north of Mill Run. The primary parking lot for the site – containing 44 striped stalls – would be located north of the building. A smaller parking area – containing 7 striped stalls and unstriped area that could accommodate additional cars – would be located between the new building and the existing home. The plans do not include any vehicular connection between the proposed parking lots and Mill Run; such connection would be limited by the location of the existing home, as well as existing site grades. As proposed, the site
would continue to accommodate a private driveway accessing the private property to the north.

- **General Building and Site Use.** Like other religious institutions in the community, Chabad Center for Jewish Life is intended as a facility for worship, prayer, study, and the celebration of life events. It is anticipated that the building would typically be used as follows.

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<thead>
<tr>
<th>Day</th>
<th>Activity</th>
<th>Attendees</th>
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<tbody>
<tr>
<td>Monday thru Friday</td>
<td>Morning services</td>
<td>10 to 15 people</td>
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<td></td>
<td>Daytime classes</td>
<td>5 to 15 people</td>
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<td></td>
<td>Regular evening classes</td>
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<tr>
<td></td>
<td>Occasional evening classes</td>
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<tr>
<td>Friday</td>
<td>One special service per month</td>
<td>75 to 125 people</td>
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<td>Saturday</td>
<td>Midday service</td>
<td>50 to 100 people</td>
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<td>Sunday</td>
<td>Early morning service</td>
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<tr>
<td></td>
<td>Later morning service</td>
<td>35 to 50 people</td>
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**Primary Questions and Analysis**

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines both the primary questions and staff findings associated with the proposal.

- **Is the proposed use generally appropriate?**
  
  Yes. The site is zoned R-1, low-density residential. By city code, religious institutions are conditionally-permitted uses in residential zoning districts. A conditionally-permitted use is one that is allowed if the conditions outlined in code are met.

- **Would the proposed use meet conditional permit standards?**
  
  Yes. City code outlines several conditions for religious facilities. It is staff’s opinion that the proposed Chabad Center for Jewish Life meets the ordinance standards. Some of the CUP standards are objective and compliance with these standards can be specifically measured. Other standards are subjective and require the reasonable exercise of discretion by the commission, based on the facts presented in the record. The following highlights some of the CUP standards. All of the standards are outlined in the “Supporting Information” section of this report.

  **Objective Standards.** The objective standards of the code reference access to a collector or arterial roadway, building and parking setbacks, parking numbers, and the percentage of the site covered by hard surfaces. The proposal meets all of these objective measurements.
Subject: Chabad Center for Jewish Life

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<th>Required</th>
<th>Proposed</th>
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<tr>
<td>Building Setback</td>
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<tr>
<td>Parking Setback</td>
<td>Minimum 20 ft</td>
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</tr>
<tr>
<td>Parking Stalls</td>
<td>Minimum 40 stalls per city code*</td>
<td>Minimum 55 per ITE**</td>
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<td></td>
<td>51 striped</td>
<td>51 striped</td>
</tr>
<tr>
<td>Impervious Surface</td>
<td>Maximum 70%</td>
<td>66%</td>
</tr>
</tbody>
</table>

* based on sanctuary seating for 99 persons, as per city code
**based on Institute of Transpiration Engineers (ITE) rate of 2.25 persons per vehicle and 125 attendees

**Subjective Standards.** Some of the subjective standards of the ordinance require limiting site disturbance to the greatest extent practicable, details of construction being compatible with neighboring and adjacent structures, and protection of neighboring properties. It is important to evaluate compliance with these subjective standards with the understanding that the ordinance contemplates construction of a religious institution on a residentially zoned-property.

- **Site Disturbance.** The proposal would result in alteration of a majority of the site, including changes to grade and tree removal/impact. The subjective standard does not prohibit such alteration, but requires that it be limited to the *extent practicable*. This means that the grading plan, and resulting tree removal/impact, must relate to the building and required parking that is proposed. With some minor modifications to the grading plan – which are included in the staff-drafted resolution as conditions of approval – it is staff’s opinion that site disturbance would be limited to the extent practicable, given construction of a building and parking lot.

- **Design Compatibility.** Generally, staff does not interpret compatibility to mean that a religious institution located in a residential zoning district be designed to “look like” or be “sized like” a residence. Minnetonka does not have design criteria for single-family homes. Given this, and given that that homes in the area of the proposed Chabad Center were built over several decades, there is no clear design pattern in the area surrounding the subject property. Further, in staff’s opinion, it would be inappropriate to suggest that a building intended for the public assembly of people be of a size similar to a single-family home. There are currently 21 religious institutions in Minnetonka that are located on properties zoned R-1, low-density residential. Staff finds that none of these existing institutions “look like” or are “sized like” a single-family home. Instead, staff interprets design compatibility to mean some level of complementary design features. The façade of the proposed Chabad Center for Jewish Life would be of a neutral color palate and would include natural materials, which are residential in character. Additionally, at a proposed height of 31 feet, the facility would be shorter than the 35 feet permitted for single-family homes. (See attached photos.)

- **Protection of Neighboring Properties.** Generally, any change to the use of a property will bring with it changes to drainage patterns, sounds, and site lines. The objective standards – building setbacks, parking setbacks – as well as conformance with the
stormwater management rules and nuisance regulations regarding lighting and “quiet hours,” are intended to minimize or mitigate for these changes.

The conditional use permit standards for religious institutions are the same standards that are applied to any public building; for instance, city hall or a library. The consistency between these standards is intentional. By federal law, local ordinances must treat religious facilities in the same manner as any place of public assembly. Federal law is discussed in greater detail in the “Support Information” section of this report.

- **Can anticipated traffic and parking be accommodated?**

  Yes. The city commissioned a traffic and parking study for this conditional use permit request. The purpose of any traffic study is to understand: (1) the existing traffic volume and operations; (2) the impact of the proposal on existing traffic volume and operations; and (3) if the proposal impact would be negative, how those impacts could be mitigated. The purpose of a parking study is to determine if anticipated parking demands can be accommodated by the proposed parking supply.

  The traffic study conducted for the proposed Chabad Center included trip data collection for the center’s anticipated “peak hours,” which are associated with anticipated service times: weekday a.m. from 7:15 to 8:15, Friday p.m. from 5:00 to 6:00, and Saturday midday from 12:30 to 1:30. The traffic study concluded:

  ✔ Hopkins Crossroad experiences approximately 14,500 daily vehicle trips. The theoretical capacity of the roadway with its current configuration is 17,000 vehicles trips per day.

  ✔ Based on general activity hours, the proposal would add 36 vehicle trips to Hopkins Crossroad during the weekday a.m. peak hour, 60 vehicle trips in the Friday p.m. peak hour, and 50 trips in the Saturday midday peak hour.

  ✔ The proposal is anticipated to increase the delay at the Mill Run/Hopkins Crossroad by approximately two to three seconds during the a.m. and p.m. peak hours.

  The parking study concluded:

  ✔ The proposed 51 parking stalls is expected to be sufficient to meet parking demand.

  ✔ 13 additional proof-of-parking stalls would be available in the proposed south court.

  Area residents have noted that the study does not specifically look at the Hillside Lane intersection to the north nor take into account the activities occurring at Hopkins school campus. This traffic study was intended to review if the proposed use would negatively impact volume on Hopkins Crossroad and or decrease levels of service in the specific area in which is located, based on current traffic data. On a Friday, the anticipated busiest day at the proposed institution, the proposal would add 96 vehicle trips to Hopkins Crossroad. This would amount to a 0.7% increase in daily traffic.
Is the proposed access consistent with city code?

Yes. By city code, religious institutions must have direct access on a collector or arterial roadway as identified in the comprehensive plan or the access must be located such that it does not conduct significant traffic on local residential streets. The intent of this requirement is to ensure these uses – which generate more traffic than single-family homes – are located on roadways that can accommodate higher traffic volumes. Collector and arterial roadways can see traffic volumes of up to 30,000 vehicle trips per day. Local streets generally experience volumes of less than 1,000 trips per day.

The subject site has frontage on both Hopkins Crossroad and Mill Run, an arterial roadway and local street respectively. Hopkins Crossroad sees an average of 14,500 vehicle trips per day, while Mill Run experiences an average of 100 trips per day. City staff supports the proposed access onto the arterial roadway, as such access is consistent with both the letter and intent of the city code requirement.

The county has informed city staff that it would prefer that the site plan be redesigned to direct all vehicle access to Mill Run and that a variety of turn lanes be added to the county road. The county has driveway permitting authority and has control of the design of Hopkins Crossroad. As with any driveway change on a county road, the applicant would have to obtain a driveway permit from the county. This has been included as a condition of approval.

Summary Comments

Staff acknowledges that the proposed Chabad Center for Jewish Life would visually alter the Hopkins Crossroad/Mill Run area. Further, the proposal would result in a different level of activity than was historically observed while the site contained occupied single-family homes. However, staff recommends approval of the request, as: (1) religious use of the site is contemplated by the zoning ordinance; (2) the proposal would meet CUP requirements; and (3) similar uses exist in residential areas throughout the community.

Staff Recommendation

Recommend the city council adopt the resolution approving a conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run.

Originator: Susan Thomas, AICP, Assistant City Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

**Surrounding Land Uses**
The site is surrounded by single-family residential homes.

**Planning**

<table>
<thead>
<tr>
<th>Guide Plan designation</th>
<th>Existing Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>low-density residential</td>
<td>R-1</td>
</tr>
</tbody>
</table>

**Concept Plan Review**
In February 2018, the planning commission reviewed a concept plan for a religious facility on the properties at 2339 Hopkins Crossroad and 11170 Mill Run. At that meeting, several area residents addressed the commission. The residents generally expressed concern about the size and design of the proposed building, the possible intensity of the proposed use, and off-site impacts of traffic and parking. The commission expressed similar concerns. (Meeting minutes are attached.)

The formal application includes three noticeable differences from the concept plan.

- Additional property has been incorporated into the redevelopment site.

- The maximum visual height of the building, from grade to highest point of the roof structure has been reduced from 40 feet to 31 feet.

- The home at 11170 Mill Run is proposed to remain.

- No vehicle access to/from the new building to Mill Run is proposed.

**Other Facilities**
There are 21 religious institutions in Minnetonka located on properties zoned R-1, low-density residential. The facilities are located on county roads and local streets and on lots ranging from 1.9 acres to 25.7 acres in size. The variety in lot size is also reflected in the variety of building size, which ranges from 12,900 square feet to 72,000 square feet. (See attached chart for more information.)

**Site and Building Information**
The following data is for informational purposes. The ordinance does not have minimum or maximum limits for these.

<table>
<thead>
<tr>
<th></th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Lot Area</strong></td>
<td>85,145 sq.ft.</td>
</tr>
<tr>
<td><strong>Total Floor Area</strong></td>
<td>15,000 sq.ft. (proposed building)</td>
</tr>
<tr>
<td></td>
<td>2,950 sq.ft. (existing home)</td>
</tr>
<tr>
<td><strong>Floor Area Ratio</strong></td>
<td>0.18 (proposed building)</td>
</tr>
<tr>
<td></td>
<td>0.21 (proposed building and home)</td>
</tr>
</tbody>
</table>
Grading

Grading would be necessary to accommodate construction of the proposed facility and associated parking lots. Generally, the area north of the home would be graded flat. Approximately three to ten feet of soil would be removed from the central portion of the site. Roughly, two to four feet of soil would be added near the northwest corner of the site. In this same area, to accommodate an existing private and new parking lot, a retaining wall would be constructed. The wall would range in height from two feet to seven feet.

As a condition of approval some areas of the grading plan must be revised. In particular, along the east property line and south of the existing home. The easterly portion of the site must be graded to direct runoff to the underground storage facility. This may be done via overland flow or piping. Additionally, grading proposed south and southwest of the existing home must be reduced to better protect existing trees.

Trees

The following tree removal/impact is anticipated based on the proposed grading plan. With some modifications to the plan, removal/impact may be slightly lowered. These modifications, noted in the preceding paragraph have been included as conditions of approval in the staff-drafted resolution.

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Removed</th>
<th>% Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Priority</td>
<td>36</td>
<td>14</td>
<td>39%</td>
</tr>
<tr>
<td>Significant</td>
<td>45</td>
<td>40</td>
<td>89%</td>
</tr>
</tbody>
</table>

* By city code, a tree is considered removed if 30 percent or more of the critical root zone is compacted, cut, filled or paved.

The proposal is for redevelopment of existing, developed lots. As such, the tree ordinance does not establish a maximum threshold for tree removal/impact. The ordinance does require mitigation for removal of trees located outside of proposed building footprints and driveways, and 20 foot and 10 foot perimeters of these respective areas.

Stormwater

The proposal triggers the city’s stormwater management requirements. These requirements include: (1) on-site retention of 1-inch for runoff from the site’s impervious surfaces; (2) limiting peak runoff rate flow to those of the existing condition; and (3) treatment of all runoff for removal of 60 percent of phosphorus and 90 percent of suspended solids.

The applicant proposes construction of an underground stormwater facility to meet these stormwater requirements. As proposed, runoff from the site would be captured through several catch basins and directed to the underground chambers via stormwater pipe. Final plans and soil borings must be submitted for staff review and approval as part of a grading permit application.
Buffering

The applicant proposes to plant 78 arborvitae along the north and east property line to provide a visual buffer to the adjacent single-family homes. As a condition of approval, the plan must be revised to substitute half of these plants with another species to avoid planting a monoculture.

Legal Considerations

The city’s evaluation of the proposed Chabad Center for Jewish Life is subject to both local and federal law. The local law is the conditional use permit standards the city has established in the zoning ordinance. Generally, an applicant is legally entitled to a conditional use permit if the city finds that the request meets the standards of the ordinance. The federal law is the Religious Land Uses and Institutionalized Persons Act (RLUIPA). Generally, RLUIPA requires that religious institutions not be subject to standards that are more restrictive than would be required for any other type of assembly land use, such as a school or community center.

The city attorney has provided an advisory memo regarding RLUIPA. (See attached.)

CUP Standards

The proposed religious facility would be consistent with the general CUP standards as outlined in City Code §300.16 Subd.2:

1. The use is consistent with the intent of this ordinance;

Finding: Religious institutions are specifically listed as conditionally-permitted uses in the single-family residential zoning district.

2. The use is consistent with the goals, policies and objectives of the comprehensive plan;

Finding: The goals, policies, and objectives of the comprehensive plan are generally the city’s effort to create a vibrant and resilient community. Religious institutions are a component of such communities.

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

Finding: The proposal has been reviewed by members of the city’s community development, engineering, public works, fire, and legal departments. Staff does not find that the proposed religious institution would have an adverse impact on the provision of government services or infrastructure.

4. The use does not have an undue adverse impact on the public health, safety or welfare.
Finding: The proposed institution would visually alter the Hopkins Crossroad/Mill Run and result in a different level of activity than was historically observed while the site contained occupied single-family homes. Though noticeable, these changes would not be detrimental to the health, safety, or welfare of the community.

The proposal would meet the specific conditional use permit standards for religious facilities as outlined in City Code §300.16 Subd.3(b):

1. Direct access limited to a collector or arterial roadway as identified in the comprehensive plan or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

Finding: The proposed facility would have access to Hopkins Crossroad, which is defined as an arterial (minor reliever) roadway in the comprehensive plan.

2. Buildings must be set back 50 feet from all property lines;

Finding: The new facility would meet this setback from east and west property lines and it exceeds it from the north and south.

3. Parking spaces and parking setbacks subject to section 300.28 of this ordinance;

Finding: By ordinance, 1 parking space is required for every 2.5 seats within the main sanctuary of a religious facility. As proposed the sanctuary would regularly have seating for 99 people, requiring 40 parking stalls. 51 parking stalls would be striped on the site. Staff notes additional areas would be available as “proof-of-parking.”

4. No more than 70 percent of the site to be covered with impervious surface and the remainder to be suitably landscaped; and

Finding: Staff calculates impervious surface would cover 66 percent of the site.

5. Site and building plan subject to review pursuant to section 300.27 of this ordinance.

Finding: See the “SBP” section of this report.

SBP Standards The proposal would meet the site and building standards as outlined in City Code §300.27 Subd.5:
1. Consistency with the elements and objectives of the city’s development guides, including the comprehensive plan and water resources management plan.

**Finding:** The proposal has been reviewed by city planning, engineering, and natural resources staff and found to be generally consistent with the city’s development guides, including the water resources management plan.

2. Consistency with this ordinance.

**Finding:** Religious institutions are specifically listed as conditionally-permitted uses in the single-family residential zoning district.

3. Preservation of the site in its natural state to the extent practicable by keeping tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing properties.

**Finding:** The proposal would result in significant alteration of the site, including changes to grade and tree removal/impact. However, with some minor modifications to the grading plan – which are included in the staff-drafted resolution as conditions of approval – site disturbance would be limited to the extent practicable, given construction of a building and parking lot.

4. Creation of harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development.

**Finding:** The proposal would appropriately locate constructed features – new building and parking lots – at the center of the site, maintain green space and the opportunity for new plantings at its perimeter.

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:

- an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors, and the general community.
- the amount and location of open space and landscaping.
- materials, textures, colors and details of construction as an expression of the design concept and compatibly of the same with the adjacent and neighboring structures and uses.
- vehicular and pedestrian circulation, including walkways, interior drivees and parking in terms of location and number of
access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

**Finding:** The location of buildings relative to open space and paved areas is appropriate. The façade of the proposed center would be of a neutral color palate and would include natural materials, which are residential in character. Additionally, at a proposed height of 31 feet, the facility would be shorter than the 35 feet permitted for single-family homes. Vehicular and pedestrian circulation patterns would be intuitive.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures, and the use of landscape materials and site grading.

**Finding:** As new construction, the building code requires use of energy saving features.

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and site buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

**Finding:** Generally, any change to the use of a property will bring with it changes to drainage patterns, sounds, and site lines. The objective standards – building setbacks, parking setbacks – as well as conformance with the stormwater management rules and conformance with nuisance regulations regarding lighting and “quiet hours” are intended minimize or mitigate for these changes.

**County Review**

As the site is located on a county road, the county has permitting authority related to driveways. The county further has authority regarding the configuration of Hopkins Crossroad – number of lanes, turn lanes, etc. As a condition of approval, the applicant must receive all necessary permits from the county prior to issuance of a grading permit.

**Private Driveway**

There is an existing private driveway located on the northwest corner of the subject site. The driveway provides access to the adjacent residence to the north. As proposed, this driveway would be slightly reconfigured. As conditions of approval, a private driveway easement must be recorded to accommodate the reconfigured drive.
Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with the staff recommendation. In this case a motion should be made recommending the city council adopt the resolution approving the request.

2. Disagree with staff’s recommendation. In this case, a motion should be made recommending the city council deny the request. This motion must include a statement as to how the CUP standards are not met.

3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Voting Requirement

The planning commission will make a recommendation to the city council. The city council’s final approval requires an affirmative vote of a simple majority.

Neighborhood Comments

The city sent notices to 78 property owners. Several comments were received during the concept plan review and several more following submittal of the formal application. All of the comments are attached.

Deadline for Action

July 9, 2018
The Chabad Center for Jewish Life requires a permit for the allowable conditional use as a religious institution for a facility of approximately 15,000 gross square feet to be constructed at the above captioned address. The center will share the property with a renovated existing residential structure which is planned for use as the rabbi’s family home.

There will be three elements to the building accessible from the main lobby:

The East Wing will be a two story structure clad in terra cotta rain-screen, with an elevator, containing:
- **Ground Floor**: Chabad offices and mikveh (ritual bath) and toilet rooms; **Second Floor**: Classrooms, storage

The North Wing will be a one story structure containing a large assembly space with a moveable partition separating the social hall from sanctuary/presentation/study room. Storage, kitchen/pantry and loading dock will be located along the west side of the social hall. There will be a small terrace north of the social hall accessible from three pairs of french doors.

The library/study will be located at the southwest corner of the building as a “gatepost” to the South Court.

**BUILDING ACCESS**

There will be a South Court created between the north face of the existing Mill Run House and the Chabad Center. A loggia between the library and the East Wing will give access to the lobby. There will be an entrance from the main parking lot and drop-off via a loggia on the north side of the East Wing giving access to the lobby between the East and North Wings. Entry is also possible through a West Entry facing Hopkins Crossroads. There is secure access to the men’s mikveh and the vessel mikveh in the west wall of the East Wing. There will also be a covered, dedicated entrance to the women’s mikveh on the south side of the building (by appointment only).

**HOURS OF OPERATION AND OCCUPANCY LOAD**

**Monday – Friday**

- Services in the morning 10-15 people
- Some classes throughout the day 5-15 people
- Evening classes and lectures. Regular 5-15, 3 courses x 6 up to 30-50 people at any given time
**Friday night** once a month 75 – 125 people

**Shabbos** 10am - 2 pm 50 -100 people

**Sunday** 8am 10-15 people, 9:45am -12pm 35-50 people

**Mikveh** approximately four people per week by appointment only.

**Holidays:** 75 - 150 people 5-10 times

NOTE: On Friday evening and Saturday (Shabbos) and holidays, some of the attendees will arrive on foot so there will be reduced parking demand from what one would typically calculate.

**LIGHTING**

Site lighting will be guided by two factors:

1) to provide for safety, security and visibility for visitors to the Chabad Center.

2) To limit light spill and glare off site – horizontally, towards neighboring land and vertically, light pollution to the sky. We follow the dictates of the International Dark Sky Association [www.darksky.org](http://www.darksky.org)

3) Interior lighting will be designed to effectively place light where it is needed for safety and visibility and affect and to limit lighting and energy use where and when not efficacious.

**PARKING**

The property will have fifty-one (51) parking stalls including two HC accessible stalls. Forty-four (44) stalls are arrayed in the main lot along the north property setback; the remainder will be located in the South Court.

There is room on the property for eleven (11) additional vehicles: four (4) in the South Court; two (2) along the west drive; five (5) along the east verge of the north lot. This additional capacity would bring the total to sixty-two (62) vehicles with site access from Hopkins Crossroads.

There is also capacity for five (5) vehicles in the residential driveway (3) and 2-car garage accessible off Mill Run.

**SITE ACCESS**

The existing curb cut on Hopkins Crossroads must be widened to 26’ to accommodate fire equipment access and the centerline of that drive will be moved approximately fifteen feet (15’) south. This will provide the only vehicular access to the Chabad Center (except for mountain bikes).

The residence on the south portion of the lot will use the existing curb cut off Mill Run to provide vehicular access to the residence.

**SITE ORGANIZATION**
The Chabad Center building will be located near the center of the property. The existing residence at 11170 Mill Run will be renovated and serve as a residence for the rabbi’s family. The Mill Run house and the dense existing and proposed plantings on the south verge of the site will effectively screen the Chabad Center from view from Mill Run. Between the Chabad Center and the Mill Run house, at an elevation of approximately +956, will be a paved landscaped court enclosed by the facades of the two buildings. The main floor elevation of the new facility will be approximately +957’ above MHW. [NOTE: For reference, the southeast corner of the property on the Mill Run frontage is at El. +972; the main floor elevation of the Mill Run house is +967.5.]

An entry plaza on the north of the Chabad Center connects the north parking lot with the main entrance to the Chabad Center.

**LANDSCAPING & GRADING**
Existing trees along the perimeter and other trees undisturbed by the construction of the facility will be preserved to the extent possible. The grove on the southwest corner will be tended, restored and limbed up to provide a permeable screened view to motorists traveling north. It is anticipated that the access drive in the north portion of the Hopkins Crossroads frontage will continue to provide access to the property to the subject property’s immediate north. A retaining wall will be required between that drive and the north parking lot. The arborvitae hedge along the west property line will be tended and mended to provide a partial screening from Hopkins Crossroads. Additional plantings will be set judiciously to provide both screening and visual access.

The landscape plan has not been finalized. New plantings will be installed along the north and east property line to screen light and view from residences to the north and east. Species may be a mix of evergreens and, possibly, deciduous plantings with high twig density.

All precipitation falling on the site will be managed on site.

**Trees:**

All Trees in the area of the addition (and parking area)

Trees to be preserved: at least 20 (not including trees to remain south of the north face of the existing Mill Run house).

Trees to be removed: 25

New trees – 134 conifers as screening around the perimeter of the property.

New trees: Deciduous trees: approximately 10 trees.

Additional deciduous trees will be added as appropriate to site plan as the design progresses.

**MATERIALS**

**East Wing**

Exterior walls: Terra cotta rain screen

Roof: Standing seam metal roof

Fence at mikvah garden: wood
**Lobby:**

Walls: Terra cotta rain screen

Roof: EPDM

**West Wing - Service Wing:**

Walls: Terra cotta rain screen

**Social Hall:**

Exterior walls: Terra cotta rain screen

Roof: EPDM

**Sanctuary/study room:**

Exterior walls: Kasota Stone

Windows: Clerestory windows on north, south and west. Indirect, deep-cavity windows in thick wall on east facade.

Roof: EPDM

**Kitchen / Storage:**

Exterior walls: Terra cotta rain screen

Roof: EPDM

**Library / Daily Minyan:**

Exterior walls: Kasota Stone

Roof: EPDM
WEST FACADE

FORMAL APPLICATION, original submittal

FORMAL APPLICATION, revised, reviewed by Planning Commission

FORMAL APPLICATION, revised since Planning Commission
EAST FACADE

FORMAL APPLICATION, original submittal

FORMAL APPLICATION, revised, reviewed by Planning Commission

FORMAL APPLICATION, revised since Planning Commission
Additional Letters Received
Bob Byers, P.E.
Hennepin County Transportation Planning
1600 Prairie Drive
Medina, MN 55340-5421
(612) 596-0354

From: Susan Wiens <wns6860@hotmail.com>
Sent: Wednesday, May 16, 2018 12:38 PM
To: Robert H. Byers <Robert.Byers@hennepin.us>; Jo Soo
Cc: Chad Ellos <Chad.Ellos@hennepin.us>; Kristin Soo; Jim and Amy; Phil Eckhert
Subject: [External] Re: Chabad project on County Road 73

Bob,

Thank you for your timely response to Jo Soo's questions. I have emailed you a couple times as well about this project, updating you on the Minnetonka residents' concerns. I'm wondering when the County can share its ideas with us (the residents) regarding possible left turn lanes on southbound 73 just south of Hillside Lane. We heard from the Minnetonka City staff on Monday night that a simple restriping might be possible to fit in a left turn lane. There was quite a bit of conjecture (by the City) about what is possible without any concrete discussion of such possibilities. The residents would like to stay in the loop regarding any suggestions about altering County Road 73.

We appreciate your attention to our safety concerns.

Susan Wiens

Hi Jo:

Yes, we are very aware of the tight dimensions and the constraints in this area.
We had to deal with many of the issues you mentioned when we installed the southbound left turn lane to Hillside Lane.

The safety for drivers, pedestrians and bicyclists is of upmost importance to us. We’ll have to be very careful how any changes are made on Hopkins Crossroad.

County and city staff will discuss these items and see what options might be possible.

- Bob

Bob Byers, P.E.
Hennepin County Transportation Planning
1600 Prairie Drive
Medina, MN 55340-5421
(612) 596-0354

From: Jo Soo <joseph.soo@gmail.com>
Sent: Wednesday, May 16, 2018 9:46 AM
To: Chad Ellos <Chad.Ellos@hennepin.us>; Robert H. Byers <Robert.Byers@hennepin.us>
Cc: Kristin Soo; Susan; Jim and Amy; Phil Eckhert
Subject: [External] Chabad project on County Road 73

Hello Chad, Bob,

I thought that it is pertinent for you and your team to visualize the possible effect of having a non-residential driveway for the Chabad project into County Road 73.

There's a sinkhole that needed to be filled just a few yards away from a possible driveway to the Chabad project (midpoint between Hillside Lane and Mill Run). The traffic cones are still there as of this morning. The attached photos shows a possible scenario of having three lanes, with the middle lane as the turn lane. Here are some concerns that I noticed with the three lanes:

1. Doesn't look like there's room for sidewalks, snow banks, or safety buffer
2. Doesn't look like there's room for an additional right turn lane into Hillside Lane
3. Is there room for tapering and bypass?
4. If the Chabad were to cede some space for widening the road on the east, how would the County deal with a sudden shift of traffic to the east, just south of Hillside Ln, and then shifting quickly back to the west, just north of Hillside Ln? Doesn't seem like it would be a smooth flow of traffic, and the Hillside Ln and CR73 intersection is already a very bad intersection
5. The guardrail can't be moved because there's a topographical drop, and it's a wetland there
6. Is it possible that the sinkhole occurred because of drainage from the east side of the road trying to get over to the west side, into the wetlands? How would this affect any re-stripping, widening of CR73 or other engineering work required to prevent more
sinkholes? Here's a link to a video showing how left turners into the property could cause traffic backup. 
[https://app.box.com/s/gl4hani9f9sqt6omwmrt9kphgighmqa8](https://app.box.com/s/gl4hani9f9sqt6omwmrt9kphgighmqa8)
It shows how quickly a backup would occur, and how long it takes to clear up. Let me know if you can't get the video, and I'll find another way to get it to you.

We hope these would help the County make the appropriate decisions for the safety of drivers and people who use this important thoroughfare.

Thank you,
Jo Soo

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Dear Mayor Wiersum and City Council Members:

During our ongoing dialogue with the city staff about parking and traffic issues related to the proposed development, we have respectfully requested that the human behavior component of parking and traffic be given ample consideration and review in the decision making process. Very simply, drivers often disregard signage and directions if they think a shortcut is available, if they are in a rush or if they are in an unfamiliar area. In addition, the data from the staff’s site visit to the St. Louis Park Chabad showed that nearly half of the motorists attending services Friday night and Saturday morning parked off site even though parking was available next to the building. The consequence of all of the aforementioned means that attendees will park off site regularly, even when parking is available on site.

Last week Hopkins Crossroad was closed between Cedar Lake Road and I-394 for about thirty six hours. There was “Road Closed” signage for potential Hopkins Crossroad northbound traffic well before the Cedar Lake Road intersection in all directions. That didn’t stop cars from heading north on 73. As cars approached the barricade they had three choices: 1) Turn around on 73; 2) Turn left into Fetterly; 3) Turn right into Mill Run. Just below the Mill Run street sign there is another sign that says “No Outlet.” As you will see in the very brief video below, “No Outlet” was continuously disregarded. Cars drove through the cul de sac onto a clearly marked private drive, down to the end, which was a neighbor’s driveway, where there was no room to turn around.

We recognize that the Chabad project won’t lead to this kind of chaos. However, it would lead to Mill Run, Vernon Circle and Fetterly streets being used in ways that they are not designed or intended to be used. It will also lead to motorists driving in unfamiliar neighborhoods, and that’s when mistakes become more likely.

If a busy 15,000 square foot facility is placed next to a small residential neighborhood, drivers trying to get in and out of the site are not likely to behave in the desired manner, especially during busy times. That will create safety and congestion issues for the small neighborhoods surrounding the facility. That’s not the intention of the developer nor is it the intention of the staff or the city council. However, it is the inevitable consequence of the project and that will create an adverse undue impact on the surrounding neighborhood.

Thank you for your consideration and review of this email.

Best Regards,

Jim Moscowitz and Amy Taswell
11120 Mill Run
Minnetonka, MN
Dear Julie and Loren,

Hope you are doing well. We were glad to get a call from Rabbi Grossbaum yesterday in regards to coordinating a landscape meeting next week. We appreciate this step before the next Council meeting as well as being engaged for it. As you know, the potential loss of privacy to our home and backyard where we spend a lot of family time is one of our key concerns. Thank you.

We are hoping that this is where an east side rendering of the property would also come into play, in order to know what exactly needs to be screened. To date, renderings have been provided from all other sides except from the closest homes to the east (see image attached), despite several requests.

Knowing the relationship of the height of the building and 2nd story classroom windows/sight lines to our home would be critical in choosing the right landscape materials. We think it would be hard to create an accurate screening plan if there is not a depiction of what exactly needs to be screened.

Will the landscape plan include a comprehensive drawing of the east side of the property?

Thank you,

Kristin and Jo Soo
2391 Vernon Circle
Dear Mayor Wiersum,

On behalf of the Safety on 73 Neighborhood Alliance, we are attaching for your review a link to a story published in the StarTribune on 6/2/18 reporting on the wedding of Rabbi Mordechai Grossbaum’s daughter on Tuesday, June 5th at the Mermaid Event Center in Moundsview.


The article was deemed newsworthy by the StarTribune because it was the first Hasidic wedding performed in Minnesota in a long time. We consider it noteworthy and are bringing it to your attention because it is about the applicant and the article reports that 380 guests have been invited to the wedding. We understand that the event was called for 4pm.

The proposed Chabad development would be a very attractive venue for any orthodox Jewish wedding held in the upper Midwest. (A Hasidic wedding may be a rarity, but orthodox weddings occur regularly.) The proposed development would be attractive because it would have a kitchen that would be maintained according to the strictest Kosher standards, over 3,000 square feet of contiguous space plus a lobby on the main floor, a courtyard for outside ceremonies, some onsite parking and off-site parking in the surrounding neighborhoods.

Orthodox weddings are frequently held on weekdays and they typically begin late in the afternoon to early in the evening, during rush hour and after school activities. A wedding
The possibility of hundreds of turns during rush hour on Hopkins Crossroad many times a year is not a religious issue and is not one that the Council can disregard. As we have clearly demonstrated through pictures and videos, left turns into the proposed site from cars traveling south on Hopkins Crossroad cause cars to stack up into and beyond the Hillside Lane intersection creating incredible pedestrian and motorist safety hazards.

The applicant’s narrative contained few specifics on the subject of lifecycle events. This project is designed to host large celebrations such as the wedding described in the article. Unfortunately, its location makes that a very unsafe proposition. This article is credible evidence that such large events will take place at the proposed site if the proposal is approved. We urge you to seriously consider the implications your approval will have on the safety of pedestrians, motorists and the residents that must travel local roads and navigate this additional congestion.

Thank you for your consideration of this email.

Sincerely,

The Safety on 73 Neighborhood Alliance

Lori and Brad Fritz - 11111 Mill Run
Cheryl and David Carlson - 11171 Mill Run
Susan Flint and Michael Leirdahl - 2390 Vernon Circle
Nancy and Todd Lurie - 2375 Vernon Circle
Teresa Maki - 2533 Cedar Hills Drive
Angela and Daniel Meshbesher - 2320 Nottingham Court
Amy Taswell and Jim Moscowitz - 11120 Mill Run
Debbie and Ralph (Tad) Powell - 11155 Mill Run
Alison and Stu Silberman - 11123 Mill Run
Karen and Bruce Simon - 11133 Mill Run
Brenda Culp and Carl S Smith - 11201 Fetterly Road
Kristin and Jo Soo - 2391 Vernon Circle
Susan and Jon Wiens - 2346 Vernon Circle
Good afternoon, Mayor Wiersum. I am a homeowner on Fetterly Road. I am writing to you to voice my concern about the safety of my family and neighborhood.

The intersection leading into my neighborhood (Hopkins Crossroad and Fetterly) is a dangerous and perilous intersection. So much so, I will not allow my children to use the school bus pick up/drop off at this intersection. At morning and afternoon rush hour, this intersection is a danger. There will be numerous cars stacked at the peak of the hill atop the entrance to our neighborhood with parents dropping off/picking up their children at the school bus stop. There is no shoulder at this location and parents have to park on Fetterly. The entrance into our neighborhood then becomes a single file lane for all inbound and outbound traffic - cars, UPS trucks, delivery trucks, semi trucks, work trucks, construction trucks. These massive vehicles come bounding into Fetterly from high speeds on Hopkins Crossroad just feet away from children standing at their bus stop. This is unsafe and precarious for pedestrians and drivers.

Fetterly is an older, two lane residential road with no divider and no shoulder. The proposed Chabad Center would be a danger and detriment to the safety of my neighborhood. The proposed addition of a middle turn lane for the benefit of Chabad would come at the expense of Fetterly homeowners who would lose our dedicated right turn lane. Chabad’s proposed parking is inadequate and would force patrons to park on Hopkins Crossroad and nearby residential roads including Fetterly.

Hopkins Crossroad and Fetterly is already a dangerous, perilous intersection. This location cannot safely support the heavy traffic and parking demands Chabad would create. This intersection is an unsafe location for the development of Chabad and I implore you to reject their proposal.

Kindest regards,

Candace Velasquez
11512 Fetterly Rd W
Minnetonka
612-840-7320
Date: July 2, 2018

To: Brad Wiersum, Mayor
    Tony Wagner, Council Member
    Deb Calvert, Council Member
    Bob Ellingson, Council Member
    Tim Bergstedt, Council Member
    Mike Happe, Council Member
    Patty Acomb, Council Member
    Jan Callison, Hennepin County Commissioner
    Julie Thomas, Assistant City Planner

From: Amy Weiss

Re: Proposed Hopkins Crossroad Restriping Plan

I am writing, as a resident of Fetterly Woods neighborhood to express my concern about the proposed restriping plan for Hopkins Crossroad to accommodate the Chabad Center for Jewish Living. My concerns, some of which I have articulated both in writing and in person before the City Council in the past remain.

Hopkins Crossroad is currently not wide to safely accommodate a left turn lane. The addition of a left turn lane from Hillside Lane south to Overlook Drive removes the right turn lane for Fetterly Road and creates a variety of safety issues.

1. There are at least four different school buses that stop at the corner of Fetterly Road and Hopkins Crossroad for Tanglen, Hopkins Junior High, ISLA and Groveland Elementary schools. The restriping process will reduce our shoulder to 6.6'. It is already a challenge to put kids safely on the bus in the morning—narrowing the shoulder simply exacerbates that problem.

2. We have 47 households in this neighborhood, each making multiple trips in and out of the neighborhood each day. MNDOT guidelines stipulate that if there are more than 100 right turns into the neighborhood, it warrants a right turn lane. There are easily more than 100 turns onto Fetterly Road on a daily basis from residential traffic alone let alone deliveries, etc.

3. As you know if you drive Hopkins Crossroad at all in the winter, the road becomes even more treacherous. The road narrows as the snow and ice pile up along the edges and the incline for people heading both north from Cedar Lake and south from Hillside often leaves cars sliding backwards and sideways. Narrowing the road to accommodate this turn lane makes it even more hazardous for drivers.

I believe that this restriping project will create additional safety issues for a roadway that is already extremely busy and challenging for automotive and pedestrian traffic and I urge the City of Minnetonka and Hennepin County to explore other options.

Respectfully,

Amy R. Weiss
2308 Nottingham Ct.
Minnetonka, MN 55305
Resolution
Resolution No. 2018-
Resolution approving a conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run

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

Section 1. Background.

1.01 Chabad Center for Jewish Life has requested a conditional use permit to operate a religious institution on the combined site at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run.

1.02 The site is legally described as: Lots 2, 3, and 4 Block 1, Heeler’s First Addition, according to the recorded plat thereof, Hennepin County, Minnesota.

1.03 On April 26, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the permit.

Section 2. Standards.

2.01 City Code §300.16 Subd.2 outlines the following conditional use permit general standards:

1. The use is consistent with the intent of this ordinance;

2. The use is consistent with the goals, policies and objectives of the comprehensive plan;

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

4. The use does not have an undue adverse impact on the public health, safety or welfare.

2.02 City Code §300.16 Subd.3(b) outlines the following specific conditional use permit standards for religious institutions and facilities:
1. Direct access limited to a collector or arterial roadway as identified in the comprehensive plan or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

2. Buildings set back 50 feet from all property lines;

3. Parking spaces and parking setbacks subject to section 300.28 of this ordinance;

4. No more than 70 percent of the site to be covered with impervious surface and the remainder to be suitably landscaped; and

5. Site and building plan subject to review pursuant to section 300.27 of this ordinance.

2.03 City Code §300.27 Subd.5 outlines the following site and building plan standards:

1. Consistency with the elements and objectives of the city's development guides, including the comprehensive plan and water resources management plan;

2. Consistency with this ordinance;

3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;

4. Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:

   a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;

   b) the amount and location of open space and landscaping;

   c) materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and

   d) vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access
points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Section 3. Findings.

3.01 The proposal would meet the general conditional use permit standards outlined in City Code §300.16 Subd.2.

1. Religious institutions are specifically listed as conditionally-permitted uses in the single-family residential zoning district.

2. The goals, policies, and objectives of the comprehensive plan are generally the city’s effort to create a vibrant and resilient community. Religious institutions are a component of such communities.

3. The proposal has been reviewed by members of the city’s community development, engineering, public works, fire, and legal departments. Staff finds that the proposed religious institution would not have an adverse impact on the provision of government services or infrastructure.

4. The proposed institution would visually alter the Hopkins Crossroad/Mill Run area and result in a different level of activity than was historically observed while the site contained occupied single-family homes. Though noticeable, these changes would not be detrimental to the health, safety, or welfare of the community. The proposed institution would have no significant operational impacts to Hopkins Crossroad.

3.02 The proposal would meet the specific conditional use permit standards outlined in City Code 300.16 Subd.3(b).

1. The proposed institution would have access to Hopkins Crossroad, which is defined as an arterial (minor reliever) roadway in the comprehensive plan.

2. The institution would meet the required setbacks from east and west property lines and exceed the required setbacks from the north and south.
3. By ordinance, one parking space is required for every 2.5 seats within the main sanctuary of a religious facility. As proposed, the sanctuary would regularly have seating for 99 people, requiring 40 parking stalls. 50 parking stalls would be striped on the site. Additional areas would be available as “proof-of-parking.”

4. Impervious surface would cover roughly 66 percent of the site.

3.03 The proposal would meet the site and building plan standards as outlined in City Code §300.27 Subd.5:

1. The proposal has been reviewed by city planning, engineering, and natural resources staff and found to be generally consistent with the city’s development guides, including the water resources management plan.

2. Religious institutions are specifically listed as conditionally-permitted uses in the single-family residential zoning district.

3. The proposal would result in alteration of the site, including changes to grade and tree removal/impact. However, with some modification to the grading plan – which is a condition of this resolution – site disturbance would be limited to the extent practicable, given construction of a building and parking lot.

4. The proposal would appropriately locate constructed features – new building and parking lots – at the center of the site, maintain green space and the opportunity for new plantings at its perimeter.

5. The location of the proposed building relative to open space and paved areas is appropriate. The façade of the building would be of a neutral color palate and would include natural materials, which are residential in character. Additionally, at a proposed height of 29 feet, the facility would be shorter than the 35 feet permitted for single-family homes. Vehicular and pedestrian circulation patterns would be intuitive.

6. As new construction, the building code requires use of energy saving features.

7. Generally, any change to the use of a property will bring with it changes to drainage patterns, sounds, and site lines. The objective standards – building setbacks, parking setbacks – as well as conformance with the stormwater management rules and conformance with nuisance regulations regarding lighting and “quiet hours” are intended to minimize or mitigate for these changes.

Section 4. City Council Action.

4.01 The above-described conditional use permit is approved based on the findings outlined in section 3 of this resolution. Approval is subject to the following
conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   - Site plan, dated May 10, 2018
   - Floor plans, dated May 10, 2018
   - Landscape plan, dated March 23, 2018, and as amended by site plan dated May 10, 2018
   - Grading plan, dated March 23, 2018 and as amended by site plan dated May 10, 2018
   - Utilities plan, dated March 23, 2018
   - Building elevations, dated May 10, 2018

2. Prior to issuance of a building permit:
   a) This resolution must be recorded with the county.
   b) Obsolete drainage and utility easements must be vacated.
   c) Obtain permits from the county for access and work within county right-of-way.
   d) Submit a lot combination form to the county.
   e) Submit the following:
      1) Items associated with site work:
         a. An electronic PDF copy of all required plans and specifications.
         b. Final site, grading, utility, stormwater management, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP).

         1. Final site plan must be revised as follows:
            - Include a hammerhead turnaround in the northwest corner of the parking lot for fire apparatus.
            - Show and label “proof of parking” stalls in the south court as per the traffic and parking study.
2. Final grading plan must be revised as follows:

- Runoff from the east side of the building must be directed overland or via piping to the underground stormwater facility.
- Show no grading on adjacent property or otherwise provide written approval for such.
- Adjust grading adjacent to trees 46, 49, 144, 145, 147, 151, 152, and 152 to protect their critical roots zones.
- Grade out area adjacent to Hopkins Crossroad to accommodate future public trail.

3. Final utility plan must be revised as follows:

- Illustrate unused water services removed back to the main with pipe removed and the corporation stop turned off.
- Illustrate unused sanitary services removed back to the main with pipe removed and the wye cut out and sleeved.

4. Final stormwater management plan must meet the requirements of the city’s Water Resources Management Plan, as outlined in Appendix A. Design. The plan and acceptable model must demonstrate conformance with the following criteria:

- Volume Control: Provide onsite retention of 1-inch of runoff from impervious surfaces. The city prefers that this be accomplished through infiltration practices.
- Rate Control: Limit peak runoff flow rates to that of existing conditions for
the 2-, 10-, and 100-year storm events at all points where stormwater discharge leaves the parcel.

- Water Quality: Provide for all runoff to be treated to at least 60% removal efficiency for total phosphorus and 90% total suspended solids.

In addition:

- Provide soil boring in underground storage locations to verify infiltration rates and three-foot separation between the bottom of the facility and the seasonally-high ground water table.

- The underground facility must be able to support 83,000 pounds and 10,800 pounds per square foot outrigger loads.

- The applicant must hire a qualified third party to inspect the installation of the underground facility. The party must provide the city verification that pressure requirements are adequately met.

5. Final landscaping and tree mitigation plans must:

- Include species and size of proposed plantings.

- Include substitution of half of the originally proposed 78 arborvitae with another species to avoid planting a monoculture. These trees would be planted in the following manner:

  - On the east side of the fence, on Chabad property, trees would be planted along the
o On the west side of the fence adjacent to the parking lot, no trees would be planted to allow for snow storage.

o At the southeastern corner of the parking lot, trees would be planted and extend to the south property line.

• In the area south of the parking lot between the building and fence, overstory maple trees and hickory trees would be planted to soften and somewhat screen the building from neighboring properties. The final location of the trees would be field approved by city staff.

• Include tree mitigation for trees removed outside of the code-defined basic tree removal area. Under the originally submitted plans, two 2-inch deciduous trees, and five 6-foot evergreen trees must be planted as mitigation.

c. Private driveway easement for review and approval by the city attorney. The easement must outline the construction and maintenance responsibilities associated with the driveway, as between the owner of the site and the owner of the residential property to the north.

d. Stormwater maintenance agreement over the proposed underground stormwater treatment facility.

e. A construction management plan. The plan must be in a city-approved format and must outline minimum site management practices and penalties for non-compliance.

f. Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to
construct parking lot and stormwater facility improvements, comply with landscaping requirements, and to restore the site. One itemized letter of credit is permissible, if approved by staff. The city will not fully release the letters of credit or cash escrow until: (1) a final as-built survey has been submitted; (2) vegetated ground cover has been established; and (3) required landscaping or vegetation has survived one full growing season.

Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion or grading problems.

2) Items associated with building work:

a. A final material and color palate board for staff review and approval.

b. An exterior lighting and photometric plan.

c. All required hook-up fees.

f) Install a temporary rock driveway, erosion control, tree protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

3. Construct a solid fence that is six-feet in height that is located six-feet west of the east property line. The fence shall extend from the north property line south 285 feet. The “good side” of the fence, if there is only one, shall face adjacent residential properties.

4. The applicant will make an equitable contribution of funds for the roadway improvements as determined by the city and county.
5. During construction adjacent streets must be kept free of debris and sediment.

6. The city council may reasonably add or revise conditions to address any future unforeseen problems.

7. This conditional use permit approves the land use as presented in the plans outlined in this resolution and as outlined in associated staff reports. Any change to the approved use that results in a significant increase in traffic or a significant change in character beyond that outlined in this resolution may require a revised conditional use permit. This includes a regular or permanent increase in sanctuary seating beyond 99 seats.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 9, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:


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 July 9, 2018.

David E. Maeda, City Clerk
Brief Description

Items concerning Ridgedale Executive Apartments located at 12501 Ridgedale Drive:

1) Rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD);
2) Master development plan;
3) Final site and building plan

Recommendation

Recommend the city council deny the requests.

Proposal

Rotenberg Companies, property owner, is proposing to redevelop a portion of the property located at 12501 Ridgedale Drive. The project consists of demolishing the existing restaurant building and constructing a new four-story, residential apartment building with underground parking. The building would include 77 apartment units with a number of indoor and outdoor amenities.

Council Introduction

The city council introduced the proposal on April 30, 2018. The council asked the planning commission and staff to evaluate the following: 1) site circulation, 2) how the office building would coexist with the apartment building, and 3) public benefit from the PUD.

Planning Commission Public Hearing – May 24, 2018

The planning commission considered the request on May 24, 2018. The commission report and associated plans are attached. Staff recommended denial of the proposal, finding the request was unreasonable. At that meeting, a public hearing was opened. Two people spoke against the project. Following the public hearing, the commission discussed the proposal.

The commission was split on their opinion of the apartment and office building sharing the site. Some of the commissioners stated that the building layout was poorly planned and a detriment to the site as they did not work well together. Other commissioners felt that the layout was the owner’s risk and should not be a concern of the city. A common area of support from the commission was that the apartment building was much better designed in its height and mass from the concept plan review. Various commissioners reacted positively to an additional drawing that was shown by the applicant that removed a portion of the building. The vote was tied at 3-3.

Planning Commission Review – June 14, 2018

Since the planning commission meeting, the applicant has decided to further revise the plans. The revised plans were previewed, but not officially submitted, at the May 24th meeting which show removal of portions of the building including residential living space, parking garage and amenity deck.
It is not customary to bring back a plan revision after the planning commission had evaluated the request, conducted a public hearing and made recommendation to the city council. However, because the changes were substantial, the revised plans were placed on the agenda for planning commission review. The commission reviewed the revised plans remaining split in their opinions of the request. Some commissioners stated that because the site already had two uses – an office and restaurant use, the proposal would not make the site less harmonious than it is currently. The commission generally agreed that mixed uses were appropriate here, the building was attractive and appropriate in mass and scale. Some commissioners commented that the site organization was poor and confusing. The vote was to deny the project 3-2.

Revised Plans

The applicant’s revised building plans show an overall reduction in the building size from the original plans, mostly due to removal of the lower level parking garage. Comparisons of the original and revised plan sets of the building elevations are attached. The areas colored red represent the portions of the original plans that are removed in the revised plans.

The revised plans do reduce the overall above grade building size by approximately 25,000 square feet. The living area of the building remains nearly the same, increasing by 318 square feet. Although the unit count increases by 1 unit (77 to 78), the bedroom count decreases by two (108 to 106).

The site plan has some minor changes, mostly to parking areas in the front and rear of the building. The front parking area changes from angled to parallel parking spaces west of the building entry. In the rear of the building, surface parking spaces replace the area previously occupied by the parking garage. The plan revisions include the following:

<table>
<thead>
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<th>Original Plans (3/29/18)</th>
<th>Revised Plans (6/10/18)</th>
<th>Change</th>
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<tbody>
<tr>
<td>Units</td>
<td>77</td>
<td>78</td>
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<tr>
<td>Bedrooms</td>
<td>108</td>
<td>106</td>
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<tr>
<td></td>
<td>46 1-bedroom</td>
<td>50 1-bedroom</td>
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<tr>
<td></td>
<td>31 2-bedroom</td>
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<tr>
<td>Building Size (SF)</td>
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<td>including parking garage</td>
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<td></td>
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<tr>
<td>Building Size (SF)</td>
<td>130,653</td>
<td>130,971</td>
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<tr>
<td>(living area above grade; excluding the parking garage)</td>
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<td>Floor to Area Ratio</td>
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<td>Parking Garage (SF)</td>
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<td>Parking spaces</td>
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<td>178</td>
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<td>(45 exterior)</td>
<td>(55 exterior)</td>
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<td></td>
<td>(161 interior)</td>
<td>(123 interior)</td>
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Planning Commission Recommendation

To summarize again, at the May 24, 2018 planning commission meeting, the commission split 3-3 on a motion to deny the project. Meeting minutes are attached.
At the June 14, 2018 planning commission meeting, the commission reviewed the revised plans. The commission voted 3-2 to deny the project. Meeting minutes are attached.

Staff Comment

One of the primary project deficiencies from staff’s review that remains unchanged from the original proposal is the lack of site organization. Site and building plan standards in city code call for “harmonious design for structures and site features.” The tight “building behind building” approach for this site is one primary reason the project does not meet code standards. This is a basic urban planning and design principle that helps bring order to development. Intuitive and organized site design and building placement creates positive and productive environments. It is staff’s opinion the organization of this site does not provide the necessary organizing principles that bring about harmonious design. As staff stated at the public hearing, the fact that the office building lacks visibility from Ridgedale Drive and does not have convenient access and parking supports the site and building plan review standards.

Staff has stated that redevelopment of this site for a mix of uses is certainly appropriate. Staff continues to be willing to work with the applicant to improve the project. However, at this time, this plan does not further the basic planning and design principles identified in city code. For that reason and those included in the staff report, staff is recommending denial of the revised application.

Action on the Application

The applicant previously signed an extension of the 120-day review period. That review period ends on July 9, 2018. The council has two options for taking action on this application:

1. Approve or deny the application, or
2. Have the applicant agree to and sign an extension.

Staff continues to recommend denial of the proposal; a denial resolution is attached. However, if the council should wish to approve the proposal, an ordinance and resolution to that effect are also attached.

Staff Recommendation

Staff recommends that the city council adopt the resolution denying the following, associated with the properties at 12501 Ridgedale Drive:

1) Rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD);
2) Master development plan;
3) Final site and building plan

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

Originator: Loren Gordon, AICP, City Planner
MINNETONKA PLANNING COMMISSION
June 14, 2018

Brief Description  Items concerning Ridgedale Executive Apartments located at 12501 Ridgedale Drive.

1) Rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD);

2) Master development plan;

3) Final site and building plan

Recommendation  Recommend the city council deny the requests.

Background
Rotenberg Companies, property owner and applicant, appeared before the planning commission on May 24, 2018 with a proposal to redevelop a portion of the property located at 12501 Ridgedale Drive. The project consisted of demolishing the existing restaurant building and constructing a new four-story, residential apartment building with underground parking. The building would include 77 apartment units with a number of indoor and outdoor amenities.

At the May 24, 2018 planning commission meeting a public hearing was held. Two people provided input on the proposal generally stating that the project was too big and dense for the property, its adjacency to single-family residences, and did not meet city ordinances.

The commission discussed the proposal and split on their opinion of the project, namely the use of the site for the apartment and office building. Some of the commissioners stated that the building layout was poorly planned and a detriment to the site as they did not work well together. Other commissioners felt that the layout was the owner’s risk and should not be a concern of the city. A common area of support from the commission was that the apartment building was much better designed in its height and mass than the plan provided in the concept plan review. Various commissioners reacted positively to an additional revised drawing that was shown by the applicant that removed portions of the building. The commission split 3-3 on a motion to deny the project; therefore there was no affirmative vote.

Since the Planning Commission meeting
Since the planning commission meeting, the applicant has decided to further revise of the plans. The revised plans were previewed at the May 24th meeting which show removal of portions of the building including residential living space, parking garage and amenity deck.

Revised Plans
The applicant’s revised building plans show an overall reduction in the building size from the original plans, mostly due to removal of the lower level parking garage. Comparisons of the original and revised plan sets of the building elevations. The areas colored red represent the portions of the original plans that are removed in the revised plans.
The revised plans do reduce the overall above grade building size by approximately 25,000 square feet. The living area of the building remains nearly the same, increasing by 318 square feet. Although the unit count increases by 1 unit (77 to 78), the bedroom count decreases by two (108 to 106).

The site plan has some minor changes, mostly to parking areas in the front and rear of the building. The front parking area changes from angled to parallel parking spaces west of the building entry. In the rear of the building, surface parking spaces replace the area previously occupied by the parking garage. The plan revisions include the following:

<table>
<thead>
<tr>
<th></th>
<th>Original Plans</th>
<th>Revised Plans</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units</td>
<td>77</td>
<td>78</td>
<td>-1</td>
</tr>
<tr>
<td>Bedrooms</td>
<td>108</td>
<td>106</td>
<td>+2</td>
</tr>
<tr>
<td></td>
<td>46 1-bedroom</td>
<td>50 1-bedroom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>31 2-bedroom</td>
<td>28 2-bedroom</td>
<td></td>
</tr>
<tr>
<td>Building Size (SF)</td>
<td>199,105</td>
<td>174,060</td>
<td>-25,045</td>
</tr>
<tr>
<td>including parking</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>garage</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building Size (SF)</td>
<td>130,653</td>
<td>130,971</td>
<td>+318</td>
</tr>
<tr>
<td>(living area above</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>grade; excluding the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>parking garage)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floor to Area Ratio</td>
<td>0.79</td>
<td>0.78</td>
<td>-0.01</td>
</tr>
<tr>
<td>Parking Garage (SF)</td>
<td>68,451</td>
<td>43,140</td>
<td>-25,311</td>
</tr>
<tr>
<td>Parking spaces</td>
<td>206</td>
<td>178</td>
<td>-28</td>
</tr>
<tr>
<td></td>
<td>(45 exterior)</td>
<td>(55 exterior)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(161 interior)</td>
<td>(123 interior)</td>
<td></td>
</tr>
</tbody>
</table>

**Staff Comment**

Staff reviewed the proposal for its consistency with the city code standards. One of the primary project deficiencies from staff’s review that remains unchanged from the original proposal is the lack of site organization. The tight “building behind building” approach for this site is one primary reason the project does not meet code standards. A site and building plan standard in city code is “harmonious design for structures and site features.” This is a basic urban planning and design principle that help bring order to development. Intuitive and organized site design and building placement creates positive and productive environments. It is staff’s opinion the organization of this site does not provide the necessary organizing principles that bring about harmonious design. As staff stated at the public hearing, the fact that the office building lacks visibility from Ridgedale Drive and does not have convenient access and parking supports the site and building plan review standards.

Staff has stated that redevelopment of this site for a mix of uses is certainly appropriate. Staff is also willing to work with the applicant to improve the project. However, at this time, this plan does not further the basic planning and design principles identified in city code. For that reason and those included in the staff report, staff is recommending denial of the revised application. Staff is continues to recommend denial of the proposal finding the request is not reasonable.
Staff Recommendation

Recommend the city council adopt the attached resolution denying rezoning, master development plan and site and building plans for the Ridgedale Executive Apartments.

Originator:  Loren Gordon, AICP, City Planner
Supporting Information

**Surrounding Land Uses**
- **North:** Ridgedale Center mall; zoned PID
- **South:** residential property; zoned R-1
- **East:** YMCA; zoned R-1
- **West:** Stormwater ponding; zoned R-1
  - Hennepin County Service Center and Ridgedale Library; zoned PID

**Planning**
- **Guide Plan designation:** mixed use
- **Existing Zoning:** PID, Planned I-394 District

**Required Actions**
The proposal requires the following:

**Land Use**
- **Rezoning.** The applicant is requesting that the property be rezoned to PUD. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the rezoning.

- **Master Development Plan.** Under the zoning ordinance, a master development plan is required in conjunction with PUD zoning. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the master development plan.

- **Final Site and Building Plans.** By city code, site and building plan review is required in conjunction with PUD zoning. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the final site and building plans.

**Previous Reviews**
The project has changed since the initial concept plan. The building height and unit count has reduced from 6-stories and 117-units to 5-stories and 89 units to the current 4-stories and 78 units. The placement of the apartment building on the site has changed very little in each of the revised plans with the exception of additional setback from Ridgedale Drive.

**Grading**
The property would require excavation to construct the below grade parking garage which is approximately 7 to 10 feet below the existing site grade. As proposed, finished grades surrounding the proposed building would be very similar to the elevations of the existing site.

**Tree Impact**
Based on the proposed grading plan, the majority of high-priority and significant trees would be preserved.

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Removed</th>
<th>% Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Priority</td>
<td>14</td>
<td>11</td>
<td>79%</td>
</tr>
</tbody>
</table>
Significant | 62 | 22 | 35%
* By city code, a tree is considered removed if 30 percent or more of the critical root zone of is compacted, cut, filled or paved.

As the proposal is for redevelopment of property, the proposed level of tree removal/impact would be permitted under the tree protection ordinance.

**Stormwater**

As proposed, stormwater runoff would be directed to several catch basins and directed via pipe to one of three stormwater facilities located under the proposed drive isles.

Engineering staff has reviewed the plans associated with the proposal and finds them to be generally acceptable. As a condition of approval, final plans must meet both the city’s Water Resources Management Plan standards and Bassett Creek WMO rules.

**Utilities**

Public water and sewer facilities are available at the site. Fire hydrants must be provided around the perimeter of the apartment building. Hydrants should be no more than 500’ apart as measured along the drive aisles. Newly installed private hydrants would require a private hydrant maintenance agreement.

Private water service to southern most building is thought to come from the main on the eastern side of the property. Applicant needs to confirm and may need to relocate service to the southern building. Provide a looped connection to the proposed building.

**Parking and Circulation**

As proposed, parking would be constructed as follows:

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interior</td>
<td>0</td>
<td>123</td>
</tr>
<tr>
<td>Surface</td>
<td>181</td>
<td>55</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>181</td>
<td>178</td>
</tr>
</tbody>
</table>

The parking ratio proposed would be slightly less than at other apartment buildings in the community. However, it would be consistent with Institute of Transportation Engineers suggested parking demand. Although a secondary concern, it is unclear how the proposal would address where office tenants would park. The plan provides 32 parking spaces immediately adjacent to the office building. The 14,361 square-foot office building is required 57 parking spaces by city code.

The two-way circulation driveway is designed at 24 feet of width which is deficient from the 26 feet minimum width requirement.
Pedestrian Improvements

The project proposed to connect to future Ridgedale Drive sidewalk and trail systems. Additional sidewalk connections are provided along the east side of the site along the access drive. The west access drive does not contain sidewalk connections to the office building.

Setbacks, Etc.

The PUD ordinance contains no specific development standards relating to setbacks, lot coverage, etc. However, the following chart outlines these items for informational purposes:

<table>
<thead>
<tr>
<th>Proposed Apartment Building</th>
<th>Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setbacks</td>
<td></td>
</tr>
<tr>
<td>North property line</td>
<td>50 feet</td>
</tr>
<tr>
<td>South property line</td>
<td>405 feet</td>
</tr>
<tr>
<td>East property line</td>
<td>35 feet</td>
</tr>
<tr>
<td>West property line</td>
<td>37 feet</td>
</tr>
<tr>
<td>Height</td>
<td>54 feet</td>
</tr>
<tr>
<td>FAR</td>
<td>0.78 - property total</td>
</tr>
<tr>
<td></td>
<td>1.19 - northern portion of property</td>
</tr>
<tr>
<td>Impervious Surface</td>
<td>51.3 percent</td>
</tr>
</tbody>
</table>

SBP Standards

Staff review of the site and building standards as outlined in City Code §300.27 Subd.5 are as follows:

1. Consistency with the elements and objectives of the city’s development guides, including the comprehensive plan and water resources management plan.

   **Finding:** The proposed high-density residential development is generally consistent with the 2030 Comprehensive Guide Plan and water resources management plan.

2. Consistency with this ordinance.

   **Finding:** The proposal is not consistent with ordinance requirements including with parking drive isle width and parking minimums.

3. Preservation of the site in its natural state to the extent practicable by keeping tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing properties.
Finding: The proposal would not negatively impact the developed portion of the existing site or the undeveloped southern natural site area.

4. Creation of harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development.

Finding: The proposal does not result in a harmonious relationship of buildings. The project fails to adequately transition between land use and architectural types and spatial relationships. The tight “building behind building” approach for this site is one primary reason the project does not meet code standards. This is a basic urban planning and design principle that help bring order to development. Intuitive and organized site design and building placement creates positive and productive environments. The organization of this site does not provide the necessary organizing principles that bring about harmonious design.

5. Creation of a function and harmonious design for structures and site features, with special attention to the following:

- an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors, and the general community.

- the amount and location of open space and landscaping.

- materials, textures, colors and details of construction as an expression of the design concept and compatibly of the same with the adjacent and neighboring structures and uses.

- Vehicular and pedestrian circulation, including walkways, interior drivees and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

Finding: The proposal fails to:

- Create an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community. The lack of visibility to the office building from Ridgedale Drive is concerning to its long term viability.

- The developed portion of the site provides no open space for the enjoyment of residents.
• Provide intuitively designed vehicular and pedestrian circulation, adequately designed internal driveways and circulation and the arrangement and location of parking.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures, and the use of landscape materials and site grading.

Finding: The project if approved, would be required to meet minimum building and landscaping requirements.

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and site buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Finding: The proposal would visually and physically alter the property and the immediate area. However, this change would occur with any redevelopment of the site.

Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with the staff recommendation. In this case a motion should be made recommending the city council adopt the resolution denying the request.

2. Disagree with staff's recommendation. In this case, a motion should be made recommending the city council approve the request.

3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement as to why
the request is being tabled with direction to staff, the applicant, or both.

<table>
<thead>
<tr>
<th>Voting Requirement</th>
<th>The planning commission will make a recommendation to the city council. The city council’s final approval requires an affirmative vote of four members.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighborhood Comments</td>
<td>The city sent notices to 1114 property owners and has received no written comments to date.</td>
</tr>
<tr>
<td>Deadline for Action</td>
<td>July 9, 2018</td>
</tr>
</tbody>
</table>
Revised Plans - June 14, 2018
Planning Commission Meeting
Below is a recap of the history of the project design and City Submittals. This highlights the major changes made during the City approval process, starting with the original site plan review submittal. This shows how we progressed from a 6 story 111 unit building to the current 4 story 78 unit building.

Ridgedale Apartments History & Comparison

**Original Site Plan Review Submittal (11-20-17)**
- Height: 6 Stories (75’)
- Number of Units: 111 units
- Gross Square Footage: 253,404 sf
- Building Footprint: 47,171 sf
- F.A.R.: 1.06
- Setback from North Property Line: 27’
- Setback from East Property Lines: 31’
- Interior Parking: 192 stalls
- Exterior Parking: 58 stalls
- Notes: Original design presented to the neighborhood and the planning commission

**Development Application Submittal (01-24-18)**
- Height: 5 Stories (67’)
- Number of Units: 89 units
- Gross Square Footage: 219,754 sf
- Building Footprint: 44,992 sf
- F.A.R.: 0.89
- Setback from North Property Line: 50’
- Setback from East Property Lines: 36’
- Interior Parking: 183 stalls
- Exterior Parking: 46 stalls
- Notes: Made the building skinnier and added additional stepbacks to north facade to increase the setbacks along the north and east sides of the property. Removed 6th floor. Reduced units and parking. Added enhanced pedestrian connection to Ridgedale Drive.

**Revised Development Application Submittal (03-29-18)**
- Height: 4 Stories (55’)
- Number of Units: 77 units
- Gross Square Footage: 199,105 sf
- Building Footprint: 44,920 sf
- F.A.R.: 0.79
- Setback from North Property Line: 50’
- Setback from East Property Lines: 36’
- Interior Parking: 161 stalls
- Exterior Parking: 45 stalls
- Notes: Removed 5th floor. Reduced the size of the 2nd level pool deck to add units on 2nd, 3rd, and 4th floors. Reduced units and parking. Made very minor changes to footprint resulting in a 72 sf reduction in footprint square footage.
Revised Development Application Submittal (OPTION B) (06-01-18)

Height: 4 Stories (50’)
Number of Units: 78 units
Gross Square Footage: 174,060 sf
Building Footprint: 43,140 sf
F.A.R.: 0.78
Setback from North Property Line: 50’
Setback from East Property Lines: 36’
Interior Parking: 123 stalls
Exterior Parking: 55 stalls

Notes: Eliminated the first floor indoor parking. Reduced the size of the amenity deck and relocated it from the second floor to the first floor. Eliminated the “extra” wings of the building and their associated units and massing, which formerly surrounding the amenity deck. Added additional units and relocated amenity space to the first floor.

One of the sacrifices that we needed to make for this new Option B plan with reduced massing was the elimination of our pool at the amenity deck. The reason for this is because of the elimination of the first level parking garage. In the initial design the height of the first floor, and thus the first floor parking garage, was set in order to permit a pool at the second floor amenity deck. The first floor level garage was tall enough to support the pool, which was recessed into the garage space below, and still allowed the necessary minimum clearance for parking below it.

Once the first floor garage is eliminated and the amenity deck lowered to the first floor, this is no longer a viable option. The underground garage is not tall enough to permit a pool above the parking. Unfortunately, lowering the level of the underground garage is not an option because we want to stay at least a couple of feet above the highest recorded water table level. We cannot simply carve out a few parking stalls directly beneath the pool location either. (Not that we want to lose more parking.) This is because we reduced the foot print of the amenity deck to allow for additional on-grade parking, a pool at the first floor amenity deck would need to be situated, at least partially, over a drive aisle in the garage below, which obviously cannot be carved out.
UP
UP
NEW APARTMENT BUILDING
GARAGE FLOOR ELEVATION: 933' - 0"
EXISTING OFFICE BUILDING
EXISTING OFFICE BUILDING
13 EXISTING STALLS
REMAIN
FIRST FLOOR ELEVATION: 943'
935' - 0"
EXISTING POND
EXISTING WETLAND
4 STALLS
12 STALLS
10 STALLS
9 STALLS
5 STALLS
11 STALLS
3 STALLS
4 STALLS
2 STALLS

ARCHITECTURAL SITE PLAN
1" = 20'-0"
SWPP NOTES:
1. This permit is greater than one acre, and will require an
   SWPP APPLICATION CONSTRUCTION, IS RESPONSIBLE FOR DETERMINING
   ANY EROSION CONTROL PERMITS REQUIRED BY THE CITY.
2. DESIGNER: B.E. L. PERMIT FOR ALL EROSION CONTROL NOTES,
   DESIGNATIONS, AND PRACTICES.
3. DESIGNER: B.E. L. PERMIT FOR ALL EROSION CONTROL NOTES.
4. CONTRACTOR IS RESPONSIBLE FOR SWPP IMPLEMENTATION,
   INSPECTIONS, AND COMPLIANCE WITH PERMITS.

CITY OF MINNETONKA EROSION CONTROL NOTES:
1. DESIGNER: FOR CITY SPECIFIC EROSION CONTROL NOTES.
COMPARISON OF PLANS
Original Concept Plan Submission – 6-stories (north elevation)

Revised Concept Plan Submission – 5-stories (north elevation)

Comparison of Concept Plan Submissions
Formal Plan Submission – 4-stories (north elevation)

Comparison of Revised Concept Plan (5-stories) to Formal Plan Submission – (4-stories)

Comparison of all plans
Original Concept Plan (6-stories)   Revised Concept Plan (5-stories)   Formal Plan Submission – (4-stories)
CONCEPT PLAN MINUTES
A. Concept plan for Ridgedale Executive Apartments, a 112-unit luxury apartment building, at 12501 Ridgedale Drive.

Chair Kirk introduced the proposal and called for the staff report.

Gordon reported. He recommended that the planning commission provide comments and feedback on the identified key issues and others 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.

Chair Kirk noted that he is the YMCA director of architectural services, but there is no conflict for him with the proposed application as a member of the planning commission.

Schack confirmed with Gordon that the density would equal 25 to 30 units per acre.

Richard Rotenberg, applicant, stated that he purchased the property in 1986. He built the office building at 12455 Ridgedale Drive. Red Stone Grill recently terminated its lease agreement. The site is fantastic. The proposed plan fits with the city’s 2035 vision.

Charlie Carpenter, attorney for the applicant, stated that he has studied the city’s vision statement for Ridgedale Village. The concept would fit pretty well. The property lies at the center of Ridgedale Drive. Given its prominent location and natural beauty, the proposal would create a center piece for the Ridgdale Center Village. There is a substantial demand not being met for up-scale rental housing. The largest demand is from empty nesters who want high-quality homes, freedom, and the amenities of a luxury apartment. Young professionals would also reside in the proposal. The proposal would serve as a catalyst for investment in the Ridgedale area. The project would include heated parking, electronic vehicle charging stations, wash bays, a private yoga studio, boardrooms equipped with communication technology, virtual golf, a putting green, and a concierge. The high quality of the project would set it apart. It would become an iconic presence.

Jesse Hamer, design architect for the applicant, stated that he was directed to create a luxury, elegant, and beautiful building. The proposal would have 111 units, 6 stories, and exterior made of natural stone.

*Knight moved, second by Calvert, to extend the meeting until midnight.*
Calvert, Knight, O’Connell, Powers, Schack, Sewall, and Kirk voted yes. Motion carried.

Mr. Hamer stated that glass with glazing would be used to allow more light to come inside. Details at the base would include metal panels. The building was designed to be pushed up against Ridgedale Drive to make it part of the community, maximize the number of parking stalls between the buildings, and create as much distance between the neighbors on the south side as possible. The site is wooded which is a big amenity. There would be wood floors and marble countertops in the units. The proposal would be an asset to the neighborhood.

Dan Rhodes, applicant’s landscape architect, addressed the concerns expressed at the neighborhood meeting. The building would be pushed close to Ridgedale Drive and away from neighbors on the south. The closest residence would be 130 feet from the nearest point of the building. The Ridgedale Library and YMCA are further south than the proposed building. The bluff between the site and adjacent south neighbors would provide effective screening. The applicant has agreed to work with neighbors to add more screening such as evergreens that would be more effective in the winter. There would be a path along the pond and a path that would tie in with the government center.

Mr. Rotenberg is looking forward to doing a great project. The Ridgedale area is the center and hub of the city. It belongs to the entire city of Minnetonka. It would be a great project for everyone and would be impressive when done.

Powers confirmed with Mr. Rotenberg that the existing building and proposed building would complement each other.

The public was invited to comment.

Kim Leventhal, 2030 Norway Pine Circle, asked if 4.3 acres encompasses the entire site. Gordon answered affirmatively. It includes the developed portion of the site and the portion that would be in a conservation easement.

Dr. Mark Stesin, 2000 Norway Pine Circle, stated that he spoke on behalf of the neighborhood. He did not believe that one would not be able to see a six-story building through the trees from his house. The path would cause people to walk through the residents’ back yards. There is not enough room to tear down trees, put in a path, and install railings to prevent people from falling into the pond. Commissioners need to visit the site. He welcomed commissioners to his back yard. He was not opposed to building on the property, but six stories would be way out of proportion for the density and proximity to the neighborhood.
Gary Van Cleave, attorney on behalf of Mark and Heather Stesin at 2000 Norway Pine Circle, Felix and Donna Ricco at 2010 Norway Pine Circle, and Andy and Zhanna Schectman at 2074 Austrian Pine Circle stated that:

- The property owner has the right to develop the property, but the proposal is not the right size. There are inconsistencies between the proposal and the comprehensive guide plan and zoning ordinances. The building would exceed the allowed size and scale for the area. He disagreed that the proposal would fit within the context of the surrounding neighborhood.
- The PID I-494 district does not allow a mixed-use development.
- The height and mass would be grossly out of scale and character with the surrounding area.
- There would not be adequate buffering between different land uses.
- The proposal would increase traffic, noise, and light exposure. Balconies would face sideways toward the neighborhood.
- The zoning district limits FAR to .75. The proposed FAR is 1.06.
- The trail adjacent to the single-family residences would not provide adequate buffering, would cause tree removal, and result in bluff destabilization.
- The neighbors he represents strongly object to the proposed project. He urges commissioners and city councilmembers to direct the applicant to work with staff to develop a project consistent with policies and law and work with neighbors.

Annette Bertelsen, 13513 Larkin Drive, stated that:

- The proposed path would be a park trail that would be paid for with park and trail improvement funds. It would be maintained by the park and trail budget. Adding a trail around the pond had never been mentioned before this proposal. The trail would be 10 feet from houses. The trail would be a loop that would go nowhere. The trail is not needed. The funds should be used for other parks and trails.

Zhanna Schectman, 2074 Austrian Pine, stated that:

- Her house was built four years ago. The back of the house is all windows. The second floor of her house would overlook the proposed building. Her fear is that people with binoculars would look in her windows. Her house would have no privacy if the building would be six stories tall. The back of her house would be lit up all night long. She opposed the proposal.

Richard Campion, 12700 Sherwood Place, stated that:
• The easement travels to Woodbine.
• When the leaves are down, the Ridgedale Service Center is visible and residents are used to the view. When the leaves are on, none of the buildings are visible.
• He understood that the trail could connect to Plymouth Road and the sidewalk. He asked if that would be the grand plan. He questioned if another path is necessary.
• Two lanes of traffic are needed instead of making it look green and pretty. Adding hundreds of people around Ridgdale would cause a traffic problem. Cops could tell commissioners about traffic better than an engineer.
• Bike paths provide escape routes for burglars.
• He did not think the trail would be necessary.

Heather Stesin, 2000 Norway Pine Circle, stated that:

• The swing set in her back yard would be 25 feet from the path. She did not think it would be safe.
• Helicopters have looked for shoplifters in the woods before. The path would make it more convenient for criminals to leave a getaway car on her cul de sac.
• The building would be an albatross. The library is two stories and the Sheraton Hotel is three stories. The proposal would not fit in the neighborhood. She would be fine with a three-story building.

Felix Ricco, 2010 Norway Pines Circle, stated that he agrees with his neighbors’ comments.

In response to Schack’s question, Gordon explained that the trail would not travel south into the neighborhood. It would go around the pond.

Powers requested Dr. Stesin provide photos from his house of the view. Powers liked the idea of a luxury apartment building. There is a demand. The Ridgedale Center area would be the right place. He did not have enough visual evidence yet to determine if six floors would be appropriate.

Calvert agreed that there is a market for luxury, high-density residential housing. The Ridgedale area would be a likely spot for it. She asked what sustainable features would be utilized. A green roof might reduce the mass or industrial look of the building. She drove all of the streets south of the site. In her mind, a six-story building would be intrusive to the neighborhood. It would be an abrupt transition from high density to a single-family resident’s back yard. It would be a valuable project. The proposal looks very attractive. The stone exterior would be beautiful. She was concerned with the mass being located so close to a residential area. It would have an urban feel and what people love about Minnetonka is the suburban feel, so she has conflicted feelings.
Schack understood that, generally, it has been agreed that the Ridgedale area is an area suitable for high density. The proposed mass seems large to be adjacent to single-family houses. She noted that a 10-story office building would not be any better. The need for high-density housing is great, but 6 stories at the proposed location does seem like a lot. She commended the inclusion of electric-vehicle plugins, but would look for more than that from a sustainability perspective.

Sewall felt that the land use would be appropriate. There is a compromise to be made. He saw dense housing orbiting Ridgedale and funneling people towards Ridgedale.

Powers asked if the proposal would move forward if the SWLRT would not be completed. Mr. Rotenberg answered in the affirmative. He noted that the illustrations were created using actual elevations and a survey. Trees that would be planted were included in the illustration. The white building is the building based on the survey. The light pole is 15-feet tall. The building would be visible in the winter without additional buffering, but not in the summer.

Knight thought that the angle would be so low that a six-story building would not look like a six-story building from the houses. The density would work. It does not look too big. View corridors are not property rights. He would like staff, the developer, and city councilmembers to add some clarity around the favored zoning districts.

Chair Kirk wondered about the FAR in regard to high-density housing. He would be comfortable not including the trail or creating two dead-end trails that would not encroach on the neighborhood. He saw the center of Ridgedale Center as a bullseye. He thought the mass would be too large. He preferred four stories.

Calvert agreed with Chair Kirk.
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 to 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. Concept plan review for Ridgedale Executive Apartments at 12501 Ridgedale Drive

Robert Weinstine, an attorney with the Winthrop & Weinstine law firm, said he represented the property owner. Since the council last saw the concept plan, the property owner seriously considered all the feedback he received from the council. Neighborhood issues were reflected upon. Earlier in the day there was a neighborhood meeting that was attended by five or six people and also city staff. He said the plan was generally well received. As a result of listening to the neighbors, the building height was reduced from six stories to five stories. This was a significant financial contribution from the property owner given all the amenities that were being included to make it a first class development. For comparison, he noted the building at 1700 Plymouth Road was six stories. The building southeast of the YMCA was four stories and was much closer to residential homes and the topography was much higher. In addition to reducing the size of the building, the building was moved further back on the property. As a result the closest home would be 423 feet away. The area was wooded and the plan would not affect the trees in any way. The design of the building has been softened. The proposed path was removed. He said the development would be very attractive to empty nesters and young professionals.

Gordon and Community Development Director Julie Wischnack gave the staff report.

Wagner noted the reduced height was about seven feet while most apartment buildings a story was eight to 12 feet high. He asked if part of the reason for this was the amount of parking, which was 250 parking spots for 93 units. He asked if this was discussed at the neighborhood meeting. Gordon said the information Wagner was referencing was a staff interpretation and not from the architect. He said the concept plan indicated floor to ceiling heights around 10 feet. There would also be around two to three feet between floors. As far as the parking, he noted the office building was part of the site. The plan was for two to three spots per unit, visitor parking spots, plus spots for the office building. Staff would do more analysis on the parking if an application was submitted.

Jesse Hamer, from Momentum Design Group, the architect for the project, said the revised height of the building would be about 65 feet, about a nine foot reduction. The current plan met the city’s full parking requirement. There were two spaces per units and 57 spaces for the office building. He said in addition to moving the building back, there was an effort to increase the connection to the pedestrian walk area. There also was a plaza area added in front of the building.

Dr. Mark Stesin, 2000 Norway Pine Circle, said he was speaking on behalf of a coalition of neighbors. None of the coalition attended the neighborhood meeting earlier in the day and they remain opposed to the project. They do not oppose bringing in new residents to the city with high density apartment buildings as long
as they comply with the comprehensive plan and do not encroach on neighbors who have lived in the city for decades. He said the change in the height of the building doesn’t get at the core issues discussed at the previous council meeting. The building was still too big, bulky and dense for the property. There still were balconies facing the neighborhood, a pool, a recreation area and now an outdoor barbeque area. The trees may buffer the building from being seen but they would not buffer the noise. The entire character of the neighborhood abutting the property would change. There was not enough buffer for going from high density to low density.

Acomb said the she appreciated the developer making changes to address concerns but looking at a drawing of the building it looks like a big wall along Ridgedale Drive. While there had been some accommodations she liked, she didn’t think there were enough. She noted some developments had stepped things down to break up the look of the building. She didn’t know if this was an option for this plan. She appreciated Stesin’s comments about transitioning from single family homes to high density. She thought high density was appropriate for the site although five stories still might be too high. She noted there was a lot of the development in the Ridgedale area and none of it included affordable housing. This put the city in the situation of not having any affordable housing in a commercial area. She encouraged the developer to look at including affordable housing and for the council to hold developers to the standard especially for a commercial area.

Calvert said this also was a project she reviewed as part of the planning commission. She appreciated the reduction in height. She said there seemed to be some changes in the design that helped break up the blank wall feel. She liked the materials being used and that they were really attractive. She noted the view from the east Ridgedale Drive perspective made it look like the building was almost sitting on the road. She appreciated the developer moving the building as far away from the residential property as possible, but in doing so it placed the building close to the road. This gave it a claustrophobic feeling. It also robbed the site of a suburban feeling and gave it a very urban feeling. She was concerned this might create issues given some of the changes to Ridgedale Drive. She agreed with Acomb’s comments about affordable units. She also thought the city needed to be mindful as it promoted its values and priorities, in promoting sustainability. She had not heard that discussed much for this concept plan.

Wagner said he continued to believe high density housing was appropriate for the site. While he recognized the removal of a story from the building, he encouraged the developer to evaluate concepts associated with how the parking was treated on the site. In general the council’s comments indicated although it was an appropriate use being looked at, the mass with the existing office building remained too much. Even though the look was softened, the wall along Ridgedale Drive was a concern.

Ellingson said the building was attractive and it was appropriate to have high density housing on the site. He thought it was unfortunate such a high density building was right next to a single family residential neighborhood. He noted such
an abrupt situation existed with the Best Buy site so he understood and appreciated the concerns from the neighbors. He questioned what might be acceptable for the site.

Wiersum agreed the building was an attractive building but as he considered the location and the amount of buildable land, he thought it was an overly ambitious project. The mass was still too much. A high end building built to high standards with a lot of amenities on such a small footprint next to a single family residential neighborhood with no real buffer was too ambitious. He appreciated the changes that were made to the plan, but he thought it still needed to be downscaled.
Ellingson moved, Calvert seconded a motion to adopt resolution 2018-052 approving the final plat for LEGACY OAKS 3RD ADDITION. All voted “yes.” Motion carried.

E. Ordinance regarding massage license requirements

Ellingson moved, Calvert seconded a motion to adopt ordinance 2018-04. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Conditional use permit, with variances, for a daycare facility at 14410 Brunsvold Road

Ellingson moved, Acomb seconded a motion adopt resolution 2018-053 approving the conditional use permit, with variances. All voted “yes.” Motion carried.

B. Items concerning the 2018-2022 Capital Improvements Program

Ellingson moved, Acomb seconded a motion to amend the 2018-2022 Capital Improvements Program as follows: (1) Add $140,000 from the Utility Fund for public works 800 MHz ARMER radios in 2018; (2) Advance $50,000 from 2020 to 2018 from the Capital Replacement Fund for the fuel pump and leak detection replacement at public works; (3) Add $75,000 from the Parks & Trails Improvement Fund for initial planning of the Ridgedale Area park improvements in 2018; and (4) Advance $75,000 from 2019 to 2018 from the Parks & Trails Improvement Fund for a community facility and programming space study. All voted “yes.” Motion carried.

12. Introduction of Ordinances:

A. Ordinance rezoning the properties at 12501 Ridgedale Drive

City Planner Loren Gordon gave the staff report.

Wagner said it was important for the planning commission and staff to evaluate the site circulation and how the existing office building would coexist with this development. Rarely had he seen a use of a site that was this intense that had a one way street. He said he would also have questions about a PUD within a PID when the proposal came back to the council. He would like the planning commission to discuss the public benefit required by the PUD. He commended the developer for listening to the feedback.

Tammy Diehm with Winthrop and Weinstine, appeared on behalf of the applicant. She said the applicant had been working hard with staff since the concept plan review to incorporate the feedback.

Dr. Mark Stesin, 2000 Norway Pine Circle, said he was speaking on behalf of a coalition of neighbors from several nearby neighborhood streets. The coalition
appreciated the developer decreasing the height of the building but the proposal did not address the core issues discussed at previous meetings. The site plan and footprint had not changed. The building was still too big and dense for the site. He shared Wagner’s concern with the circulation on the site. The building exceeded the allotted floor area ratio. The proposal was for 17 units per acre instead of 12 units for high density. There still was not an accurate buffering between the building and the neighboring properties. The coalition did not oppose high density and supported the Trammel Crow development on the mall site.

Acomb said she agreed with Wagner’s comments about the planning commission looking at the site circulation and the public benefit required by the PUD. She said those were important aspects of the project.

Wagner moved, Bergstedt seconded a motion to refer the ordinance to the planning commission. All voted “yes.” Motion carried.

B. Items concerning Bren Road Development, a multi-family residential development by Dominium, at 11001 Bren Road East

Land Use
1) Ordinance rezoning the property from I-1, industrial, to PUD, planned unit development;
2) Master development plan;
3) Final site and building plan review;
4) Lot division; and
5) Environmental Assessment Worksheet declaration,

Finance
1) Tax Increment Financing
2) Contract for Private Development

Gordon and Community Development Director Julie Wischnack gave the staff report.

Ryan Lunderby with Dominium, thanked the council and staff for all their feedback.

Wagner thanked Dominium for its forward thinking in terms of the parking.

Calvert agreed there was forward thinking with the parking but asked what the plan was if the SWLRT did not happen. Lunderby said other areas of the site would be looked at. He was confident however the SWLRT would happen.

Bergstedt said the architecture had greatly improved since the concept plan. He thought it was a good idea to split building A.

Calvert thanked Dominium for including the solar aspect.
8. **Public Hearings**

**B. Items concerning Ridgedale Executive Apartments located at 12501 Ridgedale Drive.**

Chair Kirk introduced the proposal and called for the staff report. He disclosed his employment with the YMCA, but noted that there would be no conflict of interest by his participation on the planning commission.

Gordon reported. He recommended denial of the application based on the findings listed in the staff report.

Powers was confused why there would be a concern regarding disharmony between the design of both buildings when the buildings would not be visible from Ridgedale Drive. Gordon explained that staff determined that the functionality of the proposed layout of the site would not work. The mix of uses would be welcome in the Ridgedale area, but the way the buildings would be laid out locates the front of an office building facing a parking garage belonging to a new apartment building. That would not provide a good functional relationship. Powers did not see how that would harm the city.

Sewall asked for the width requirement of a standard-drive-aisle access. Gordon answered that the drive-aisle-width standard for a two-way access is 24 feet. The proposal’s drive aisle would be 22 feet in width.

Sewall asked if the applicant owning the office building was considered. Gordon stated that at some point ownership could change, so things need to be in place to ensure that the real estate would remain viable.

Sewall asked if staff would support the application if the office building would be removed. Gordon stated that would eliminate the problem with the disharmony between the layout of the two buildings.

In response to Hanson’s question, Gordon explained that the building behind a building layout would be concerning for long-term viability of a valuable piece of real estate. That may work for the current tenants, but would not be a good long-term solution for way finding and accessibility of future tenants.

Chair Kirk noted that the applicant could stay with the current PID zoning. Gordon agreed. He explained that PID zoning allows a mix of uses. The proposed setbacks would require variances in a PID.

In response to Chair Kirk’s question, Wischnack stated that the footprint issue was not resolved. That led to the issues listed in the staff report.
Powers asked if staff liked the look of the building from a pedestrian's view. Gordon answered in the affirmative. It is an attractive building. It has a look that resembles parts of Ridgedale Center. There is compatibility with the materials. It works pretty well in a lot of aspects.

Tammy Diehm, attorney with Winthrop and Weinstine, representing the applicant, stated that:

- The site is one tax parcel with one legal description.
- The code requires only one standard to be met to justify rezoning a property to PUD.
- Staff has acknowledged that housing is appropriate for the area, specifically high-density housing. The city’s comprehensive guide plan specifically makes statements about adding diversity in housing types. Several Minnetonka residents expressed interest in having luxury rental units. This is a justification for rezoning the site to a PUD.
- She reviewed the history of neighborhood meetings and revisions to the plan. The applicant revised the plans to address concerns that were raised by neighbors, councilmembers, and commissioners.
- The architect has come up with some further modifications that could be made. The developer is in a difficult position. The developer needs to create a viable project to attract a certain demographic that fits the market demand. The architect provided staff yesterday with modifications that could be done to address the issues raised in the staff report.
- The two-lane drive aisle access on the west side would be widened to 24 feet in width.
- The applicant believes that the project does meet the city’s requirements and would be a wonderful project for the city of Minnetonka.
- The building height would be reduced from 55 feet to 51 feet.
- She provided a diagram that showed the reduction in the building height and footprint since the concept plan.
- The most recent changes removed the pool and the outside amenity area would be on ground level and hidden. Units that previously wrapped around the pool deck could be removed to reduce the massing on the west side of the building as well as near the existing office on the southeast side.
- The number of parking stalls would be reduced to 178. That would include 123 spaces of underground parking.
- A traffic consultant found that, overall, the internal operations of the development work well. He had no concerns.
- The proposed PUD zoning would be appropriate.
- The development meets the city’s goals.
- She was available for questions. She requested that the commission recommend that the city council approve the project.
Sewall confirmed with Ms. Diehm that the recent modifications did not include changes to the office building. Ms. Diehm would appreciate commissioners’ feedback on the revisions.

The public hearing was opened.

Annette Bertelsen, 13513 Larkin Drive, stated that:

- The proposed building would not be allowed in a PID-zoned area because it would be too big. A lot of variances would be needed. Variances cannot be approved for economic reasons.
- The setbacks would be way too small.
- Apartments are required to provide 10 percent of the site to be used as outdoor recreation space. That would be another variance.
- The same standards in a PID are the guidelines in a PUD. There still needs to be a judgement on whether the proposed building and footprint would be appropriate.
- The proposal would be a big, dense use adjacent to single-family residences.
- The building would feel massive, be more intense, and provide no transition to single-family houses.

Mark Stesin, 2000 Norway Pine Circle, stated that he represents his wife and a coalition of neighbors. He stated that:

- They are excited about the Ridgedale redevelopment project and support high-density housing as long as it is compliant with the comprehensive guide plan and ordinances north of Ridgedale Drive and does not encroach on surrounding properties. They support the Trammel Crow project proposed on the Ridgedale Center property.
- They vehemently oppose the proposed project even with the revisions because it does not meet the comprehensive guide plan and ordinance requirements.
- The building and its footprint would be too big for the property. The height has been addressed.
- They agree with denying the request. His attorney provided a letter that is included in the agenda packet. It lists their concerns with the proposal changing the zoning from PID to PUD; not being compliant with the comprehensive guide plan; and not providing a sufficient transition from high density to single-family houses.
- The building would be very nice and upscale.
- They agree with staff’s recommendation to deny the proposal.

No additional testimony was submitted and the hearing was closed.
Gordon confirmed that PID zoning requires 10 percent of a site to be used as outdoor space.

O'Connell mainly supports the proposal. He understood staff’s concern, but the success of the office building is a risk for the building owner to bear. He thought the mass would be fine. He believed that the market would support the building, but that is not his concern as a planning commissioner.

Powers concurred with O'Connell. He favors the development. The developer has gone to extraordinary lengths to meet the requests of the neighborhood. The neighbors do not own the view. He has seen developments on Shady Oak Road that are much closer to residential areas and have much more impact on the view. He had no issue with the size of the building or the mass.

Knight agreed. A new resident in the apartment building has a choice to live there and view the office building. He agreed that the mass would be appropriate. He supports the proposal.

Sewall applauded the developer for making changes from the original concept plan to create a much more manageable design and scale. There would be over 400 feet and tree cover between the property and the nearest house. This would provide better view shed protection than a lot of other developments. He concurred with staff that the flow of the project is not what it should be and a different design could provide a better flow. He did not support the plan tonight. He felt good about the scale and was not as concerned with the detriment to a future property owner. A future property owner would know what he or she was getting into.

Chair Kirk noted that there would be a fair amount of buffer between the proposed building and the adjacent neighbor. The proposal would fit the harmony of being located north of Ridgedale Center. This proposal would pale in comparison to future development. He struggled with the density. He thought the two buildings could have a better layout. He thought the two buildings would appear poorly planned. He saw it as a detriment to the city if the site would not be organized well. He did not think the apartment building and office buildings worked well enough together. He did not have a problem with PID or PUD zoning. The setbacks could not be decreased any further. He was comfortable with the mass of the buildings. He did not think the proposal was quite there yet.

Hanson did not see a problem with the office building.

Powers appreciated the developer making revisions because it shows intent. Requiring a plan to be harmonious is too much of a burden on the applicant.

Sewall moved, second by Hanson, to recommend that the city council adopt the attached resolution with revisions provided in the change memo dated May 24, 2018 denying rezoning, master development plan, and building plans for the Ridgedale Executive Apartments.
Sewall, Hanson, and Kirk voted yes. Knight, O'Connell, and Powers voted no. Schack was absent. Motion carried.

This item is scheduled to be reviewed by the city council at its meeting on June 4, 2018.
Phillip Branson, director of operations for Morrie’s Auto Group, applicant, stated that the proposal would make improvements to the building. He was available for questions.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Sewall thanked the applicant for not applying for a parking-lot expansion. The neighbors appreciate it.

Powers moved, second by Knight, to adopt the resolution approving final site and building plans for additions to the existing auto dealership building at 13400 Wayzata Blvd.

Sewall, Knight, Powers, Schack, and Kirk voted yes. Hanson was absent. Motion carried.

Chair Kirk stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

C. Items concerning Ridgedale Executive Apartments located at 12501 Ridgedale Drive.

Chair Kirk introduced the proposal and called for the staff report.

Gordon reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Powers noted that the site could hold an apartment building and a two-story office building in some way that would be acceptable. Gordon stated that the location of the office building would make the plan challenging.

Sewall asked if there are examples of office buildings located behind other office buildings. Gordon stated that there are a few office developments along Interstate 394 that have office buildings located along private driveways. Gordon was unable to find a site in Minnetonka similar to the proposal’s uses and layout. The mix of uses is appropriate for the area. The proposal has organizational issues with the driveway and layout.

Sewall confirmed with Gordon that exterior parking spaces could be used by anyone. There would be no interior office building parking.

Tammy Diehm, of Winthrop and Weinstine, representing the applicant, stated that:

- The applicant has improved the plan since what was presented in November of 2017 in response to concerns from neighbors and staff.
- A traffic consultant confirmed that the internal operation would have
appropriate circulation and be safe for all types of uses.
- The site would have a monument sign and be a destination.
- Much of the office building would be oriented toward the wooded area and pond.
- The drive aisle would be changed to be 26-feet in width.
- The parking stalls on the side of the building on Ridgedale Drive and those abutting the YMCA would be visitor parking stalls for the apartment building and the stalls added between the office and apartment buildings would be used by the office building tenants and visitors.
- She was available for questions.
- Based on the additional reduction in mass, the proposal meets the requirements of the ordinances and justifies the planning commission’s recommendation to the city council that rezoning would be appropriate.
- The proposal would bring diversity of housing types and the redevelopment of the vacant building would be an asset to the community and increase the city’s tax base.

Chair Kirk invited those present to comment.

Dr. Mark Stetsin, 2000 Norway Pine Circle, stated that he was speaking on behalf of his wife and a coalition of neighbors. He stated that:

- They are excited about the Ridgedale redevelopment project and support high-density housing, but all new high-density housing must be in compliance with the comprehensive guide plan, meet city code requirements including zoning, and not intrude on existing neighborhoods.
- They support the Trammel Crow project at Ridgedale Center.
- The developer has not incorporated much of what was recommended by the city council, planning commission, and staff.
- They strongly opposed the proposed project and support denial of the application.
- He referred to a letter written by their attorney that includes a written list illustrating how the proposal does not comply with the comprehensive guide plan or city code requirements.
- Councilmember Allendorf said that the footprint would be too large for the property. He agreed. The height has been decreased, but the footprint has not been reduced. The FAR has been increased.
- The building would be too big and massive. It would not provide an adequate transition or buffer from high-density to low-density housing. High-density housing should be located north of Ridgedale Drive.
- The site would lack organization and have a building behind a building.
- The office building would be required to have 57 parking spaces, but the proposal only has 32. It would be short 25 parking stalls.
- He requested the proposal be denied.
Sewall asked if parking would meet ordinance requirements. Gordon explained that there would be surface parking stalls adjacent to the building. It is presumed those would be used by the office building tenants and visitors. To meet ordinance requirements, additional spaces would be needed.

Chair Kirk noted that the applicant has gone to great lengths to respond to what the community, city council, and planning commission requested.

Powers agreed that the applicant has made changes. The city council and planning commission did not mention disharmony during the concept plan review. He did not agree with the neighbors. There would be adequate buffering. He respects staff’s recommendation.

Chair Kirk likes the look of the apartment building. He struggled with the office building.

Gordon noted that the planning commission and city council focused on the size, mass, and width of the residential building during the concept review process.

Schack reviewed the previous packets. She recalled discussion regarding site organization and problems with site organization during the concept plan review in November. She acknowledged that was not the primary concerns addressed by the planning commission, because mass was a greater issue at that time. The organization of the site is troubling. She supports residential and high-density housing in the Ridgedale area. She would like to know more about how the comprehensive guide plan and Ridgedale development plan would impact the zoning before commenting further on that piece. She could not get over the issues with the site’s organization. Planning staff recognize the issues and she respects their recommendation. When driving to the proposed office building, she knows that she would drive by it before figuring out its location since it would not be visible from the road. She was not comfortable with the proposal. The mixed use makes sense at the proposed location. She would not oppose the high-density residential use, if the site would be better organized.

Sewall did not have a problem with the mass. He would be o.k. with removing the office building and making the apartment building larger. The apartment building could be attractive and respectful to the neighbors. He agreed that the site is messy. He was not sure what could be built that would work. He was torn.

Chair Kirk noted that the office building was not visible behind Redstone. Powers noted that he went to Redstone for years and never noticed the office building.

Knight struggled with the proposal. The applicant reduced the mass of the building. The office building is not a fast-food restaurant that would need to have a large sign. Most of the visitors to the office building would know where it is located. He voted for it last time and it has been improved since then. He questioned why there would be no windows on
the back of the office building that would face the wetland. Gordon clarified that there would be windows.

Chair Kirk supports staff’s recommendation to deny the proposal.

Powers did not think the proposal would make the site less harmonious than it is currently.

Schack moved, second by Sewall, to recommend that the city council adopt the attached resolution denying rezoning, master development plan, and site and building plans for the Ridgedale Executive Apartments.

Sewall, Schack, and Kirk voted yes. Knight and Powers voted no. Hanson was absent. Motion carried.

This item is tentatively scheduled to be reviewed by the city council at its meeting on July 9, 2018.

9. Other Business

A. Concept plan review for Hennepin County Medical Examiner’s Office at 14300 County Road 62.

Chair Kirk introduced the proposal and called for the staff report.

Gordon reported. Staff recommends that planning commissioners provide comments and feedback on the identified key issues and other issues commissioners deem appropriate. The discussion is intended to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

John Rode, senior facility planner with Hennepin County Facility Services Planning and Project Development, representing the applicant, stated that the site has 160 acres. He provided a history of the site.

Zach Essig, engineer with Leo A. Daly, stated that:

- He pointed out what wetland area and trees would be protected. The Tamarack bog would be protected and preserved up to the slope.
- There would be 24.5 acres of buildable space.
- He compared possible building locations considering access, impact to trees, wetlands, and slopes.
- The proposed building location would provide a nice approach through the south side of the wetland between the woodland preserve and wetland area using retaining walls to reach the road. The road would have a typical width with retaining walls that would not have any permanent impact on the wetland or woodland preserve.
Neighborhood Correspondence
June 14, 2018

Chair Kirk and Planning Commissioners
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Via Email

Re: Proposed Ridgedale Executive Apartments, 12501 Ridgedale Drive

Dear Chair Kirk and Planning Commissioners:

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 Planning Commission this evening, June 14th. We respectfully request that this letter be made part of the administrative record for the Project along with our previous correspondence regarding the Project.

Our clients have been closely following the evolution of the Project and were optimistic when the Applicant proposed an alternative at the May 24th Planning Commission that appeared to be an effort to reasonably reduce the building bulk to correspond with the City Code and City policies. Unfortunately, the Applicant’s most recent proposal results in an increase to the number of units and overall floor area ratio (FAR) for the Property. The Applicant’s assertion of a FAR reduction is merely the result of a prior miscalculation. We support staff’s conclusion that the Project is proposed in a manner that does not support harmonious site design. Our clients continue to object to the Project as 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”).

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 summarizes several of our clients’ objections.

The Project Fails to Provide Benefits Necessary for a PUD

The Project fails to meet any of the required criteria to justify rezoning to the PUD District as required under City Code Section 300.22(2). The Project does not result in any one of the seven (7) benefits that could justify a PUD that could not otherwise be achieved under the current zoning. There is no added protection of natural features; no affordable housing is provided in the
Project; and, the anticipated rents will exceed the target housing price that is desirable to the City. A mix of land uses is provided, as the existing office building remains on-site, but the development is haphazardly designed with no integration of uses and no benefit over the existing zoning. The Project offers no increase in energy conservation over non-PUD development. In short, the Project simply provides no benefit to the City or the Community, merely a financial benefit to the Applicant.

The Project Conflicts with the Comprehensive Plan

State law and the City Code require all zoning regulations to be consistent with the City’s Comp Plan, which designates the Property as Mixed-Use on the southernmost edge of the I-394 Corridor/Ridgedale Area. 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.” 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.

Insufficient Transition to Low Density Residential

The Project further conflicts with Comp Plan Policy 4.A.2, which governs adequate transitioning between the Ridgedale area and the neighborhoods:

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.

The Project conflicts with this policy as the height and massing are grossly out of scale and character from existing structures, and the Project 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 like the Project 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.

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1 Minn. Stat. § 473.858, subd. 1.
2 Comp Plan IV-32.
3 Comp Plan IV-31 (emphasis added).
4 Comp Plan IV-46.
Chair Kirk and Planning Commissioners  
June 14, 2018  
Page 3  

**Failure to Provide Adequate Buffer to Residential Uses**

The Project also conflicts with Comp Plan Policy 4.A.33, which calls for the “Provision of adequate buffering between differing land uses, as appropriate.”\(^5\) The City Code identifies “high density” as density exceeding 12 units per acre; the Project exceeds this threshold with 17 units/acre proposed. The Project will substantially increase the activity, noise, traffic, and intensity of the use of the Property that will detrimentally impact the neighboring 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.

For these reasons, we strongly object to the Project as currently proposed and urge the Planning Commission to recommend denial of the Project and 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,

_s/ Gary A. Van Cleve_

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

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\(^5\) Comp Plan IV-46.
May 24, 2018

Chair Kirk and Planning Commissioners
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Proposed Ridgedale Executive Apartments, 12501 Ridgedale Drive

Dear Chair Kirk and Planning Commissioners:

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 Planning Commission this evening, May 24th. We respectfully request that this letter be made part of the administrative record for the Project along with our previous correspondence regarding the Project.

Our clients recognize and appreciate that the Applicant has reduced the proposed height of the Project in response to the concerns of the neighborhood and the City. However, 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").

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 Fails to Provide Benefits Necessary for a PUD

The Project fails to meet any of the required criteria to justify rezoning to the PUD District as required under City Code Section 300.22(2). The Project does not result in any one of the seven (7) benefits that could justify a PUD that could not otherwise be achieved under the current zoning. There is no added protection of natural features; no affordable housing is provided in the Project; and, the anticipated rents will exceed the target housing price that is desirable to the City. A mix of land uses is provided, as the existing office building remains on-site, but the development is haphazardly designed with no integration of uses and no benefit over the existing zoning. The Project offers no increase in energy conservation over non-PUD development. In short, the Project simply provides no benefit to the City or the Community, merely a financial benefit to the Applicant.
The Project Conflicts with the Comprehensive Plan

State law and the City Code require all zoning regulations to be consistent with the City’s Comp Plan, which designates the Property as Mixed-Use on the southernmost edge of the I-394 Corridor/Ridgedale Area. 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.” 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.

Insufficient Transition to Low Density Residential

The Project further conflicts with Comp Plan Policy 4.A.2, which governs adequate transitioning between the Ridgedale area and the neighborhoods:

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.

The Project conflicts with this policy as the height and massing are grossly out of scale and character from existing structures, and the Project 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 like the Project 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.

Failure to Provide Adequate Buffer to Residential Uses

The Project also conflicts with Comp Plan Policy 4.A.33, which calls for the “Provision of adequate buffering between differing land uses, as appropriate.” The City Code identifies “high density” as density exceeding 12 units per acre; the Project exceeds this threshold with 17 units/acre proposed. The Project will substantially increase the activity, noise, traffic, and intensity of the use of the Property that will detrimentally impact the neighboring residential neighborhood. Very-high density residential and single-family homes are not compatible, and

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1 Minn. Stat. § 473.858, subd. 1.  
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5 Comp Plan IV-46.
such very-high density uses should be located away from the single-family residential neighborhood and towards the Ridgedale core.

For these reasons, we strongly object to the Project as currently proposed and urge the Planning Commission to recommend denial of the Project and 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,

[Signature]

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
Resolution
Resolution No. 2018-_______

Resolution denying rezoning, master development plan, final site and building plans at 12501 Ridgedale Drive

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

Section 1. Background.

1.01 Ridgedale Executive Apartments, LLC, has proposed construction of a multi-family residential development at 12501 Ridgedale Drive. The site is legally described as:

Lot 3, Block 1, Ridgedale Center Fifth Addition, Hennepin County, Minnesota

1.02 The proposal requires a rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD), master development plan and final site and building plan review.

1.03 On May 24, 2018, the Planning Commission held a hearing on the proposal. On June 14, 2018, the Planning Commission reviewed revised plans. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. At the May 24, 2018 meeting, the commission split 3-3 on a motion to deny the project; therefore there was no affirmative vote and no formal recommendation to the city council. At the June 14, 2018 meeting, the commission made a motion to the council to deny the project.

1.04 On July 9, 2018, the city council reviewed the proposal recommending the application be denied on the following findings.

Section 2. Findings.

2.01 The decision to rezone property to a PUD is a policy decision that the council makes in its legislative capacity.
2.02 The current zoning of Planned I-394 District is consistent with the city’s comprehensive plan, and the proposed change in zoning is not needed to conform the zoning ordinance to the comprehensive plan.

2.03 Section 300.22, Subd. 2 of the city code provides that the council may consider rezoning to PUD if the proposed development would result in one (or more) enumerated public benefits. However, even if one or more of the enumerated benefits exists, the council has the discretion to rezone as it determines to be in the public interest. The enumerated public benefits in Section 300.22, Subd. 2 are addressed below:

a) Greater preservation of existing natural resources, in number or quality, than would otherwise be provided under non-PUD development. The proposed development does not provide additional natural resource preservation than could be provided under the existing zoning.

b) Provision of affordable housing. The proposed development does not provide any affordable housing units.

c) Provision of a housing type or target housing price that is desirable to the city. The proposed development would provide luxury rental apartments. The city has not determined that the unit type or price is needed or desirable.

d) A mix of land use types. The proposal does provide a mix of land use types, but the same mix of land use types could be obtained under the existing zoning. This aspect of the proposal provides no additional public benefit that would support rezoning to PUD.

e) Development that is compatible with existing, surrounding development type and intensity that is no longer allowed in other existing zoning districts. The proposed development type and intensity would be allowed in the existing Planned I-394 zoning district.

f) Greater energy conservation through building and site design than would otherwise be achieved under non-PUD development. The proposed development proposes no greater energy conservation gains with building and site design than could be achieved under non-PUD development.

2.02 The proposal does not meet the following site and building standards as outlined in City Code §300.27 Subd.5:

a) The proposal is not consistent with ordinance requirements including parking drive isle width and parking minimums.

b) The proposal does not result in a harmonious relationship of buildings. The project fails to adequately transition between land use and architectural types and spatial relationships.
c) The proposal fails to create a functional and harmonious design for structures and site features including:

1) An internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community. The lack of visibility to the office building from Ridgedale Drive is concerning to its long term viability.

2) The developed portion of the site provides no open space for the enjoyment of residents.

3) The proposal does not provide intuitively designed vehicular and pedestrian circulation, adequately designed internal driveways and circulation and the arrangement and location of parking.

4) Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures, and the use of landscape materials and site grading is not achieved.

2.03 The proposal does not provide a logical development program for the site. The proposed apartment building would not afford easy access and visibility to the existing office building on the site. The tight “building behind building” approach for this site is one primary reason the project does not meet code standards. This is a basic urban planning and design principle that helps bring order to development. Intuitive and organized site design and building placement creates positive and productive environments. The organization of this site does not provide the necessary organizing principles that bring about harmonious design.

2.04 The proposed apartment building is placed on the property with little consideration for the long term viability of the office building. This building-behind-building relationship does not promote an active and walkable environment the city desires for the Ridgedale area.

Section 3. Action

3.01 Based on the above findings, the applications for rezoning, master development plan approval and final site and building plan approval are denied.

Adopted by the City Council of the City of Minnetonka, Minnesota, on July 9, 2018.

__________________________________
Brad Wiersum, Mayor
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 July 9, 2018.

David E. Maeda, City Clerk
Ordinance No. 2018-

An ordinance approving rezoning from I-394 District to Planned Unit Development District for redevelopment of the property located at 12501 Ridgedale Drive

The City of Minnetonka Ordains:

Section 1. Background

1.01 This ordinance hereby approves the master development plans and final site and building plans for construction of a residential apartment development at 12501 Ridgedale Drive.

1.02 The property is located at 12501 Ridgedale Drive and are legally described as:

Lot 3, Block 1, Ridgedale Center Fifth Addition, Hennepin County, Minnetonka

Section 2. Standards and Findings

2.01 Section 300.22, Subd. 2 of the city code provides that the council may consider rezoning to PUD if the proposed development would result in one (or more) enumerated public benefits. The city council finds that the project provides at least one public benefit as identified below.

   a) Greater preservation of existing natural resources, in number or quality, than would otherwise be provided under non-PUD development.

   b) Provision of affordable housing.

   c) Provision of a housing type or target housing price that is desirable to the city.

   d) A mix of land use types.

   e) Development that is compatible with existing, surrounding development type and intensity that is no longer allowed in other existing zoning districts.

   f) Greater energy conservation through building and site design than would otherwise be achieved under non-PUD development.
Section 3. The city council finds that the project provides at least one public benefit as identified below.

   a) The proposal provides a mix of land use types on the property.
   b) Contribution to park development through dedication of funds.

Section 4. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on July 9, 2018.

Brad Wiersum, Mayor

ATTEST:

David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction: 
Date of adoption: 
Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Ordinance adopted. 

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on July 9, 2018.

David E. Maeda, City Clerk
Resolution No. 2018-_______

Resolution approving rezoning, master development plan, final site and building plans at 12501 Ridgedale Drive

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

Section 1. Background.

1.01 Ridgedale Executive Apartments, LLC, has proposed construction of a multi-family residential development at 12501 Ridgedale Drive. The site is legally described as:

Lot 3, Block 1, Ridgedale Center Fifth Addition, Hennepin County, Minnesota

1.02 The proposal requires a rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD), master development plan and final site and building plan review.

1.03 On May 24, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the Planning Commission. The planning commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission split 3-3 on a motion to deny the project; therefore there was no affirmative vote and no formal recommendation to the city council.

1.04 After the planning commission public hearing, the applicant decided to further revise the plans. It is not customary to bring back a plan revision after the planning commission has evaluated the request, conducted a public hearing and made a recommendation to the city council. However, because the changes were substantial, the revised plans were placed on the June 14, 2018 planning commission agenda for consideration. The commission voted 3-2 to recommend the city council deny the project as revised.

1.05 On July 9, 2018, the city council reviewed the proposal recommending the application be approved based on the following findings.
Section 2. Planned Unit Development and Site and Building Plan Standards and Findings.

2.01 The decision to rezone property to a PUD is a policy decision that the council makes in its legislative capacity.

2.02 The proposed Planned Unit Development zoning district is consistent with the city's comprehensive plan.

2.03 Section 300.22, Subd. 2 of the city code provides that the council may consider rezoning to PUD if the proposed development would result in one (or more) enumerated public benefits. As identified below, the project provides at least one public benefit.

   a) Greater preservation of existing natural resources, in number or quality, than would otherwise be provided under non-PUD development.

   b) Provision of affordable housing.

   c) Provision of a housing type or target housing price that is desirable to the city.

   d) A mix of land use types. The proposal provides a mix of land use types.

   e) Development that is compatible with existing, surrounding development type and intensity that is no longer allowed in other existing zoning districts.

   f) Greater energy conservation through building and site design than would otherwise be achieved under non-PUD development.

2.04 The proposal meets the following site and building standards as outlined in City Code §300.27 Subd.5:

   a) The proposal is consistent with ordinance requirements.

   b) The proposal would result in a harmonious relationship of buildings.

   c) The proposal creates a functional and harmonious design for structures and site features.

   d) The proposal would continue to provide a buffer to the existing adjacent single-family neighborhood.

   e) The proposal would visually and physically alter the property and the immediate area. However, this change would occur with any redevelopment of the site, which is anticipated.
Section 3. Action

3.01 Based on the above findings, the applications for rezoning, master development plan approval and final site and building plan approval are approved with the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

   - Architectural Site Plan, dated June 1, 2018
   - Grading Plan, dated June 4, 2018
   - Utility Plan, dated June 4, 2018
   - Stormsewer Plan, dated June 4, 2018
   - Landscape Plan, dated June 4, 2018
   - Building Elevations, dated June 1, 2018

2. A grading permit is required. This permit will cover grading and installation of sewer, water, stormwater facilities and construction of retaining walls. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.

   a) The following must be submitted for the grading permit to be considered complete.

      1) An electronic PDF copy of all required plans and specifications.

      2) Final site, grading, utility, stormwater management, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.

         a. Final site plan. The plan must:

            - Illustrate all existing and proposed easements. No structural improvements are allowed within the easements. This includes pool, pool deck, fencing, ramps, stairs, playgrounds, or other elements as outlined in city policy.

            - Drive aisles must be 26' wide and inside turning radii must be 22' to allow for ladder truck access to the apartment and existing office building.
• Stormwater treatment vaults underneath drive lanes must be able to support 83,000 pound fire apparatus and 10,800 psf outrigger load.

• Provide a turning template to illustrate that city's emergency vehicles can navigate the parking lot and service both buildings.

b. Final grading plan must:

• Illustrate that rails and sidewalks must meet Americans with Disability Act (ADA) standards.

• Reevaluate grading near the east driveway. Runoff must be captured onsite to the greatest extent possible, rather than draining, untreated to the city storm sewer system.

c. Final utility plan. The plans must:

• Add hydrants around the perimeter of the apartment building. Hydrants should be no more than 500' apart as measured along the drive aisles. Newly installed private hydrants would require a private hydrant maintenance agreement.

• Private service to southern most building is thought to come from the main on the eastern side of the property. Applicant needs to confirm and may need to relocate service to the southern building.

• Provide a looped connection to the proposed building.

• Confirm location of the southern building service to ensure it is not impacted by the proposed building.

d. Final stormwater management plan is required for the entire site's impervious surface. The plan must demonstrate conformance with the following criteria:

• Rate. Limit peak runoff flow rates to that of existing conditions from the 2-, 10-, and 100-
year events at all points where stormwater leaves the site.

- **Volume.** Provide for onsite retention of 1-inch of runoff from the entire site’s impervious surface.

- **Quality.** Provide for all runoff to be treated to at least 60 percent total phosphorus annual removal efficiency and 90 percent total suspended solid annual removal efficiency.

In addition:

- **Review drainage atop the west retaining wall.** Confirm with a structural engineer whether additional drainage considerations need to be implemented to protect the wall’s integrity given the large drainage area that flows toward the wall.

- **Provide evidence that the underground system will be able to support 83,000 pounds and 10,800 pounds per square foot outrigger load.**

- **The underground facilities must be inspected by a qualified third party during installation and that party must verify that the pressure requirements are adequately met.**

e. **Final landscaping plan must:**

- **Require a final landscape plan for staff review and approval that meets city code including the landscape value.** The applicant must illustrate the project value to demonstrate the required landscape value.

- **Provide landscape value of 2% of project value.**

- **Substitute all Colorado spruce with another species of evergreen.**

- **Require that all deciduous trees are planted no closer than 15’ behind the curb of a public roadway or 10’ from the edge of a public trail or sidewalk.**
• Require that all evergreen trees are planted no closer than 20' behind the curb of a public roadway or 15' from the edge of a public trail or sidewalk.

• Require that the land south and southwest of the office be placed in conservation easement to protect it into the future. This aligns with city code Section 300.31, subdivision 7.b.2., which reads:

Landscaping: in addition to the landscape plan requirements contained in section 300.27, subd. 14, the following requirements shall be met:

- Master development plans shall undertake all efforts to preserve existing natural features including wetlands/floodplain, trees and areas of steep slope conditions.

- All development other than single family residential development shall be buffered from nearby single family neighborhoods. Buffering may be accomplished through the preservation of existing slopes and trees. In cases where natural buffers are absent, earthen berms with new landscape materials shall be installed.

3) An agreement should be entered into for the installation of private facilities within the city's public easement on the eastern side of the property.

4) Dedicate additional easement over city sewer and water to allow for proper maintenance.

5) A conservation easement over the 16.5-foot wetland buffer over the north and south portion of the southern wetland.

6) No new stormwater infrastructure and associated appurtenances are allowed below the delineated wetland edge (no pipes or rip rap is not allowed).

7) Erosion control best management practices are required including construction management plan, compliance escrow, indication a private erosion control inspector will
be hired and provide weekly reports to the city, the installation and maintenance of all erosion control and tree protection fencing, etc.

b) Prior to issuance of a grading permit:

1) This resolution must be recorded at Hennepin County.

2) Obsolete utility easements must be vacated.

3) Park dedication in the amount of $385,000.00 must be submitted as part of the planned unit development public benefit.

4) Submit the following:

   a. A development agreement in a city approved format for review and approval of city staff.

   b. A stormwater maintenance agreement in a city approved format for review and approval of city staff.

   c. A private hydrant maintenance agreement in a city approved format for review and approval of city staff.

   d. A construction phasing plan for staff review and approval. The plan must include details regarding construction of proposed retaining walls.

   e. A MPCA Sanitary Sewer Extension permit or documentation that a permit is not required.

   f. A MDH permit for the proposed water main construction.

   g. A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.

   h. Financial guarantees in the amount of 125% of a bid cost or 150% of an estimated cost to comply with grading permit and landscaping requirements and to restore the site. Staff is authorized to negotiate the manner in which site work and landscaping guarantees will be provided. The city
will not fully release guarantee until: (1) as-built drawings and tie-cards have been submitted; (2) a letter certifying that the underground facility has been completed according to the plans approved by the city; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

i. Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city. At its sole discretion, the city may accept escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction.

j. Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

5) Install erosion control, and tree protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

6) Hold a preconstruction meeting with site contractors and city planning, engineering, public works, and natural resources staff. The meeting may not be held until all items required under 2(a) and 2(b) of this resolution have been submitted, reviewed by staff, and approved.

7) Permits may be required from other outside agencies including, Hennepin County, the Basset Creek Watershed
Management Organization, and the MPCA. It is the applicant’s or property owner’s responsibility to obtain any necessary permits.

3. Prior to issuance of any building permit, submit the following documents:
   a) A snow removal and chloride management plan.
   b) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for noncompliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

   1) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
      • The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
      • If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

   If the builder is the same entity doing grading work on the site, the escrow submitted at the time of grading permit may fulfill this requirement.

4. Ensure the minimum clearance of the main entry canopy is 13 feet 6 inches.

5. Provide an address sign along Ridgedale Drive for the office building intended for wayfinding purposes only. Only one monument or pylon sign is allowed on the property.

6. The property owner is responsible for replacing any required landscaping that dies.

7. Construction must begin by December 31, 2019, unless the city council grants a time extension.
Adopted by the City Council of the City of Minnetonka, Minnesota, on July 9, 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 meeting held on July 9, 2018.

David E. Maeda, City Clerk
Addendum
Minnetonka City Council
Meeting of June 18, 2018

14A Conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run

Attached are emails received after the council packet was distributed.

14B Items concerning Ridgedale Executive Apartments located at 12501 Ridgedale Drive

Attached is correspondence received after the council packet was distributed.
ITEM 14A – Chabad Center for Jewish Life

The attached comments were received following distribution of the agenda packet.

Item 14 - Ridgedale Executive Apartments located at 12501 Ridgedale Drive

The attached letter was received following distribution of the agenda packet.
Hi Julie and Loren,

We appreciate the time that both of you had put in to try and make the landscaping plan work. We believe Loren's shuttle diplomacy, literally, and Julie stepping in to calm down the applicant and architect helped move it in a positive direction.

We (as well as Susan and Michael) went to both meetings to come up with a landscaping plan, as needed by the City Council. The landscaping plan needed to address our main concerns, which the CUP does provide protection for, to the neighbors:

1. Visual barrier
2. Security/Safety barrier
3. Sound barrier

We came away feeling that we've just went through a couple of very confrontational negotiation situations. We went to the meeting hoping to be able to build a bridge to the applicant, an olive branch to our potential new neighbor, and to negotiate in good faith. Having the applicant's attorney at the meetings was very unexpected, as we didn't think legal counsel were needed. Now, with Mr. Liszt's letter in the packet, perhaps we should have been more guarded and perhaps brought our own.

Referring to Mr. Liszt's letter, item #3 should include two rows of Arborvitae from the southeast end of the parking lot to the Soo/Flint property line. Further, for item #4, we did not "gain" any additional square footage, we just did not lose square footage to someone new coming into the neighborhood.

Mr Liszt's letter that our request for an 8' and 10' fence was "punitive" could not be farther from the truth. We are simply trying to ensure both sight and noise mitigation, especially in the years before the arborvitae grow together, and afterwards as an additional layer of sound mitigation. The following article discusses a Chabad CUP in Toledo, Ohio. The building is much smaller (just under 10,000 sq feet) and is one-story. It includes these conditions:

1. An **eight-foot fence** along the north property line
2. A **dedicated green space** to serve as a buffer between the community center and its neighbors


Mr. Liszt's letter left out the utility of the fence as a sound barrier. The Arborvitaeas would not provide enough screening from sound. Even Loren mentioned that at the second meeting.
Dear Mayor Wiersum and City Council Members,

We understand the proposed Chabad development project will be considered at the City Council meeting on Monday, July 9th and we would like you to consider the comments attached to this email. We have been present at the City Council and Planning Commission meetings where this proposed project has been considered, discussed and debated. We have heard from many of you that the project meets the requirements of the zoning ordinance and the CUP conditions. What we have not heard is "how" you have come to this conclusion. It seems that some of you have concluded that you have no discretion in determining whether the proposal meets the city's zoning ordinance. We urge you to review the enclosed summary that details the zoning ordinance, as to each specific requirement and indicates whether you must make a subjective or objective determination. You will note that most of the decision points are more subjective than objective and you must closely weigh all of the required factors in your decision.

We know this decision is difficult, but the citizens of Minnetonka have elected each of you to protect our collective best interests over projects that will change the character of long-standing residential areas forever. And, as each of you have recognized, it will undoubtedly create substantial risks to the safety of Minnetonka residents on Hopkins Crossroads and local neighborhood roads.

We will be present at the council meeting tomorrow and will address any questions you may have.

Thank you,

Jon and Susan Wiens
2346 Vernon Circle
Minnetonka

CITY OF MINNETONKA – ZONING REGULATIONS
## Comparison to Chabad Project

<table>
<thead>
<tr>
<th>Ordinance - Requirements</th>
<th>Subjective or Objective Standard</th>
<th>Has the requirement been met?</th>
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<tbody>
<tr>
<td>I. Chapter 3. Section 300.01, subd. 2 Zoning Regulations - Purpose. This ordinance is enacted to <strong>promote the public health, safety and general welfare of the city of Minnetonka</strong> through the following: a) encouraging the planned and orderly development of residential, commercial, industrial, recreational and public uses of land; b) providing adequate light, air and convenience of access to property; c) limiting congestion in the public right-of-way; d) preventing overconcentration of land and undue concentration of population and structures; e) providing for the compatible integration of different land uses and the most appropriate use of land; and f) encouraging development in accordance with the city's comprehensive plan.</td>
<td>These general purpose statements of intent of the zoning ordinance are all <strong>subjective</strong> and require independent consideration by council members.</td>
<td>a) No. The city has not met its obligations for a planned development when it does not require appropriate parking for capacity of project. b) No. Neighborhoods surrounding the project will not be provided adequate light, air or convenience of access to their own properties. c) No. A 15,000 sq ft facility with the potential to add 350 – 400 people at any one time will increase congestion in all public right-of-ways. The adding of a turn lane on Hopkins Crossroads has made pedestrian travel more unsafe by taking away and reducing the shoulder lane. d) No. The proposal has the highest land use concentration of comparable religious institutions as evidenced by residents' previous submission of summary of comparable projects. e) No. Inserting a 15,000 sq ft facility into a small residential neighborhood is not “compatible integration.” f) No. The city's comprehensive plan contemplates residential neighborhoods in this location. There is no indication the comprehensive plan anticipates a 15,000 sq ft facility in an historically residential neighborhood.</td>
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<td>II. 310.10, subd. 4 Conditional Use Permits. Within the R-1 district no structure or land shall be used for the following except by conditional use permit and in conformance with the standards specified in section 300.16 of this ordinance; b) religious institutions and facilities;</td>
<td>Objective</td>
<td>Yes. The proposed project falls within permissible uses of the Conditional Use Permit ordinance – but only if all other subjective and objective requirements have been met.</td>
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<td>III. 300.16, subd. 1. It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be <strong>subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and</strong></td>
<td>Subjective Standard. Each council member must determine, <strong>after careful evaluation</strong> whether the location, size and design of</td>
<td>No. See comments below.</td>
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</table>
| procedures of this ordinance and the comprehensive plan | the proposed project is consistent with the standards, purposes and procedures of the ordinance an comprehensive plan | IV. 300.16, subd. 2. **General Standards.**  
No conditional use permit shall be granted unless the city council determines that all of the following standards will be met:  
a) the use is consistent with the intent of this ordinance;  
b) the use is consistent with the goals, policies and objectives of the comprehensive plan;  
c) the use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and  
d) the use does not have an undue adverse impact on the public health, safety or welfare. | Subjective Standard a) No. The proposed use is not consistent with the intent of the ordinance. See General Purpose section of ordinance above pursuant to 300.02 to **promote the public health, safety and general welfare of the city of Minnetonka**  
b) No. The proposed use is not consistent with any identified goal or objective of the comprehensive plan.  
c) Yes. There appears to be no undue adverse impact on government facilities and services  
d) No. The proposed use has an undue adverse impact on public health, safety or welfare. The public record is complete with factually supported data demonstrating the project’s undue adverse impact on public health, safety and welfare by 1) adding traffic to an already congested area and creating traffic problems and problems for pedestrians; 2) proposing to restripe Hopkins Crossroads into three lanes and not adequately reviewing the proposal or allowing time for public comment on such a significant change in Hopkins Crossroads. The restriping will create new safety risks for pedestrians where the shoulder of Hopkins Crossroads has been removed or significantly narrowed; 3) allowing the proposed curb cut which is just 150 feet from an intersection on a hill at Mill Run and Fetterly that prevents adequate sight lines as is required by county highway standards and creating significant additional safety risks for all who travel through this intersection; and 4) not requiring sufficient parking. The project is so large and dense that it cannot provide for adequate parking causing increase in traffic in the neighborhoods as drivers seek places to park and causing small cul-de-sac neighborhoods to absorb parking and traffic that make the roads unsafe for drivers and residents |
### V. 300.16, subd. 3.b. Religious Institutions and Facilities:

1) Direct access limited to a collector or arterial roadway as identified in the comprehensive plan or otherwise located so that access can be provided without conducting significant traffic on local residential streets;
2) Buildings set back 50 feet from all property lines;
3) Parking spaces and parking setbacks subject to section 300.28 of this ordinance;
4) No more than 70 percent of the site to be covered with impervious surface and the remainder to be suitably landscaped; and
5) Site and building plan subject to review pursuant to section 300.27 of this ordinance.

### VI. 300.27, subd. 1 Site and Building Plan Review. Purpose.

It is the intent of this section to serve the public interest by promoting a high standard of development within the city. Through a comprehensive review of both functional and aesthetic aspects of new or intensified development, the city seeks to accomplish the following:

- Implement the comprehensive plan;
- Maintain and improve the city's tax base to a reasonable extent;
- Mitigate to the extent feasible adverse impacts of one land use upon another;
- Promote the orderly and safe flow of vehicular and pedestrian traffic; and
- Preserve and enhance the natural and built environment.

#### a) – e) Subjective Standard

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<td>1) Yes. As long as the access to the proposed project is limited to Hopkins Crossroads, the standard has been met</td>
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<td>2) Maybe. The set back requirements are reviewable by the council</td>
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<td>3) No. The council has required 2.5 spaces only for the currently proposed daily attendance (99) and not for the design capacity of the project (350 – 400).</td>
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<td>4) No. No suitable landscape design has been provided to the council for consideration.</td>
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<td>5) No. See comments below in Section VI.</td>
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VII. 300.27, subd. 5. Standards. In evaluating a site and building plan, the planning commission and city council shall consider its compliance with the following:

a) consistency with the elements and objectives of the city’s development guides, including the comprehensive plan and water resources management plan;
b) consistency with this ordinance;
c) preservation of the site in its natural state to the extent practicable;
d) creation of a harmonious relationship of buildings and open spaces;
e) creation of a functional and harmonious design for structures and site features;
f) promotion of energy conservation; and
g) protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

Subjective Standards

All of these standards are subjective standards that must be considered when approving/denying the project. In order to vote in favor of the project, council members must find that these subjective standards have been met.

VIII. 300.28, subd. 12.(c)(2)g. Religious institutions and facilities, other buildings that include public assembly space, such as community centers and buildings of fraternal organizations, but excluding hotels, and related uses: one parking space for each 2.5 seats based on the design capacity of the main sanctuary or assembly space. The city may require additional spaces for offices, classrooms, day care

Objective

No. The design capacity of the assembly space is much larger than the applicant’s suggested current use of the sanctuary.

The Minnesota Building Code, Section 1004, determines how many people can occupy any given public space – i.e. the permissible design capacity for any structure. For religious assemblies, the number of occupants is determined whether the seating is fixed or unfixed. For areas having fixed seating without dividing arms, the occupant load shall not be less than the number of seats based on one person for
centers or other uses operated on the grounds.

| Minn. Building Code, sec. 1004.4. The project proposer has not proposed fixed seating, therefore the calculation of the **design capacity** of the assembly space is based upon how the unfixed seating is arranged. If tables and chairs are used, as suggested by the applicant, 15 sq ft is applied to each person. The total square feet of the assembly (minus stage space @ 100 sq ft) is divided by 15 to obtain capacity of the room. This is the recognized method for determining design capacity. Using 15 sq ft, the 2000 sq ft sanctuary space will hold 133 occupants. If chairs only are used, the sanctuary will hold 295 occupants. For standing room only, the sanctuary will hold 400 occupants. Additionally, the city has not accounted for any other use of the remaining 13,000 sq ft and has failed to include the adjacent assembly space of 1700 sq ft into the design capacity of the assembly area. These two rooms must be combined to determine design capacity as the two rooms are really just one big room that, at the discretion of the applicant, can be separated by a retractable wall. |
|---|---|

**From:**
**Sent:** Monday, July 09, 2018 10:58 AM
**To:** Tony Wagner <twagner@eminnetonka.com>
**Cc:** Geralyn Barone <gbarone@eminnetonka.com>
**Subject:** Re: Chabad Center for Jewish Life

Thank you Mr. Wagner.

Additional thought on the expressed concern regarding too many people attending Chabad events.

Presently the center is housed in a suite in an industrial park off Hedberg Drive less then a mile away. There are between a dozen and a couple of dozen parking spots and even this scarce space is never filled. Anyone could ask employees of the surrounding businesses if anyone has suffered of heavy traffic or noise or been otherwise inconvenienced.

I would argue that with the exception of the Jewish High Holidays daily attendance will hardly be noticed by the neighborhood.

Ms. Barone -

I would like my comments to be added to the council packet. Thank you.
Members of the City Council of Minnetonka:

I have been following the request for conditional use permit for Chabad Center for Jewish Life at 2339 Hopkins Crossroad, Minnetonka and I fully support of the project.

The agenda packet for the upcoming July 9th meeting shows a proposed traffic plan for the area. While it is clear that Chabad's use will not impact the traffic on CR 73 much, I think the proposed plan would be a great fix for those that live in the area as well as driving through.

I am looking forward to the completion of the trail of this segment of CR 73 (giving us safe access to the rest of the trail for biking and walking).

I am aware of concerns that were expressed by others, but I don't share those concerns.

Thank you for considering this worthy project and for your openness to 'change'. I am confident that it will be a change for the better.

If you have any questions please feel free to call me at (612) 203-4607.

Yana Glikin

On Jul 8, 2018, at 6:26 PM, " > wrote:

Dear Tony (Councilmember Wagner),

I just wanted to say thank you again for taking so much time to talk with me this afternoon. I obviously feel passionate about this neighborhood having lived here for so many years. Pedestrian and vehicle safety has always been a concern on Hopkins Crossroads and the neighboring streets. Unfortunately, the Chabad project and the restriping plan for the road only add to those concerns. It will create 3 narrow lanes causing additional safety issues for all who use this road: the usual pedestrians and vehicles, in addition to school buses and emergency vehicles. Winter conditions will make things even worse. Although the city staff has told you that Chabad has met the CUP conditions, I believe that they have not met one of the conditions required: that the use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare. This is the area where believe the city staff has "missed the boat". As I mentioned, those representing us on the city council should have as their number one priority - the safety of the Minnetonka residents
and visitors who drive, walk, run and bike on our roads. **This safety condition of the CUP has not been met. Therefore, I believe this project should be denied.** Below is a summary of an interesting Bloomington, MN case from 2015 which illustrates this condition not being met.

Again, thank you for your time and consideration,

I look forward to seeing you on tomorrow night.

Best,

Lori Fritz
11111 Mill Run

**Cities Can Deny Conditional Use Permits to Protect Public Health, Safety, and Welfare**

On March 18, 2015 the Minnesota Supreme found in *RDNT, LLC, v. City of Bloomington, A13-0310, — N.W.2d — (Minn. 2015)*, that a city’s decision to deny a conditional use permit application on the ground that the proposed use would be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and welfare was not unreasonable, arbitrary or capricious. Further, a city’s determination that the proposed conditions were insufficient was not unreasonable, arbitrary, or capricious.

The case involves RDNT, LLC (“RDNT”) and the City of Bloomington (“Bloomington”). RDNT owns the Martin Luther Campus (“Campus”) located in Bloomington, which consists of two buildings—the Martin Luther Care Center and Meadow Woods Assisted Living. Back in September of 2011, RDNT sought a conditional use permit from Bloomington to expand the assisted living services it already offered. This expansion included the addition of a third building. RDNT’s reasoning would be that the additional building would allow for persons in its care unit to be able to transfer to assisted living units. The conditional use permit requested that the new building be three stories tall and contain 67 “catered living units” in addition to the 117 units that already existed in its assisted living facility.

A public hearing was held on November 3, 2011. The major opposition to the application was the increased amount of traffic. Bloomington’s planning commission voted to recommend denial of the application. The reasoning was based on the staff report that concluded the application would violate Bloomington’s comprehensive plan because: 1) it is not adjacent to an arterial or collector street; 2) it is not in close proximity to transit, amenities and services; and 3) it would not preserve the character of the surrounding low density, single family neighborhood.

Bloomington’s City Council reviewed the application, two traffic studies (one prepared by Bloomington’s expert and one prepared by RDNT’s expert), and information from the neighborhood. The neighborhood comments were both in favor and against. The City Council voted 4-3 to deny the application. The first three reasons set for by the City Council were that the application conflicted with the comprehensive plan revisions. The last reason, however, was
because the City Council felt the application violated Bloomington’s permit ordinance, which requires the “proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and welfare."

The case was heard in district court, which reversed the denial. The Minnesota Court of Appeals reversed the trial court and reinstated Bloomington’s denial.

The Minnesota Supreme Court narrowed its analysis to the denial reason of the requirement that the proposed use not be “injurious” or “otherwise harm the public, safety, and welfare” of the neighborhood.

In upholding Bloomington’s denial, the Court held that based on prior case law, cities can deny conditional use permits if it “endangers the public health or safety or the general welfare of the area affected of the community as a whole.” Thus, the Court found that the ordinance was legally sufficient.

The Court then examined Bloomington’s factual basis for denial and found, that even though Bloomington’s traffic report differed from RDNT’s, it was still a “sufficient factual basis to determine that the increase in traffic would injure the neighborhood or otherwise harm the public health, safety and welfare,” effectively rejecting RDNT’s argument that Bloomington’s evidence was “insufficient.”

**Conclusion**

In summary, this case highlights that there can be numerous hurdles for a land owner when seeking a conditional use permit, including subjective reasons such as “public safety, health and welfare.”

On Jul 8, 2018, at 4:51 PM, Marie Calabria < > wrote:

I see by your bio that you are a tenured public servant and want to thank you for that. This is likely not your first time being in this position.

I am writing as a new resident of Mill Run. We moved in on June 1, specifically to be in the school district and send our girls to North and the Sr High. We moved in partially, as soon as we could, as our girls were ecstatic about taking the bus the last week of school. We previously lived in Plymouth and drove our girls daily to school.

Our first attempt to catch the bus in the morning left me shocked at the rush hour traffic and the lack of space the bus has to stop safely. If this was a flat stretch with visibility to oncoming traffic it would lessen the risk. But with the hills, narrowness of the road and the tight Fetterly intersection the experience was nerve-racking. Several buses stop there from different public, charter and private schools and they stop many times during the day ending with after school activities.

I have limited experience with working through safety concerns and city ordinances. At our previous residence there were fatalities in a similar situation on a county road that got busier through development without adequate consideration of safety. That particular location was not as tight or as busy as the Mill Run/Fetterly intersection. The eventual solution was adding a stop sign, cross walk, turning lane and lowering the speed limit on the county road.
I understand that the county has proposed future changes to address the added traffic and has not denied the access point. This falls now with the city to address the safety concerns. Since moving in I have noticed pedestrians walking along Co Rd 73. My first thought when seeing any pedestrian or cyclist is for their safety given the happenings at my previous residence.

In an attempt to be helpful I am telling you my story and asking two things:

1. That you spend some time at the intersection tomorrow at rush hour.
2. That you vote in favor of safety and deny the CUP on the grounds that it will compromise vehicular and pedestrian safety at the intersection. The area is simply too constrained for safe use by all.

Thank you for taking the time to read this and consider my requests. I cannot attend the meeting on Monday but my husband is planning on attending. I welcome your input and questions in advance of the meeting.

In peace,

Marie C.

Marie F. Calabria

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From: Jim and Amy  
Sent: Friday, July 6, 2018 10:38 AM  
To: Brad Wiersum <bwiersum@eminnetonka.com>; Tony Wagner <twagner@eminnetonka.com>; Deborah Calvert <dcalvert@eminnetonka.com>; Mike Happe <mhappe@eminnetonka.com>; Patty Acomb <pacomb@eminnetonka.com>; Bob Ellingson <bellingson@eminnetonka.com>; Tim Bergstedt <tbergestld@eminnetonka.com>; jan.callison@hennepin.us  
Cc: Loren Gordon <lgordon@eminnetonka.com>; Julie Wischnack <jwischnack@eminnetonka.com>; Brad Fritz <bafritz@DELOITTE.com>; Lori Fritz < >; Stu Silberman <stusilberman@gmail.com>; Alison Silberman < >; Bruce Simon < >; Deborah Powell < >; David Too Tall Carlson < >; Cheryl Larson < >; Joseph Soo < >; Kristin Soo < >; Susan Flint < >; Michael Leirdahl < >; Nancy Lurie < >; Todd Lurie < >; Judy Sandler < >; Carl Smith < >; Angela Meshbesher < >; Amy Weiss < >; Phil Eckhardt < >; Susan Wiens < >;  
Subject: Proposed County Road 73 Restriping Plan  
Importance: High  

Dear Commissioner Callison, Mayor Wiersum and City Council Members:

We have reviewed the letter from Hennepin County to the City of Minnetonka with the proposed changes to County Road 73 to accommodate the proposed Chabad development. As neighborhood residents who travel Hopkins Crossroad multiple times per day, we have a number of concerns:

1. A more northern access point to the proposed development has gone from a requirement to a request. Leaving the current applicant’s driveway in place will put Mill Run, Fetterly and the
applicant’s driveway within 150 feet of each other on a road that carries nearly 15,000 vehicles a day. Our understanding is that is a variance from the county’s typical guideline of 300 feet. **Pursuant to the language in the City of Minnetonka’s Conditional Use Permit, it is an unsafe situation that will create an undue adverse impact on the public health and safety of the surrounding area.**

2. As at least two neighbors have noted in their correspondence to the city, the loss of the dedicated right lanes will put Fetterly and Mill Run school bus stops fully in traffic. We have two families who have moved into Mill Run in the last three months with children who will be riding the buses in the fall. Is it advisable and in the best interests of the people whom you represent to allow a change from dedicated right turn lanes to a situation where a school bus stops fully in the flow of traffic at or near rush hour on a road that carries nearly 15,000 vehicles a day? **Pursuant to the CUP, the undue adverse impact on public health and safety from reducing the margin of error for the safety of school children getting on and off of a bus should be grounds for the denial of the Chabad application.**

3. Creating three lanes and reducing each lane to eleven feet in width will be visually confusing and will make left hand turns out of Mill Run, Fetterly and the applicant's driveway onto a road that carries nearly 15,000 vehicles per day that much more dangerous because the turning vehicle will have to cross two lanes to get onto the road instead of one. Narrowing the lanes and the shoulders, particularly in the winter, further reduces the margin for error for both turns and trips.

4. The county and city’s approval of the restriping plan would allow a narrowing of the shoulders from Overlook to Hillside in two extended stretches. The obvious consequence is that pedestrians and bicyclists will be forced to walk and ride that much closer to traffic on a road that carries nearly 15,000 cars a day. **Pursuant to the CUP, the undue adverse impact on public health and safety should be grounds for denial of the Chabad application.**

Thank you for your review and consideration of this email.

Best Regards,

Jim Moscowitz and Amy Taswell
11120 Mill Run

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**From:** Angela Meshbesher < >

**Sent:** Friday, July 6, 2018 12:12 PM

**To:** Julie Wischnack <jwischnack@eminnetonka.com>

**Subject:** Proposed Chabad Development- comments for City Council

Hello, Ms. Wishnack:

Attached find a copy of the email we sent council members earlier this week- I think I was supposed to copy you, as well, for inclusion in the Memo for the Council Meeting.

Thank you!

Angela Meshbesher
Dear Council Members:

We have written previously in opposition to the proposed Chabad Center and the reservations we raised earlier remain.

We have received the Proposed Hopkins Crossroad Restriping Plan and have several additional concerns. The Restriping Plan does include a center turn lane in an attempt to address the valid concerns about left turns into the proposed Chabad Center. However, in so doing, it creates new concerns.

There are 47 families living in the Fetterly Woods neighborhood. The current right turn lane is heavily used but is eliminated in the Restriping Plan in order to make room for the center left turn lane.

Traffic on Hopkins Crossroads is often heavy and fast moving. To eliminate the right turn lane onto Fetterly greatly increases the chances of high-speed rear end collisions at this intersection.

MN DOT Guidelines suggest dedicated right turn lanes when 100 or more turns a day are made. Given the traffic generated by the residents- not to mention the many UPS, Fed Ex and Amazon deliveries that come in every single day, I am certain that far more than 100 turns a day are made from the existing right turn lane. The intersection is also an already dangerous school bus stop for at least four school buses per day. Again, the restriping just makes it more hazardous.

In addition to eliminating the right turn lane on Fetterly (and Mill Run) the plan reduces the already small shoulders on the road all the way from Mill Run to Overlook Pass in order to make room for the center left turn lane. During many months of the year, the existing minimal shoulders are eliminated by snow and ice on the sides of the road. Whatever the season, though, the concerns raised earlier about pedestrian and cyclist use of this road are only increased by the Proposed Restriping Plan.

We have been present at the Planning Commission and Council Meetings regarding this proposed development. When the vote was made at the final planning commission meeting, at least 2 of the "yes" voting commissioners indicated in their remarks that it was a very close call and that they had changed their minds back and forth several times throughout the evening’s comments.

We urge you to not rubberstamp this proposal. There is a perception that the City is willing to ignore what appear to residents to be very obvious concerns about driver, pedestrian and cyclist safety on Hopkins Crossroad in order to push this development through.

Given our previously stated concerns about the proposed development, together with the new concerns raised by the Restriping Proposal, we strongly believe it would be appropriate to decline approval at the July 9th meeting. Barring that, we urge you to put
the brakes on the development so that these new traffic concerns can be studied and addressed.

Respectfully,

Daniel and Angela Meshbesher
2320 Nottingham Ct.
Minnetonka, MN 55305

From: Gail Dahl < >
To: dcalvert@eminnetonka.com, pacomb@eminnetonka.com, bellingson@eminnetonka.com, tbergstedt@eminnetonka.com, twagner@eminnetonka.com, bwiersum@eminnetonka.com
Date: July 8, 2018 at 11:27 PM
Subject: The Chabad Center Development

To: Minnetonka City Leaders

Re: Chabad Center for Jewish Life

July 8, 2018

My concerns center on the shoehorning of this project into a too small lot on a too busy county road with inadequate, unsafe traffic control.

1. Several weeks ago County Rd 73 was closed for two days for road repair near the intersection of Hillside. Closed road/detour signs were ignored, especially from the south as the barriers were invisible. When the drivers reached the barrier, just north of Fetterly and Mill Run they turned into Fetterly Road --- literally dozens of them; proceeded to drive to the dead end of Fetterly Lane; then had to turn around in two private drives, and pass more cars coming into the neighborhood, creating an unsafe logjam. The small “no exit” sign was obviously inadequate at the beginning of the road. This situation gave us an alarming, and very real taste of what would happen with a large event at the Chabad Center with limited parking and attendees looking for a place to park, and after the event, a place to exit the area. Our road is 16 feet wide with a sharp curve and limited visibility. We live on this road because it feels like driving down a country road, not a major thoroughfare.

2. The reconfiguration of County Road 73 from the county offers a dangerous alternative for the purpose of allowing easier access to this project – it removes the right turn lanes into Fetterly Road and Mill Run. Our neighborhood children wait for the bus at the top of Fetterly Road and presently the bus stop area is buffered by the right turn lane, protecting the children. Can you imagine how unsafe it will be for children to stand right next to the main southbound lane of Cty Rd 73? The speed limit is 40 miles per hour and the timing for the buses is during the rush hour period. This is truly a life threatening situation and should be unacceptable to all.

3. Also, it was disappointing that the Traffic Engineer from Minnetonka did not address, at the last City Council meeting, the number of school buses using Hillside Lane and the number of cars going to and from the high school and Tanglen adding more congestion to this very limited area.
It is my suggestion that the City of Minnetonka do a favor to the Chabad community by denying this permit, even though it meets all guidelines. There is a common sense element to all of this, and it is obvious to us that shoehorning this project into this inadequate, cramped area is not fair to the Chabad community or the Minnetonka neighborhood. It would not allow for growth of the congregation for all of the services it provides, or if it grows, more pressure on all of these concerns. Certainly, Minnetonka has more suitable lots available that would meet their needs.

Thank you for your dedication, consideration, and concern in determining this outcome.

Gail Dahl
11612 Fetterly Lane

From: Michael Leirdahl < >
Date: Saturday, July 7, 2018 5:19 PM
To: Julie Wischnack <jwischnack@eminnetonka.com>, Loren Gordon <lgordon@eminnetonka.com>
Cc: Brad Wiersum <bwiersum@eminnetonka.com>, Tony Wagner <twagner@eminnetonka.com>, Bob Ellingson <bellingson@eminnetonka.com>, Patty Acomb <pacomb@eminnetonka.com>, Michael Happe <mhappe@eminnetonka.com>, Tim Bergstedt <tbergstedt@eminnetonka.com>, " <> , " <> , Jo Soo <> , " <>
Subject: FW: FW: Chabad-Neighbors Landscaping Plan

Julie and Loren,

Susan and I want to clarify the City’s record concerning the negotiations regarding the Chabad landscaping plan. The letter submitted on June 28, 2018 by Marvin Liszt, the attorney for Chabad, on behalf of Rabbi Grossbaum does not accurately reflect our discussions and frankly borders on disingenuous. As you know we (and the Soos) met in the spirit of cooperation with the applicant, Architect Parker, Attorney Liszt and the both of you to try to come to an agreement with respect to the landscaping of this project. At most every turn we were met with condescension and sarcasm by the applicant and Architect Parker. At several times during these discussions through your hard work we thought we had several workable solutions only to find out later that the applicant would reject those options and retreat to doing as little as possible to address the issues the neighbors raised with respect to the landscaping. Now once again in Attorney Liszt’s most recent letter to you the applicant has dismissed out of hand the multiple issues that we (and the Soos) made clear during those two meetings. The applicant has chosen to attack the neighbors for our requirements as well as the requirements for issuing a CUP and the City Council’s directive that the landscape plan protect our properties from the inevitable intrusion of sound and light and to provide visual protection from a building (if approved) that will be massively out of scale in proportion to the neighborhood. During the meetings Loren indicated that a fence will provide a sound barrier and the proposed arborvitae will not. We believe that a fence also provides a safety barrier for our properties from the activities on the proposed center’s grounds. In addition, it will be a minimum of five to seven years for the arborvitae to grow to a height of 10’ and that is a long period of time to have minimal to no visual, sound and light protection not to mention the loss of our family’s privacy. With our property bordering the parking lot we will have the addition of many car headlights, car doors closing, engines starting, conversations while traversing the parking lot to the proposed center, conversations before and after services or events in the parking lot to cope with. We believe all of the points presented in this paragraph are rational, well thought out reasons for the requirement of a 10’ fence.
We also take issue with (and are offended by) Attorney Liszt’s gratuitous comment that we (or
the City) are imposing some sort of penalty on the applicant regarding the height of the fence.
See below quote from Attorney Liszt’s letter.

“Finally, the suggestion of increasing the height of the fence strikes me as being somewhat
punitve considering the above”

Not once in our two meetings did we speak of punishing Chabad by increasing the height of the
fence. In fact we have asked all along for more height through either a berm with a fence on the
top of it or a higher than 6’ fence. We feel Chabad’s Attorney’s quote sums up
applicant’s general negotiation approach and reflects their repeated intent to be rigid and
uncompromising and to not negotiate in good faith. And while we had hoped for a neighbor who
was willing to consider the impact that their proposed building will have on not only their
immediate neighbors but the rest of the community, it has become abundantly clear that their
only interest is to force their project into this location without regard to the neighborhood impact.
We believe that it is the City staff’s and Council’s obligation to enforce the CUP and City Code
provisions that would ensure that we, the Soos and the citizens of this community are protected
from just such actions and we hope you will take those obligations seriously.

We also dispute Attorney Liszt’s claim in Item 4 of his letter that we (and the Soos) are gaining
extra land square footage for our property. The property line remains the property line. The point
of the agreement of where the trees were to be planted was so that we and the Soos would not
lose any of our existing land square footage because of the Chabad Center being built. Attorney
Liszt’s statement is misleading at best.

Finally, if despite all the CUP requirements that will be compromised the Chabad Center is
approved, we renew our request that the city staff and the Council require the applicant to install
a 10 foot fence between the Flint-Leirdahl and Chabad property in addition to the two rows of
arborvitae as agreed to by the parties and outlined in our email to Loren dated June 26th. We
have included a copy of our email reflecting what we believed the agreement was leaving
second meeting with the applicant below.

Sincerely,

Michael Leirdahl and Susan Flint
2390 Vernon Circle
Minnetonka, MN 55305

From: Michael Leirdahl <
Sent: Tuesday, June 26, 2018 10:45 AM
To: 'Loren Gordon' <lgordon@eminentonka.com>
Cc: 'Jo Soo' < >; " < >; Susan Flint Subject: FW: Chabad-Neighbors Landscaping Plan

Loren,

Thank you for your response. However the yellow highlighted area below in your email is not
what we recall as the end result of the talks.
Attached is a drawing taken from the city website and modified as we recall Aaron’s plans from that day. He had removed a row of arborvitae from the parking lot area next to my lot to account for snow removal. Those plant have been removed on the attachment.

Below is what I believe was the plan that we agreed to and the Soo’s agreed to (Kristin and Jo reviewed this email and provided input).

- No berm because of endangering existing trees at the property line with grade changes (as indicated by Chabad's architect)
- The fence would be roughly **6’ into Chabad’s property**, running from the northeast end of Chabad's property to around 70’ from the southeast corner of the site boundary
  - There would be one row of arborvitae on the east side of the fence, running parallel along the entire length of the fence, and to the southeast corner of the site boundary. This row of arborvitae is on Chabad's property
  - For the area adjacent to the parking lot, there would be only one row of arborvitae on the Leirdahl/Flint side of the fence leaving room for snow on the Chabad side
  - From the southeast edge of the parking lot going south along the entire length of the fence, and to the southeast corner of the site boundary , there would be arborvitae on both the Leirdahl/Flint/Soo side of the fence and Chabad's side
  - The height of the fence by Leirdahl/Flint would be 10’ high, to mitigate light and noise pollution
  - The height of the fence by Soo would be 8’ high, to mitigate light and noise pollution
- Because of the eventual height of the arborvitae, Leirdahl/Flint/Soo is dropping the request for a cedar fence, but a quality treated wood would be used
- The “good” side of the fence to face the Leirdahl/Flint/Soo east side (we see the boards and not the frame)

If you remember the results of the meeting differently we have then we believe we need to talk again with the complete group to confirm this outcome.

Loren, thank you for your apology (Michael) although it was total unneeded. What offended me was the Rabbi’s sarcasm, lack of respect, and statement that we had had since January to review/consider the plan. I believe we were prompt, succinct, respectful and appropriate in our response from the previous week’s meeting and have been all along through this process.

Please let me know how you wish to proceed on resolving the differences in our memories/notes.

Thank you for your help.

**Michael Leirdahl and Susan Flint**

2390 Vernon Circle

Minnetonka, MN 55305

Michael
From: Loren Gordon <lgordon@eminnetonka.com>
Sent: Monday, June 25, 2018 4:10 PM
To: 'Michael Leirdahl' <Cc: Susan Flint>
Subject: RE: Chabad-Neighbors Landscaping Plan

Michael,

I did not send around a second plan from last week’s meeting. My plan was to include your and the Soo’s preferences in the staff report that will go to the July 9 city council meeting. Essentially, the report will say (in more detail than this) the Leirdahl’s would like 10’ fence located on the property line and the Soo’s would like an 8’ fence with a berm. Landscaping will be determined in consultation with the city to provide the best solution for healthy trees with foliage for screening.

Let me know if you have additional questions.

One other thing. I was also reflecting on our meeting last week. Just before the meeting got going, the architect make a comment about the rain and increasing fence heights. You may remember I chuckled after the comment. At the city we deal with lots of long grass complaints. That comment was funny to me as rain brings on those complaints. That’s where my mind was. What I didn’t think about at the time was the fact that he was talking about the fence growing in height. I realized my chuckling may have reflected badly on my view of the situation, put down your position and showed a lack of respect. If that’s how you perceived it, know that wasn’t my intention. Nonetheless, I would like to apologize to you if you understood my actions to be derogatory.

Regards,

-Loren

From: Michael Leirdahl <
Sent: Monday, June 25, 2018 2:25 PM
To: Loren Gordon <lgordon@eminnetonka.com>
Cc: Susan Flint
Subject: RE: Chabad-Neighbors Landscaping Plan

Hello Loren,

I was wondering if you did a follow up from last week’s meeting at the Chabad property on landscaping. If so, will you please send or resend to me as I did not receive. If not are you going to do one?

Thank you,

Michael Leirdahl and Susan Flint

2390 Vernon Circle
From: Loren Gordon <lgordon@eminnetonka.com>
Sent: Monday, June 11, 2018 6:24 PM
To: '; 'Jo Soo' <Cc: Julie Wischnack <jwischnack@eminnetonka.com>; Susan Thomas <sthomas@eminnetonka.com>
Subject: Chabad-Neighbors Landscaping Plan

Attached is an illustrative summary of our meeting today on the screening/buffering components within the eastern landscape area.

Included are the following pages in the .pdf:

- An overlay on the most current site/building plan generally depicting the screening/buffering areas adjacent to/on the Leardahl/Flint and Soo properties. The plan shows fencing and landscaping locations. The plan notes the separate treatment of landscaping as screening/buffering #2 (referring to the on site option discussed) and screening/buffering #3 (also as discussed).
- A more detailed plan section of Option #2 adjacent to/on the Leardahl/Flint property and Option #3 adjacent to the Soo Property.
- Pages 3 and 4 are my notes from our meeting on site today FYI.

Few other points:

- We discussed that the landscaping would complement existing landscaping to the degree possible. The specific landscape materials would be determined by Chabad’s landscape architect and reviewed and approved by the city natural resources staff.
- The extent of the southern fence panel adjacent to the Soo property would depend on factors of 1) matching grade, which rises going south, and 2) screening of building edge and outdoor play area from the Soo house/activity area.
- As noted on page 2, the landscaping on the Leardahl/Flint property would complement existing landscaping and would be field sited for existing trees/landscaping. The new landscaping planted by Chabad would become the ownership/responsibility of the property owner.
- The landscape plant locations on the Chabad side of the fence/fence panel sections would also adjust to use areas such as the outdoor play area/Mikva.

Let me know if any of the above is not reflective of our conversation of if there are other points missed.

Regards,

-Loren

Loren Gordon, AICP | City Planner
City of Minnetonka | eminnetonka.com
Tony,

I have a number of traffic concerns related to the Chabad Center Proposal on Hopkins Crossroad and the 6-8-2018 proposed Hennepin County restriping plan to accommodate the proposed Chabad project:

- **I don't see adequate space for bicycles to safely ride on either side of Hopkins Crossroad.** I ride my bike on that stretch of Hopkins Crossroad frequently especially to get over to the Hopkins High School area. I also observe other bike riders in that stretch when I'm driving. I think it would be very important from a safety perspective to insure there is adequate and safe space for bicyclers.

- **Walkers would encounter the same safety issues** as bikers, noted above.

- **Without the dedicated right turn lane providing some buffer, under the restriping proposal people turning right onto Fetterly will be slowing down and regularly stopping the main flow of 40 mph+ traffic on Hopkins Crossroad.** It's helpful today to have a dedicated turn lane to make a right turn into Fetterly Road when driving south on Hopkins Crossroad so that you can slow down and sometimes pause to safely make the turn into Fetterly. Because of the narrow nature of Fetterly Road (barely 2 car widths wide) where it intersects with Hopkins Crossroad, if any cars/garbage trucks/delivery trucks/etc. are heading out of Fetterly at the time when a car is turning in, it needs to be a slow and careful maneuver to get around the vehicle waiting to leave Fetterly. And when there are vehicles (of all sizes) parked at the top of Fetterly Road in either direction, cars turning into Fetterly have to navigate around them. This will create a regular stop and go situation – especially during the rush hour periods – for traffic that today can continue to flow without interruptions.

- **Turning left from Fetterly Road onto Hopkins Crossroad already can be time consuming, especially during rush hour periods.** I’m not sure that the new restriping proposal would make this any easier and could make it harder.

- **The issues above will only be made exponentially worse whenever Hopkins Crossroad is used as an alternate route** for lengthy periods of time whenever any work is being done on either Highway 169 or Interstate 494. The time delays in safely getting in/out of Fetterly Road is already noticeably worse when commuters use Hopkins Crossroad as an alternate route.

Thank you for factoring in these concerns when you consider whether adding a large non-residential structure with higher traffic demands really works in this residential area.

-Jim Fremont
Hello Loren and Tony -

I am writing to follow up on the most recent proposal for the Chabad Center for Jewish Life on Hopkins Crossroad.

I greatly appreciate the work the applicant has made to adapt their original development proposal to address the various concerns the neighborhood had at the time of their initial request. However, the final plan still is problematic and I am worried about the long range impacts of a development of this size at this location. Primarily the increased traffic on this already very busy thoroughfare and the added exit and entrance point in proximity to the already challenging Fetterly Road/Hopkins Crossroad intersection give me great pause. The changing of the road striping to accommodate a left turn land eliminates the right turn lane into our Fetterly Road neighborhood, a lane that has always been greatly appreciated in accommodating access to our area without impeding thru traffic on this blind hillside. The new striping also seems to all but eliminate any possible pedestrian and bike land dedication along Hopkins Crossroad, which is sorely needed. Pedestrian and bike traffic along this route currently feels like you are taking your life in your own hands, and the new striping will only compound this danger.

Again, I appreciate the applicant's attempts to conform to this property's limitations, but in the end I don't feel a development of this magnitude is the right fit for the lot(s) or for the surrounding neighborhoods. I request that you reject the conditional use permit application.

Thank you for your time.
Sincerely,
Nathan Anderson
2337 Nottingham Court, Mtka

I believe you should pass the proposal regarding Chabad Center for Jewish Life.

Peter Warhol
2445 Hopkins Crossroad
Minnetonka, MN 55305
Rabbi Grossbaum and Loren Gordon,
Attached find pdfs of the view from the Soo property requested by one of the City of
Minnetonka Councilmembers.
B. Aaron Parker
B. Aaron Parker & Associates | Metropeligo, P.C.
architecture + urban design
4700 Minnetonka Boulevard
Minneapolis, MN 55416

From: "Susan Wiens" < >
To: "Tony Wagner" <twagner@eminnetonka.com>, "Brad Wiersum"
<bwiersum@eminnetonka.com>, "Deborah Calvert" <dcalvert@eminnetonka.com>, "Mike
Happe" <mhappe@eminnetonka.com>, "Patty Acomb" <pacombe@eminnetonka.com>, "Bob
Ellingson" <bellingson@eminnetonka.com>, "Tim Bergstedt" <tbergstedt@eminnetonka.com>
Ellingson" <bellingson@eminnetonka.com>, "Tim Bergstedt" <tbergstedt@eminnetonka.com>
Cc: "Jim and Amy" < >, "Michael Leirdahl" <>, "Lori Fritz" < >, "Jo Soo" < >, "" < >, "Jon Wiens" < >

Subject: Chabad Proposal

Dear Mayor Wiersum and Council Members,

I noticed yesterday that Lori Fritz, from the Mill Run neighborhood, sent you an excerpt from a Minnesota Supreme Court decision regarding city government's ability to deny a CUP application based solely upon health, safety and welfare considerations. I am attaching the entire case as I strongly believe that each council member has the authority, under the circumstances of the Chabad application, to deny Chabad's request for a CUP. Yesterday, I sent you a chart of decision points that demonstrates the latitude you have in finding the Chabad proposal does not meet the CUP requirements because it adversely impacts the health and safety of Minnetonka residents and others in the community driving along Hopkins Crossroads.

The Minnesota Supreme Court's 2015 decision in RDNT v. City of Bloomington states that the supreme court has "long held that a city may deny a conditional use permit application if the proposed use endangers 'the public health or safety or the general welfare of the area affected or the community as a whole.'" The neighbors have demonstrated the health and safety of the residents and the community are adversely impacted by the proposed Chabad development. At the council meeting tonight, the neighbors will demonstrate that the project endangers the public health and safety of the community because:

1. The curb cut as currently proposed violates the access spacing safety standards established by county and state guidelines. These well established standards are safety standards applicable to a-minor arterial, reliever category roads such as Hopkins Crossroads. The standards limit access to 660 feet for limited access such as right turns in and out. For full access, the standards require the accesses to such roads be at 1,320 foot intervals. The proposed access into Chabad, which is full access for right and left turns, is just 150 feet away from the Fetterly Rd-Mill Run intersection. This curb cut creates significant new safety issues as both Chabad visitors and Fetterly-Mill Run residents all attempt to make left and right hand turns without proper spacing to allow drivers time to see where other drivers are headed.

2. The new proposal for three lanes on Hopkins Crossroads eliminates shoulders for 210 feet on both sides of Hopkins Crossroads south of the Hillside intersection. For the next 190 feet south along the eastern side of Hopkins Crossroads, the shoulder is reduced to 2-5 feet. The insufficient shoulders creates added safety issues for pedestrians as there is no place to walk on a significant portion of the road. Additionally, pedestrians that need to cross Hopkins Crossroads will now need to navigate three lanes of traffic instead of two. The added third lane makes all lanes much more narrow adding to the potential for traffic and pedestrian collision. The Council should be considering how to safely separate pedestrians from vehicles by sidewalk or pedestrian barrier. Contemplating just shoulders on a three lane arterial road is not sufficient to protect pedestrians from the added safety risks posed by this project.

3. Also note that the well established safety issues created by the proposed project are much more significant than the facts presented in the City of Bloomington case and, therefore, are even more likely to withstand a challenge to a decision to deny the CUP request.
We look forward to discussing these safety issues with you tonight.

Thank you,

Susan Wiens
2346 Vernon Cir.
RDNT, LLC v. City of Bloomington

Supreme Court of Minnesota
March 18, 2015, Filed
A13-0310

Report
861 N.W.2d 71 *; 2015 Minn. LEXIS 118 **
RDNT, LLC, Appellant, vs. City of Bloomington, Respondent.

Prior History: [*1] Court of Appeals.


Disposition: Affirmed.

Core Terms
comprehensive plan, municipal, traffic, ordinance, zoning, City’s, planning, conditional use permit, zoning ordinance, neighborhood, trips, proposed use, reasons, conditional use, public health, capricious, decisions, land-use, village, street, requirements, statutes, city council, regulations, generation, estimated, controls, zoning regulation, property owner, factual basis

Case Summary

Overview
HOLDINGS: [1]-A city’s decision to deny a conditional use permit application was not unreasonable, arbitrary, or capricious because the city’s conditional use permit ordinance was legally sufficient, and because the city based its decision on the legally and factually sufficient ground that the proposed use would be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and welfare, which was supported by traffic studies, the city engineer’s testimony, and neighborhood testimony; [2]-The city’s determination that the applicant’s proposed efforts to mitigate traffic were insufficient was not unreasonable, arbitrary, or capricious because the city adequately considered the proposed mitigating conditions in several ways, and because the applicant failed to meet its burden to show that it could satisfy the standards specified by ordinance.

Outcome
Decision affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Local Governments > Ordinances & Regulations

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN1 Standards of Review, De Novo Review

The interpretation of an existing ordinance is a question of law for the court. An appellate court reviews a question of law de novo.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Real Property Law > Zoning > Judicial Review

Business & Corporate Compliance > ... > Real Property Law > Zoning > Administrative Procedure

Evidence > Burdens of Proof > General Overview

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

HN2 Standards of Review, Substantial Evidence

Susan Wiens
A reviewing court will reverse a governing body’s decision regarding a conditional use permit application if the governing body acted unreasonably, arbitrarily, or capriciously. Because zoning laws are a restriction on the use of private property, a landowner whose application for a conditional use permit has been denied has a lighter burden than one who challenges approval of a permit. There are two steps in determining whether a city’s denial was unreasonable, arbitrary, or capricious. First, the court must determine if the reasons given by the city were legally sufficient. Second, if the reasons given are legally sufficient, the court must determine if the reasons had a factual basis in the record.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

Governments > Local Governments > Ordinances & Regulations

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

**Zoning, Ordinances**

Bloomington, Minnesota’s conditional use permit ordinance states in part that, prior to the approval of a conditional use permit, a finding must be made that the proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare. Bloomington, Minn., Code Ordinances ch. 21, art. V, div. A, § 21.501.04(e)(5) (2014). A city may deny a conditional use permit application if the proposed use endangers the public health or safety or the general welfare of the area affected or the community as a whole. However, the absence of more express standards makes denial of a special-use permit more, not less, vulnerable to a finding of arbitrariness. Thus, the city conditional use permit ordinance is legally sufficient.

Administrative Law > Judicial Review > Standards of Review > General Overview

Real Property Law > Zoning > Judicial Review

**Judicial Review, Standards of Review**

Upon review of a city’s decision, a court’s function is not to weigh the evidence, but to review the record to determine whether there was legal evidence to support the zoning authority’s decision. With expert witnesses, the court does not attempt to weigh the credibility of conflicting experts, but instead reviews the record to ensure that the decision had support in the record. In other words, courts should ordinarily defer to a city’s judgment on conflicting evidence.

Governments > Courts > Authority to Adjudicate

Governments > Legislation > Interpretation

Governments > Local Governments > Ordinances & Regulations

Governments > Courts > Judicial Precedent

**Courts, Authority to Adjudicate**

A court’s task in a case is not to make legislative policy but to interpret and apply existing statutes, ordinances, and precedents. Policy-related issues are best left to the legislature. When interpreting statutes, it is the court’s role to rely on what the legislature intended over what may appear to be supported by public policy.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Administrative Procedure

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

**Zoning, Administrative Procedure**

*Minn. Stat. § 462.3595* provides that conditional uses may be approved by the governing body by a showing by the applicant that the standards and criteria stated in the ordinance will be satisfied. *Minn. Stat. § 462.3595, subd. 1* (2014). If a conditional use permit applicant demonstrates to the governing body that imposing a reasonable condition would eliminate any conflict with the ordinance’s standards and criteria, it follows that the governing body’s subsequent denial would be arbitrary.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

Susan Wiens
Zoning, Ordinances

Minn. Stat. § 462.3595 (2014) places the burden on the applicant to satisfy the standards and criteria in the ordinance. To the extent there is any conflict between prior case law and the later-enacted statute, the plain language of the statute controls.

Syllabus

1. The City’s decision to deny a conditional use permit application on the ground that the proposed use would be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and welfare was not unreasonable, arbitrary, or capricious.

2. Having considered the applicant’s proposed conditions for mitigation, the City’s determination that the proposed conditions were insufficient was not unreasonable, arbitrary, or capricious.

Affirmed.

Counsel: Tamara O’Neill Moreland, Larkin, Hoffman, Daly & Lindgren, Ltd., Bloomington, Minnesota, for appellant.

Paul D. Reuvers, Stephanie A. Angolkar, Iverson Reuvers Condon, Bloomington, Minnesota, for respondent.

Jonathan W. Lips, Natalie Wyatt-Brown, Halleland Habicht P.A., Minneapolis, Minnesota; and Benjamin T. Pelletier, Saint Paul, Minnesota, for amicus curiae Aging Services of Minnesota.

John M. Baker, Katherine M. Swenson, Greene Espel PLLP, Minneapolis, Minnesota, for amicus curiae Minnesota Chapter of the American Planning Association.

Mark R. Whitmore, Daniel R. Olson, Bassford Remele, P.A., Minneapolis, Minnesota, for amicus curiae Ebenezer Society.

Susan L. Naughton, League of Minnesota Cities, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

Terrance W. Moore, Carol R. M. Moss, Hellmuth & Johnson, PLLC, Edina, Minnesota, for amicus curiae LifeSpan of Minnesota, Inc.

Kyle D. White, Saint Paul, Minnesota, for amicus curiae National Alliance on Mental Illness of Minnesota.

Judges: LILLEHAUG, Justice. DIETZEN, J., took no part in the consideration or decision of this case. ANDERSON, Justice (concurring).

Opinion by: LILLEHAUG

Opinion

[*72] LILLEHAUG, Justice.

RDNT, LLC asks us to hold that the City of Bloomington’s decision to deny RDNT’s conditional use permit application was unreasonable, arbitrary, and capricious, and to hold that the City did not properly consider RDNT’s proposed traffic-mitigating conditions. We hold that the City’s decision was not unreasonable, arbitrary, or capricious, as the City based its decision on a legally and factually sufficient ground: that the proposed use would be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and welfare. We also hold that the City’s determination that RDNT’s proposed efforts to mitigate traffic were insufficient was not unreasonable, arbitrary, or capricious.

I.

RDNT, LLC ("RDNT") owns the Martin Luther Care Campus [*3] ("Campus"), located [*73] in Bloomington. The Campus consists of two buildings: the Martin Luther Care Center and Meadow Woods Assisted Living. The Campus provides a variety of services, including assisted living, memory care, skilled nursing, adult day care, and transitional care.

On September 27, 2011, RDNT submitted an application to the City for a conditional use permit. In its application, RDNT sought to expand its existing assisted living services by adding a third building to the Campus. RDNT stated that the expansion would allow those served by its existing transitional care unit to transfer into the assisted living units, thereby allowing them to "age in place."
At the time, the Campus consisted of 137 units in its skilled nursing facility and 117 units in its assisted living facility. The proposed addition would be three stories tall and contain 67 "catered living units," increasing the total units from 254 to 321: a 26 percent increase. It would also increase the staff from 186 to 202 employees: an 8 percent increase. And it would increase the total building square footage from 198,209 square feet to 321,264 square feet: a 62 percent increase.

On November 3, 2011, RDNT presented its application to the Bloomington Planning Commission in a meeting open to public comment. Numerous citizens spoke about the proposed expansion, with many voicing concerns about increased traffic. The Planning Commission unanimously voted to recommend denial of the conditional use permit application. The Planning Commission adopted the view of its staff report that the proposed expansion would violate the City's comprehensive plan because: 1) it is not adjacent to an arterial or collector street; 2) it is not in close proximity to transit, amenities, and services; and 3) it would not preserve the character of the surrounding low density, single family neighborhood. The Planning Commission also adopted the staff's view that the proposed use would violate the City's conditional use permit ordinance because it would be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and welfare. The staff based its views on estimated increases in traffic and on the size, density, and design of the proposed building.

The City Council met on November 21, 2011, to consider the application. Among other materials, the City Council reviewed traffic studies from two different experts estimating the future traffic volume that would be generated by the proposed expansion.

SRF Consulting Group, Inc. ("SRF"), hired by the City, conducted the first study. Using data collected on its own and by City staff, SRF calculated that the Campus generated 1,145 trips on an average day, resulting in 4.50 trips per bed. That figure exceeded the standard trip generation rate for similar facilities, which is 2.66 trips per bed. SRF relied on the 4.50 trips per bed rate in order to provide a "conservative estimate." SRF then examined the extent to which the proposed expansion would increase traffic. Using the "actual (collected) trip generation rates," SRF determined that the expansion would increase the daily number of trips from 1,145 to 1,447: a 26 percent increase. SRF concluded that the Campus generated trips on the higher end compared to similar facilities. SRF also concluded that "existing neighborhood roadways and intersections have sufficient capacity to accommodate the additional vehicles expected from the... expansion and no additional roadway improvements would be necessary to accommodate the expansion as proposed." SRF noted that delays at East Old Shakopee Road and East 98th Street would likely increase, but the increase would be "minimal."

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The City Council met on November 21, 2011, to consider the application. Among other materials, the City Council reviewed traffic studies from two different experts estimating the future traffic volume that would be generated by the proposed expansion.

In addition to the expert studies, the City Council received information from the neighborhood. Those in favor of the expansion highlighted the individual and community benefits of assisted living for the elderly. Those in opposition focused primarily on the effect that the Campus's existing traffic had on noise, safety, home values, and the general character of the neighborhood. Public comments given at the City Council meeting echoed the written concerns, with the primary emphasis on traffic issues.

By a vote of four to three, the City Council passed a resolution to deny RDNT's application for a conditional use permit. The resolution set forth four reasons for the denial. The first three reasons related to conflicts with
different comprehensive plan provisions. The fourth reason related to the City conditional use permit ordinance, which requires that the "proposed use will not be injurious [**8] to the surrounding neighborhood or otherwise harm the public health, safety and welfare." Bloomington, Minn., Code of Ordinances ch. 21, art. V, div. A, § 21.501.04(e)(5) (2014). The City Council found that the increase in square footage rendered the expanded Campus "incompatible with the scale and character of the surrounding low density, single family neighborhood." The City Council found that most structures in the neighborhood would be one-fifth or less than the size of the new addition. It also cited increased traffic volumes, projected to total between 1,377 and 1,447 daily trips, as injurious or otherwise harmful. The City Council further found that the traffic volume would be "over three and one half times the average daily trips" than if the 13-acre site were instead developed to a low density of three units per acre. And it found the various traffic concerns submitted by the public to be "credible and consistent with the traffic studies presented and staff analysis of the application." Finally, the City Council found RDNT's TDMP to be insufficient to [*75] avoid the injury, given the location and nature of the Campus.

RDNT filed a complaint and petition for alternative writ of mandamus [**9] with the Hennepin County District Court. On cross-motions for summary judgment, the district court granted summary judgment to RDNT and reversed the denial of RDNT's application. The district court held that, for each of the four reasons given, the City "misapplied certain standards, misrepresented the impact of certain studies, and appeared to ignore evidence to the contrary." Specifically, as to the fourth reason, the district court held that the record was insufficient to support a finding that the proposed use would injure the neighborhood or harm the community. The district court criticized the City's reliance on the SRF study and the generalized neighborhood opposition.

The City appealed. In an unpublished opinion, the court of appeals reversed, holding that the City appropriately exercised its discretion. *RDNT, LLC v. City of Bloomington*, No. A13-0310, 2014 Minn. App. Unpub. LEXIS 7, 2014 WL 30382 (Minn. App. Jan. 6, 2014). Of the four reasons given by the City for its decision, the court of appeals held that three were factually and legally sufficient. *2014 Minn. App. Unpub. LEXIS 7, [WL] at *2-9. On the fourth reason identified by the City, involving injury to the neighborhood and harm to the public health, safety, and welfare, the court of appeals held that the City ordinance from which [**10] that standard was derived was legally sufficient, and that the City was within its discretion in finding that the proposed use violated this ordinance, based on the square-footage and traffic evidence. *2014 Minn. App. Unpub. LEXIS 7, [WL] at *9.*

We granted RDNT's petition for review.

II.

RDNT argues that each of the City's four reasons for denying RDNT's conditional use permit application was arbitrary and capricious. We limit our consideration to the City's fourth reason: that the proposed use would violate subdivision (e)(5) of the City's conditional use permit ordinance. *3*

**HNR** [**F**] "The interpretation of an existing ordinance is a question of law for the court." *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). We review a question of law de novo. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003).

**HNR** [**F**] We will reverse a governing body's decision regarding a conditional use permit application if the governing body acted unreasonably, arbitrarily, or capriciously. *Schwardt v. Cnty. of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). *4* There are two steps in determining whether a [**11] city's denial was unreasonable, arbitrary, or capricious. First, we must

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2 The court did not address one of the comprehensive plan provisions considered by the City. *RDNT, 2014 Minn. App. Unpub. LEXIS 7, 2014 WL 30382 at *8.*

3 Because we hold this ground to be legally and factually sufficient, we do not need to address the three other grounds upon which the City based its decision. See *Hubbard Broad., Inc. v. City of Afton*, 323 N.W.2d 757, 765 n.4 (Minn. 1982) ("Not all of the reasons stated need be legally sufficient and supported by facts in the record.").

4 Since zoning laws are a restriction on the use of private property, a landowner whose application for a conditional use permit has been denied has a lighter burden than one who challenges approval of a permit. *Bd. of Supervisors of Benton Twp. v. Carver Cnty. Bd. of Comm's*, 302 Minn. 493, 499, 225 N.W.2d 815, 819 (1975).


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determine if the reasons given by the city were legally sufficient. C.R. Invs., Inc. v. Vill. of Shoreview, 304 N.W.2d 320, 325 (Minn. 1981). Second, if the reasons given are legally sufficient, we must determine if the reasons had a factual basis in the record. Id.

A.

We first address whether the City’s conditional use permit ordinance is legally sufficient. HN3 The City’s ordinance states in relevant part: "The following findings must be made prior to the approval of a conditional use permit: . . . (5) The proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare." Bloomington, Minn., Code of Ordinances ch. 21, art. V, div. A, § 21.501.04(e)(5) (2014). We have long held that a city may deny a conditional use permit application if the proposed use endangers "the public health or safety or the general welfare of the area affected or the community as a whole." Zylka v. City of Crystal, 283 Minn. 192, 196, 167 N.W.2d 45, 49 (1969). However, we have also held that the "absence of more express standards makes [**12] denial of a special-use permit more, not less, vulnerable to a finding of arbitrariness." Hay v. Twp. of Grow, 296 Minn. 1, 6, 206 N.W.2d 19, 22-23 (1973).

Thus, we hold that the City ordinance is legally sufficient, but will examine the factual basis for the City’s findings more closely than we would under a less subjective standard.

B.

Second, we address whether the City had a reasonable factual basis to determine that the proposed use would injure the surrounding neighborhood or otherwise harm the public health, safety, and welfare. We hold that it did.

The City and RDNT offer conflicting evidence about the effect the proposed use would have on traffic. HN4 Upon review of a city’s decision, our function is "not to weigh the evidence, but to review the record to determine whether there was legal evidence to support the zoning authority’s decision." Barton Contracting Co. v. City of Afton, 268 N.W.2d 712, 716 (Minn. 1978). With expert witnesses, we do not "attempt to weigh the credibility of conflicting experts, but instead review the record to ensure that the decision . . . had support in the record." Billy Graham Evangelistic Ass’n v. City of Minneapolis, 667 N.W.2d 117, 124 (Minn. 2003). In other words, courts should ordinarily defer to a city’s judgment on conflicting evidence. See White Bear Docking & Storage, Inc. v. City of White Bear Lake, 324 N.W.2d 174, 176 (Minn. 1982).

Even so, it is not necessary for us in this case to defer to the City’s projections to determine whether it had a reasonable [**13] factual basis. The City estimated that the daily number of trips would increase after the expansion from 1,145 to somewhere between 1,377 and 1,447, while RDNT estimated that the number of trips would be 1,259, taking the TDMP into account. Even by RDNT’s projection, the expansion would add over 100 daily trips. Further, the City’s engineer estimated that average traffic counts for a residential street were between 300 to 500 trips, and that the public tends to complain once traffic increases to 1,000 trips per day on such a street. Thus, regardless of which estimate is more accurate, there is a factual basis in the record for the City to find that the proposed expansion would increase traffic on already busy streets.

The evidence relied on by the City to find that the increase would injure the neighborhood is distinguishable from the evidence we held to be insufficient in C.R. [*77] Investments v. Village of Shoreview, 304 N.W.2d 320, 325 (Minn. 1981). In that case the only evidence of a traffic control problem on a certain road was "the statement of one council member that he had been told of a problem existing at one intersection and his opinion that additional housing units might aggravate that problem." Id. Here, neighbors gave concrete testimony about how [*14] the increase would exacerbate existing traffic conditions. For instance, one neighbor wrote about vehicles driving through crosswalks near the school, even though the crossing guards had their flags out. Another neighbor wrote about observing vehicles that sped and made U-turns. Yet another neighbor wrote about the incredible amount of "traffic and noise" due to the large number of delivery trucks, emergency vehicles, shuttle buses, passenger cars, and garbage vehicles. Thus, RDNT’s argument that the City relied on vague concerns for public health and welfare is simply unfounded: the City had in hand multiple traffic studies, the City engineer’s testimony regarding specific data, and detailed factual complaints from the neighborhood.

Still, RDNT argues that because the streets are not near capacity, as both the City’s engineer and SRF acknowledge, the City had no factual basis to deny the application. For this argument, RDNT relies on Chanhassen Estates, in which we held that the evidence was insufficient to reverse the grant of a
conditional use permit where the neighborhood organization only offered "non-specific testimony that the proposed [use] poses potential traffic hazards at [**15] the intersection," while the city offered "the city engineer's testimony that the intersection could handle the anticipated traffic." Chanhassen Estates Residents Ass'n v. City of Chanahessen, 342 N.W.2d 335, 340 (Minn. 1984). Chanhassen Estates is distinguishable. In that case, the city engineer concluded that the intersection could handle traffic, and we deferred to that conclusion in declining to reverse the city's decision to grant a conditional use permit. Id. Here, although the City's engineer concluded the streets were not at capacity, the City relied on specific evidence—traffic studies, average street numbers, and neighborhood testimony—to conclude that the proposed use would nonetheless injure or otherwise harm the neighborhood. Not unreasonably, the City determined that street capacity alone was not dispositive as to whether an increase in traffic injures the neighborhood or otherwise harms the public health, safety, and welfare. The fact that a street could physically handle more traffic does not determine whether the neighborhood or the public could handle more traffic. To paraphrase one of the City's planners: this is not a capacity issue, it is a livability issue. On that issue, we cannot say the City acted unreasonably, arbitrarily, or capriciously.

Because [**16] of the traffic studies, the City engineer's testimony, and the neighborhood testimony, we hold that the City had a sufficient factual basis to determine that the increase in traffic would injure the neighborhood or otherwise harm the public health, safety, and welfare.5

[78] III.

RDNT also contends that the City unreasonably, arbitrarily, and capriciously determined that RDNT's proposed mitigation efforts would be insufficient to alleviate the traffic issue. We disagree.

HNE[¶] Minnesota Statutes § 462.3595 provides: "Conditional [**17] uses may be approved by the governing body . . . by a showing by the applicant that the standards and criteria stated in the ordinance will be satisfied." Minn. Stat. § 462.3595, subd. 1 (2014) (emphasis added). Thus, the burden was on RDNT to show that it could satisfy the standards specified by ordinance. If a conditional use permit applicant demonstrates to the governing body that imposing a reasonable condition would eliminate any conflict with the ordinance's standards and criteria, it follows that the governing body's subsequent denial would be arbitrary. See Zylka v. City of Crystal, 283 Minn. 192, 196, 167 N.W.2d 45, 49 (1969) ("A denial would be arbitrary . . . if it was established that all of the standards specified by the ordinance as a condition to granting the permit have been met." (footnote omitted)).

RDNT argues that the City should have suggested or imposed mitigating conditions. We have held that a city's decision to deny a conditional use permit was arbitrary in part because "there was no attempt made, either by the opponents or the council, to suggest or impose conditions" that would mitigate problems with the development. Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee, 303 Minn. 79, 85-86, 226 N.W.2d 306, 309 (1975). But we decided Svee before the Legislature enacted section 462.3595, Act of Mar. 22, 1982, ch. 507, § 24, 1982 Minn. Laws 587, 594 (codified at HNE[¶] Minn. Stat. § 462.3595 (2014)), which places [**18] the burden on the applicant to satisfy the standards and criteria in the ordinance. To the extent there is any conflict between Svee and the later-enacted statute, the plain language of the statute controls.

Regardless of Svee, RDNT relies on C.R. Investments to argue that the City did not adequately consider RDNT's proposed mitigating conditions. See C.R. Invs., Inc. v. Vill. of Shoreview, 304 N.W.2d 320 (Minn. 1981). In that case, the village council had been informed that a traffic hazard could be eliminated by furnishing turn-around areas in the driveways. Id. at 325. The village council ignored that proposed reasonable condition. Id. Taking the ignored reasonable condition into consideration, we found no evidence warranting an inference that the traffic aggravation would be "substantial," and thus held the village's decision to be arbitrary. Id.

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5We appreciate the participation of, and the information furnished by, the amici who serve or represent some of the most vulnerable Minnesotans. While the amici explain cogently the difficulties providers encounter in siting, constructing, and operating care facilities, HNE[¶] our task in this case, like any other, is not to make legislative policy but to interpret and apply existing statutes, ordinances, and precedents. See Dahlin v. Kroening, 796 N.W.2d 503, 508 (Minn. 2011) (considering competing public policy arguments related to judgment renewals and holding that "policy-related issues are best left to the Legislature. When interpreting the statutes, it is our role to rely on what the Legislature intended over what may appear to be supported by public policy.

[2014].
Unlike the village in C.R. Investments, which ignored the applicant's reasonable proposal, see id., the record before us shows that the City adequately considered the proposed mitigating conditions in several ways. In rejecting RDNT's application, the City concluded that the "minimization of the trip volume by the proposed Traffic Demand Management Plan is insufficient to avoid injury to the public health, welfare[**19] and safety of the residential neighborhood." In SRF's expert report, heavily relied on by the City, SRF considered the TDMP. SRF admitted, taking the addition into account, that the TDMP had "the potential to reduce the facility trips by approximately 70 trips per day." However, SRF cautioned that the "effectiveness of these strategies is difficult to quantify without post implementation data to support this forecast reduction; caution should be demonstrated [*79] when estimating the actual impact to trip reduction." SRF also warned that "TDMPs typically tend to be the most effective in central business districts or in heavily transit-oriented developments versus the suburb-type development that this is." Even if URS's estimates regarding traffic generation and the TDMP's effectiveness were accurate, the expansion would still add over 100 daily trips. Thus, the City had a reasonable factual basis to determine that the proposal would not alleviate the traffic concerns.

Accordingly, based on the record, the City did not act unreasonably, arbitrarily, or capriciously when it denied RDNT's conditional use permit application.

Affirmed.

DIETZEN, J., took no part in the consideration or decision of this case.

Concur by: ANDERSON

Concur

CONCURRENCE

ANDERSON, Justice (concurring).

[**20]

One of the council members expressed similar concerns:

I appreciate all the effort that you're talking about trying to minimize, and I just — I'm looking at a bus stop six blocks away in the Minnesota winter going to a nursing [*20] home. I just don't see that some of those measures are going to have a big enough impact to bring these numbers down to anywhere where they're acceptable.

I agree with the majority's conclusion that the City did not act arbitrarily or capriciously by denying the conditional use permit as "injurious to the surrounding neighborhood or otherwise harm[ful] to the public health, safety and welfare." I am not impressed with the strength of the City's argument, and am particularly struck by the willingness of the City to ignore the long-standing use of the property by RDNT, a use that predates the arrival of the neighbors now complaining about traffic. That said, given our deferential standard of review, I would affirm on the grounds advanced by the majority opinion.

I write separately, however, to address an alarming argument advanced by the City that the majority, properly, does not reach in affirming the court [*21] of appeals. That argument is that the City may properly deny a conditional use permit when the proposed use is in conflict with its comprehensive plan. My concurring opinion is prompted by significant uncertainty in our statutory framework and confusion in our case law concerning the role of comprehensive plans. Although not addressed by the parties here, there are also constitutional implications lurking behind the insistence of the City that a conditional use permit may be denied for any comprehensive plan violation.

I.

To understand why we should be concerned with the City's argument, some history of land use planning is necessary. Early zoning lacked a formal planning element. ¹ Although comprehensive planning [*80] was

¹ The Supreme Court found zoning constitutional under the police power in Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 393, 4 Ohio Law Abs. 816 (1926). It is worth noting that Euclid marked a shift from an exclusion-based system of regulation to a governance model. As one commentator has said, [*23] after Euclid most land uses shifted from "presum[ptively] legitimate, unless specifically shown to be dangerous or unsuitable to the neighborhood," to "presum[ptively] illegitimate unless they conformed to the master plan's specifications." Eric R. Claeys, Euclid Lives? The Uneasy Legacy of Progressivism in Zoning, 73 Fordham L. Rev. 731, 741 (2004). A charitable view of zoning regulation is that it advances public safety and the general welfare; a less charitable view of zoning is that it keeps "undesirable" elements out of the community and limits the rights of property owners to use their property as they see fit without the government having to pay property owners for taking those rights. Indeed, the Euclid court characterized apartments, which were adversely affected by the Village of Euclid zoning ordinance, as "mere parasite[s]." Euclid, 272

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advocated as early as the 1920s, modern planning did not exist until the 1940s. 4 Kenneth H. Young, Anderson’s American Law of Zoning § 23.02 (4th ed. 1996). Early state zoning enabling acts were generally enacted without corresponding planning legislation, and zoning regulations were carried out with no large-scale plan. Id. § 23.01. Even when planning became a standard part of zoning statutes, its function was not fully explained. The Standard Zoning Enabling Act, which formed the basis of many state zoning acts, stated that zoning regulations "shall be made in accordance with a comprehensive plan" with the goal of preventing "haphazard or piece-meal zoning." Advisory Comm. on Zoning, U.S. Dep’t of Commerce, A Standard State Zoning Enabling Act 6 & n.22 (rev. ed. 1926). Although the Act required a "comprehensive study," id. at 6 n.22, it provided no other guidance on what should be included in the plan, or how it should be implemented. Another early model law provided that the comprehensive plan exists "solely to aid the planning board in the performance of its duties." Edward M. Bassett et al., Model Laws for Planning Cities, Counties, and States 40 (1935). This general framework has been retained in some modern planning statutes. See, e.g., 65 Ill. Comp. Stat. Ann. 5/11-12-6 (West 2012) (providing that a comprehensive plan "shall be advisory and in and of itself shall not be construed to regulate or control the use of private property in any way" unless implemented by enactment into an ordinance).

Under this traditional approach, and in my view, the better approach, courts have construed comprehensive plans as advisory documents that do not guide specific land-use decisions. See, e.g., City of Gainesville v. Cone, 365 So. 2d 737, 739 (Fla. Dist. Ct. App. 1978) ("[T]he comprehensive plan is a guide for future decisions relating to rezoning petitions and growth and development of the City."); Borsuk v. Town of St. John, 820 N.E.2d 118, 121 (Ind. 2005) ("A comprehensive plan is a guide to community development rather than an instrument of land-use control.") (quoting 4 Young, supra, § 23.15)); Iverson v. Zoning Bd., 22 Md. App. 265, 322 A.2d 569, 571 (Md. Ct. Spec. App. 1974) ("[A] master or general plan . . . is but a guide or scheme recommended to the legislative branch in order to enable them to make intelligent decisions with respect to the adoption of zoning classifications." (citing Pattee v. Bd. of Cnty. Comm’rs, 271 Md. 352, 317 A.2d 142, 147 (Md. 1974)); Forks Twp. Bd. of Sup’rs v. George Calantoni & Sons, Inc., 6 Pa. Commw. 521, 297 A.2d 164, 166-67 (Pa. Commw. Ct. 1972) ("The comprehensive plan is a general guideline to the legislative body of the municipality for its consideration of the municipality’s program of land utilization and the needs and desires of the community.").

A modern trend, however, is to give greater legal effect to the comprehensive plan. See, e.g., Baker v. City of Milwaukie, 271 Ore. 500, 533 P.2d 772, 779 (Ore. 1975) (concluding the comprehensive plan "is the controlling land use planning instrument for a city"); Town of E. Greenwich v. Narragansett Elec. Co., 651 A.2d 725, 727 (R.I. 1994) (stating the comprehensive plan "estabhishes a binding framework or blueprint [81] that dictates town and city promulgation of conforming zoning and planning ordinances"). But notwithstanding the increased prominence of the comprehensive plan, most courts have refrained from allowing municipalities to use comprehensive plans to make specific land-use decisions.2 Instead, these courts view zoning ordinances and other specific regulations—which are adopted in accordance with the comprehensive plan—as giving legal effect to the comprehensive plan’s general goals. See, e.g., Forks Twp. Bd. of Sup’rs, 297 A.2d at 167 ("[A] comprehensive plan is abstract and recommendatory; whereas the zoning ordinance is specific and regulatory."); cf. Baker, 533 P.2d at 777 ("[U]pon adopting a comprehensive plan, [a city] ha[s] a duty to implement that plan through the enactment of zoning ordinances in accordance therewith.") The Washington Supreme Court explains this distinction in Shelton v. City of Bellevue, 73 Wn.2d 28, 435 P.2d 949,

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U.S. at 394. Regardless, the constitutionality of zoning ordinances is no longer seriously debated.

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Municipal "zoning"... is, in effect, a part of and an end result or product of effective municipal "planning," for it is through the medium of enacted and enforceable zoning regulations that the aims and objectives of the land-use-classification facet of over-all municipal "planning" may be carried to fruition. Because an ad hoc, piecemeal approach to municipal "zoning" lends itself more readily to arbitrary, capricious, unreasonable, or spot zoning situations, it follows that there must be a direct and tangible link between over-all municipal "planning" and **[26]** over-all municipal "zoning."

Under this view, a municipality may not deny a permit merely because the proposed use is contrary to the comprehensive plan. See City of Louisville v. Bd. of Educ., 343 S.W.2d 394, 395 (Ky. 1961) ("The Master Plan authority deals with the general character and location of buildings and not with specific uses to which a building may be put."); Platt v. City of New York, 276 A.D. 873, 93 N.Y.S.2d 738, 739 (App. Div. 1949) (stating that a city may not deny building permits merely because a property is located on land designated as a proposed roadway on the city's master plan); see also Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 469 F. Supp. 836, 867 (N.D. III. 1979) ("A zoning decision inconsistent with the comprehensive plan does not make the rezoned property inconsistent with surrounding uses."). aff'd, 616 F.2d 1006 (7th Cir. 1980). The Idaho Supreme Court warned of the danger of allowing such overreach:

In determining whether the land "conforms to the comprehensive plan" for the purposes of a subdivision **[27]** application, the Board is simply required to look at all facets of the comprehensive plan and assure that the land fits within all of the various considerations set forth in the plan. It is to be expected that the land to be subdivided may not agree with all provisions in the comprehensive plan, but a more specific analysis, resulting in denial of a subdivision application based **[82]** solely on non-compliance with the comprehensive plan elevates the plan to the level of legally controlling zoning law. Such a result affords the Board unbounded discretion in examining a subdivision application and allows the Board to effectively re-zone land based on the general language in the comprehensive plan.

Urrutia, 2 P.3d at 743-44 (emphasis added). Using the comprehensive plan as a tool for specific zoning decisions invites, rather than minimizes, arbitrary and discriminatory municipal practices. Thus, the history of American municipal planning provides little support, and properly so, for use of the comprehensive plan as a vehicle for denying conditional use applications.

II.

Historical and current planning legislation in Minnesota also counsels against using comprehensive plans to make specific land-use decisions. The Legislature **[28]** has never made clear the legal effect of comprehensive plans and has equivocated on the issue on several occasions. In 1929 the Legislature authorized municipalities to adopt zoning ordinances, and also stated that municipalities "may acquire or prepare and adopt a comprehensive plan for the future physical development and improvement of such city or village, in accordance with the [zoning] regulations made as aforesaid." Act of April 12, 1929, ch. 176, § 1, 1929 Minn. Laws 172, 172 (repealed 1965). The comprehensive plan was subordinate to zoning regulations because the plain language of the statute required the plan to be adopted "in accordance with" those regulations.

In 1965, noting that "municipalities are faced with mounting problems in providing means of guiding future development of land," the Legislature enacted a more extensive municipal planning act. Act of May 22, 1965, ch. 670, 1965 Minn. Laws 995 (codified as amended at Minn. Stat. §§ 462.351-365 (2014)). The act authorizes "comprehensive municipal planning activities for guiding the future development and improvement of the municipality." Minn. Stat. § 462.353, subd. 1. Unlike the 1929 legislation, the 1965 act seemingly envisions that zoning regulations will conform to the comprehensive **[29]** plan. The act provides that after completion of the comprehensive plan, the municipality may "put the plan... into effect" by enacting zoning ordinances or other regulations. Minn. Stat. § 462.356, subd. 1; see also Minn. Stat. § 462.357, subd. 2(a) (stating that the planning agency may propose zoning ordinances based on a "land use plan," which may be included within the comprehensive plan, see Minn. Stat. § 462.352, subd. 5). The act also notes that "]municipal planning... enables other public and private agencies to plan their activities in harmony with the municipality's plans." Minn. Stat. § 462.351. But the act does not establish the comprehensive plan as a binding legal document; a municipality outside the purview of the metropolitan planning act, Minn. Stat. §§ 473.851-71
(2014), is not required to create a comprehensive plan, and most references to the comprehensive plan are accompanied by the permissive "may" rather than the mandatory "shall." See, e.g., Minn. Stat. § 462.353, *subd. 1* ("A municipality may carry on comprehensive municipal planning activities . . . .") (emphasis added); see also Minn. Stat. § 462.352, *subd. 5* (defining "comprehensive municipal plan" as a tool for "guiding" private and public development). The 1965 act also requires the municipality to comply with the comprehensive plan but is silent on whether the plan is legally binding on property owners [*30*] (suggesting it is not). See Minn. Stat. § 462.356, *subd. 2*.

[*83*] The 1976 metropolitan planning act went a step further, mandating comprehensive plans for municipalities (including the City of Bloomington) within the seven-county metropolitan area. Minn. Stat. § 473.858, *subd. 1*; see also Minn. Stat. § 473.859, *subd. 1* (outlining comprehensive plan requirements). The 1976 act also requires metropolitan-area municipalities to adopt and implement "official controls"—including zoning ordinances—to carry out the comprehensive plan. Minn. Stat. §§ 473.859, *subd. 4*, 473.865; see Minn. Stat. § 473.852, *subd. 9* (defining "Official controls"). Importantly, the act prohibits official controls that conflict with the comprehensive plan. Minn. Stat. § 473.865, *subd. 2*. These provisions suggest that the comprehensive plan may carry more legal significance in the metropolitan area than it does in greater Minnesota.

But the Legislature has continued to vacillate as to the legal weight accorded to comprehensive planning, both in Minnesota Statutes chapter 462 (greater Minnesota) and chapter 473 (metropolitan area). In 1985 the Legislature amended Minn. Stat. §§ 462.357, *subd. 2*, and 473.858, *subd. 1*, to include: "[i]f the comprehensive municipal plan is in conflict with the zoning ordinance, the zoning ordinance supersedes the plan." Act of May 6, 1985, ch. 62, §§ 3-4, 1985 Minn. Laws 160, 161-62. [*31*] This formulation seemingly answered the question of legal significance: the zoning [*31*] ordinance, not the comprehensive plan, is the legally operative document because it "codifies" the comprehensive plan. This makes sense given the generic, goal-oriented nature of the comprehensive plan and the specific nature of zoning ordinances, and because zoning-ordinance superiority is broadly consistent with jurisprudence elsewhere.

These amendments, however, were short lived. In 1995, the amendment to Minn. Stat. § 473.858 was replaced with the following: "If the comprehensive municipal plan is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the plan . . . ." Act of May 17, 1995, ch. 176, § 5, 1995 Minn. Laws 593, 594-95 (emphasis added). The Legislature also replaced the 1985 amendment to section 462.357, *subdivision 2*, with a provision that is markedly vague: [*32*] "The plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the plan." Act of May 30, 1997, ch. 202, art. 4, § 11, 1997 Minn. Laws 1493, 1574-75 (codified as amended at Minn. Stat. § 462.357, *subd. 2*(c)).

Not only do the 1995/1997 amendments suggest once again that the comprehensive plan supersedes zoning regulations, but they also eliminate the guidance provided by the 1985 amendments as to how comprehensive plans should be used.* The [*84*]

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*3* The 1985 amendment to the metropolitan planning act is especially curious because it modified the section that introduces the comprehensive plan requirement, Minn. Stat. § 473.858, rather than the section that implements the plan, Minn. Stat. § 473.865. Further, section 473.865, *subdivision 2* (which has never been amended since its enactment in 1976), states that zoning ordinances and other official controls may not conflict with the comprehensive plan, which seems to contradict the amendment to section 473.858.

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American Planning Association has noted a "significant gap" between Minnesota's statutes authorizing or mandating a comprehensive plan and the controls afforded to municipalities in order to implement the plan. Am. Planning Ass'n, Minnesota's Planning and Zoning Enabling Laws: Analysis and Options for Reform 1 (rev. draft 2013).\(^6\) The unclear relationship between the authorization and implementation [**33] statutes creates "ambiguity and uncertainty." Id. At least some Minnesota practitioners agreed when evaluating the 1995 amendments to the Metropolitan Planning Act, and noted the potential for municipal overreach:

Applications for subdivisions, conditional use permits, variances, and other flexible devices will most likely be evaluated to determine if they are consistent with the comprehensive plan. . . . Because many portions of comprehensive plans are generally loosely drafted, and can be interpreted to mean almost whatever the city wishes to argue, the reference to the comprehensive plan as a reason for denial is often difficult to overcome.


Even under the current legislative framework, neither the municipal nor the metropolitan planning act supports using a comprehensive plan to grant or deny a conditional use application. Although the Legislature has given municipalities broad authority to create "standards and criteria" for granting or denying a conditional use, Minn. Stat. § 462.3595, subd. 1, the comprehensive plan may be used only in specific ways under the planning acts. The plan must contain "objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation." Minn. Stat. § 473.859, subd. 1; see Minn. Stat. § 462.352, subd. 5 (providing similar requirements for comprehensive plans in greater Minnesota). The generality of the comprehensive plan [**35] belies the notion that it is legally controlling when making specific land-use decisions. Additionally, the plan may be implemented only by adopting zoning ordinances and other regulations that conform with the plan. Minn. Stat. § 473.865; see Minn. Stat. § 462.356, subd. 1. Neither planning act provides or even implies that the comprehensive plan may be implemented in the way done by the City here.

III.

Unfortunately, it is not only the Legislature that has made hash out of the intersection of comprehensive planning, zoning, and property rights law; our case law is similarly equivocal on what standard should be used to grant or deny a conditional use permit in this context. In Zylka [*85] v. City of Crystal, we established two scenarios under which a city council's decision to deny a conditional use permit is arbitrary and must be reversed: (1) when all the standards prescribed by the ordinance have been met; or (2) if the ordinance presents no standards, when the "requested use is compatible with the basic use authorized within the particular zone and does not endanger the public health or safety or the general welfare of the area affected or the community as a whole." 283 Minn. 192, 196, 167 N.W.2d 45, 49 (1969) (affirming the district court's invalidation of the city's denial of [**36] the permit because the plaintiff complied with all construction regulations; the city's conditional use ordinance provided no standards; and the city council did not demonstrate a danger to public health, safety, or general welfare). A conditional use ordinance does not provide standards if it merely supplies various factors for the city council's consideration. Metro 500, Inc. v. City of Brooklyn Park, 297 Minn. 294, 300, 211 N.W.2d 358, 362 (1973).\(^7\) While reasons for denying a permit need not necessarily be "precise and specific," they may not be "so general as to compel an inference that the board was evading its responsibility to give reasons." Corwine v. Crow WingCnty., 309 Minn. 345, 353, 244 N.W.2d 482, 486 (1976).

The City claims that because its local ordinances require adherence to the comprehensive plan, violations of the comprehensive plan are sufficient to support a denial of a conditional use permit. This reasoning invites a host of practical and legal issues. For one thing, comprehensive plans are too long and too general (too "comprehensive") to provide a reasonable standard. Cf. Place v. Hack, 34 Misc. 2d 777, 230 N.Y.S.2d 583, 587 (Sup. Ct. 1962) ("It is easier to determine what a comprehensive plan is not, than to define [**37] what it is.") (internal quotation marks omitted) (quoting Note, 7\(^7\) The ordinance at issue provided that the village council "may" grant a permit if certain standards were satisfied. Metro 500, 297 Minn. at 300, 211 N.W.2d at 362 (quoting Brooklyn Park Code of Ordinances § 34.12, subd. 4 (1973)).

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\(^7\)
Spot Zoning and the Comprehensive Plan, 10 Syracuse L. Rev. 303, 304 (1959)). This is certainly true of the City of Bloomington Comprehensive Plan, which is almost 200 pages long. City of Bloomington, Minn., Comprehensive Plan 2008 (adopted 2009). 8

Additionally, a conditional use ordinance does not create a "standard" by requiring compliance with the entire comprehensive plan as a prerequisite to obtaining a permit, because a comprehensive plan does not provide sufficiently specific standards to measure compliance. Three of the four grounds relied on by the City for the denial issued here are found in its comprehensive plan; the City cited a need to (a) locate "[l]arger traffic generators . . . adjacent to arterial or collector streets"; (b) "channel most high and medium density residential and mixed use growth to locations near transit, services, amenities and employment"; and (c) "preserve the character of low density neighborhoods." 9 Id. at 2.15, 2.19. But the City could have conceivably [**38] sought to rely on less traditional [*86] but also dubious reasons, such as whether the proposed use will (1) permit "solar access for adjacent properties"; (2) encourage "a sufficiently diverse employment base"; (3) allow for "pedestrian and cycle connections between adjacent properties"; (4) utilize "transit equipment to shuttle residents/customers to and from areas not well served by transit"; (5) "incorporate transit, pedestrian and cycle friendly design features"; (6) promote "development of complementary uses within walking distance of one another"; (7) encourage "low impact development practices . . . to reduce pollutant loading to surface waters"; or (8) "[c]reate linkages between the private sector, high schools, and post-secondary institutions." Id. at 2.13, 2.19, 4.52, 4.54, 4.55, 4.59, 6.23, 7.18. The meaning of at least some of these guidelines is unclear at best and it is a complete mystery how the City would measure compliance. It is also a safe bet that the next generation of comprehensive plans will place more ill-defined and nonspecific burdens on property owners. I have no difficulty envisioning a comprehensive plan that, depending on the political or ideological inclinations of [*39] the drafters, could include buzzwords such as "low carbon footprint" or "environmental sensitivity," or vague references to the promotion of economic development or any similar formulation. See, e.g., id. at 2.1-2.2 (promoting "sustainable development").

What is difficult to envision is how any applicant could comply with the entire comprehensive plan. The effect of relying on comprehensive plans to deny conditional use permits, and to control individual development, is to empower arbitrary and capricious decision-making by cities and to increase the likelihood that developers that enjoy political favor will be successful and those out of favor will not. The traditional deferential standard of review compounds this problem. 10

Furthermore, and as noted above, a comprehensive plan is a broad, forward-looking document that is not designed to support specific land-use decisions. The City of Bloomington Comprehensive Plan uses headings such as "Goals," "Vision," "Intent," and "Strategies." See id. at 2.1, 2.19. Like the ordinance in Metro 500, comprehensive plans do not mandate requirements but rather create a general framework that supports specific zoning ordinances. See Metro 500, 297 Minn. at 300, 211 N.W.2d at 362 (stating that a zoning ordinance must "make the issuance of a [conditional]-use permit mandatory upon the meeting of certain standards"). RDNT also notes that its proposed use would in fact further the City's "intent to "[a]just to an aging population." See Bloomington Comprehensive Plan, supra, at 2.1. RDNT could have equally relied on the City's goals of "encourag[ing] the development of housing to serve each stage of life," and constructing "500 affordable senior units." Id. at 3.10, 3.17. The fact that the City, looking for any port in the storm to deny the RDNT application, now weighs these goals as less important [*41] than other goals demonstrates the poor standard the comprehensive plan provides and the


9 These may be valid reasons to deny a conditional use permit. But if the City wanted to rely on these as "standards," it should have specifically included them in its conditional use ordinance.

10 Although exceeding the scope of my concurring opinion, I would also note that the City here has used the comprehensive plan to impose additional requirements on property owners. The Bloomington Comprehensive Plan requires conformance with several external documents, including [*40] the "Water System Master Plan," "Comprehensive Surface Water Management Plan," "Park Master Plan," and "Accessibility Evaluation Transition Plan." See Bloomington Comprehensive Plan, supra, at 6.21, 6.23, 7.15, 7.17.

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inherent arbitrariness that exists when the plan is relied upon to make these types of decisions.

[87] In addition to these practical problems, use of the comprehensive plan in this fashion creates a higher burden on conditional use applicants. As a matter of law, an applicant's burden for proving compliance with an ordinance is much lower for a conditional use than a variance because "the former is legislatively permitted in a zone subject to controls whereas the latter is legislatively prohibited but may be allowed for special reasons." Westing v. City of St. Louis Park, 284 Minn. 351, 356, 170 N.W.2d 218, 221 (1969) (quoting Verona Inc. v. Mayor of W. Caldwell, 49 N.J. 274, 229 A.2d 651, 655 (N.J. 1967)); see also Zylka, 283 Minn. at 196, 167 N.W.2d at 49 ("[P]rovisions authorizing the issuance of [conditional]-use permits are intended to provide more flexibility in land-use control than provisions authorizing a variance."). For example, in Inland Construction Co. v. City of Bloomington, the applicant "more than sustained the burden of proof" merely by providing evidence that the proposed use would not cause traffic congestion or be a nuisance to adjacent residents. 292 Minn. 374, 387-89, 195 N.W.2d 558, 567-68 (1972). By requiring a conditional use applicant to comply with the entire comprehensive plan, a municipality can deny the application for countless [88] reasons, which effectively eviscerates the lower burden that should be afforded to such applicants. This creates a presumptive prohibition on conditional uses and essentially puts a conditional use on the same level as a variance.

Our more recent cases have further confused matters by explicitly authorizing use of comprehensive plans when making decisions on conditional use applications, demonstrating an increased deference to municipalities that is seemingly at odds with our holding in Zylka. In Barton Contracting Co. v. City of Afton, we affirmed the city's denial of a conditional use permit for gravel mining because, inter alia, the use was contrary to the comprehensive plan, which was "permeated with evidence of a strong desire to preserve the rural character and unique scenic beauty of Afton and the St. Croix Valley." 268 N.W.2d 712, 717 (Minn. 1978). We acknowledged a municipality's "broad discretionary power to deny [a conditional use] application," id. (quoting Zylka, 283 Minn. at 196, 167 N.W.2d at 49), but we did not analyze the Zylka factors. Instead, we held that a municipality merely must provide "stated reasons for its decision" to deny the permit and may consider "whether the proposed use is consistent with its land-use plan." Id. In C.R. [89] Investments v. Village of Shoreview, we again allowed a municipality to rely on its comprehensive plan to deny a conditional use permit, although we nevertheless invalidated the permit denial because the village relied on provisions in the comprehensive plan that were "unreasonably vague and subjective." 304 N.W.2d 320, 326-28 (Minn. 1981); see also Hubbard Broad. Co. v. City of Afton, 323 N.W.2d 757, 763 (Minn. 1982) (affirming permit denial for same reasons as in Barton).11

Our holdings in Barton, C.R. Investments, and Hubbard Broadcasting are troubling for several reasons. Citing no authority, these cases contradict our holding in Zylka that a municipality must either rely on the specific standards in the ordinance or demonstrate that the use endangers the public health, safety, or welfare. Zylka, 283 Minn. at 196, 167 N.W.2d at 49. The ordinances in question in these cases provided no specific standard, and we did not consider whether the city made [88] findings that the proposed use was hazardous to the community. See, e.g., Barton, 268 N.W.2d at 719-20 (Iverson, J., dissenting). As demonstrated above in Part I, these [89] cases are at odds with a majority of jurisdictions around the country. The cases suggest a function of comprehensive plans that is contrary to their intended and historical use. Finally, the original holding in Barton is called into considerable question because, less than 1 month after deciding Barton, we stated that when considering a conditional use application, a municipal council "has the function . . . of applying specific use standards set by the zoning ordinance to a particular individual use and must be held strictly to those standards." State. by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885, 891 (Minn. 1978) (emphasis added).

IV.

Property rights enjoy protection under both the federal and state constitutions. The effect, if not the purpose, of modern-day municipal, regional, and state land-use regulation is to prohibit property owners from using their property as they wish and to do so without compensating the owner for the lost use. Of course, given that the constitutionality of zoning, for good or ill, is no longer in dispute, some regulation, and some lost use, is permissible. But I write separately to highlight the challenges, and dangers, presented by use of

11 It should be noted that these cases predate the 1995/1997 amendments to the planning statutes that purportedly heightened the legal authority of comprehensive plans. We have had no occasion to consider this precise issue since those amendments.

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comprehensive planning as a prohibitory tool and to specifically reject the approach [*45] taken by the City here. The difficulties and contradictions associated with the current state, regional, and municipal planning statutes necessitate that the Legislature construct a rational statutory framework that begins with a recognition of the constitutional rights of property owners and then sets out the permissible limits for land-use planning beneficial to the community as a whole. For our part, we may well have to consider whether our current deferential standard in land-use regulatory matters remains constitutionally viable; this issue is best left for another day.

In Zylka v. City of Crystal, 283 Minn. 192, 196, 167 N.W.2d 45, 49 (1969), we held that when denying a conditional use permit, a municipality must either (1) rely on specific standards outlined in the zoning ordinance, or (2) demonstrate that the proposed use endangers the public health, safety, or general welfare. I conclude that Zylka is the best expression of the standard that must be met to uphold the denial of a conditional use permit. Because I also conclude that the City has met the second of the two Zylka requirements, I join the majority opinion.
VIA E-MAIL

July 8, 2018

Mayor Wiersum and City Council Members
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345

Re: 12501 Ridgedale Drive

Dear Mayor and City Council Members:

As you are aware, our firm represents The Rotenberg Companies, Inc. (the “Applicant”) in connection with the proposed redevelopment of property located at 12501 Ridgedale Drive (the “Property”). As outlined in the staff report prepared for the Council meeting on July 9, 2018 (the “Staff Report”), the Applicant proposes to demolish the former Redstone restaurant building and replace it with a four-story, 78-unit multi-family housing building that will include underground parking (the “Project”) and result in the creation of a new, vibrant development that will offer a housing option that is not otherwise available in the City of Minnetonka (the “City”). The Project application includes a request for three approvals: (a) the rezoning of the Property from Planned I-394 to Planned Unit Development; (b) approval of the master development plan; and (c) final building and site plan approval. Because the proposed Project is consistent with the Minnetonka Code of Ordinances (“the Code”), as well as the goals and objectives outlined in the 2030 Comprehensive Plan (the “2030 Plan”), and for the other reasons outlined herein, we respectfully request that the City Council approve the requests related to the Project.

I. The PUD zoning and proposed PUD are appropriate for this site and should be approved.

The purpose of the planned unit development (PUD) zoning district is to provide a district that grants flexibility from certain subdivision and zoning regulations in order to realize public benefits that may not otherwise be achieved through non-PUD development. The Code allows the Council to rezone property to PUD when the rezoning will result in one of several benefits that are specifically listed in the Code, including the “[p]rovision of a housing type or target housing price that is desirable to the city,” a “mix of land use types” or “other public benefits as recognized by the city.”

1 Minnetonka Code Section 300.22.

2 Code Section 300.22(2)(c)(d) and (g)
The Code provides for the approval of a specific PUD when the following general standards are met:

a) The PUD results in at least one of the public benefits outlined in the ordinance;

b) The PUD is consistent with and advances the community-wide goals of the comprehensive plan; and

c) The PUD is appropriately integrated into existing and proposed surrounding development.3

The Code specifically acknowledges that the integration requirement “does not mean the PUD [must reflect] the specific standards of the surrounding area such as lot size, density, setbacks, or design. While integration may be achieved through such standards, it may also be achieved through continuation of existing land use types, architectural transitions, landscape buffering, or other means.”4

II. The PUD application results in at least one of the public benefits outlined in the ordinance.

As noted above, the Code lists several specific benefits that may be achieved through the PUD zoning process and notes that if one of these benefits is present, the City has the authority to approve the PUD zoning request. One of the benefits specifically listed in the Code is the provision of a housing type that is desirable to the City. In the present case, the Applicant proposes to construct a high quality multi-family housing building that will offer a diverse type of housing that is desirable, and currently unavailable, in the City.

As noted in the May 25, 2018 letter from Mr. Robert Lunieski that was submitted through this application review process,

there is a need for high end rentals and condominiums in the community. This market is dominated by people who are typically 50 years old or older and selling their single family homes. This market segment is looking to stay in their community (Minnetonka). They want a larger unit with finishes typically found in upper bracket homes. This segment wants to be located near shopping, restaurants and recreation amenities. Demand for upper bracket rentals currently exceed supply...Your location offers an ideal site for upper end rentals.5

The proposed Project adds to the City’s life cycle housing goals because it is specifically aimed at baby boomers who want to downsize from a single family home but remain in the City which will

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3 Code Section 300.22(4).

4 Id.

then allow and encourage the transition of ownership for the existing family homes to new residents. This Project will provide a housing type that is not only desirable for the community but that will also help the City meet its goals of providing a variety of housing types for the diverse and changing desires of the senior population in Minnetonka. Because of this, the Council has the authority to approve the rezoning and the PUD request.

III. The PUD request is consistent with and advances the community-wide goals of the 2030 Comprehensive Plan.

The Property is guided by the 2030 Plan as “mixed use.” Not only is the Project consistent with the 2030 Plan, but the proposed high quality multi-family housing building advances the community-wide goals related to housing that are identified in the 2030 Plan. Specifically, the 2030 Plan notes that the City will need to add diversity in housing to address the aging population of its residents by encouraging infill development, stating:

*To prepare for the rapid increase in the senior population, the City will need to work with and encourage developers and housing providers to develop a variety of housing types at various costs and rents with features that cater to the diverse and changing desires and needs of its senior population.*

IV. The PUD is appropriately integrated into existing and proposed surrounding development.

The question of integration and consistency within the proposed Project development has been a central theme throughout the review of this Project. While staff originally expressed concern over the “massing” of the proposed apartment building on the site, as the Applicant continued to address these concerns, the focus shifted to site circulation and the viability of the office building. The Applicant responded to these concerns through additional site plan modifications and then, at the eleventh hour, a concern was raised over the “building behind a building.” The Applicant has repeatedly responded to feedback and modified its plans to address concerns and ensure that the proposed apartment building is integrated into the surrounding development. As a result, the Project that is currently proposed satisfies this requirement in the Code and should be approved.

A. The Applicant has redesigned the Project numerous times in response to requests and feedback received from City staff, Planning Commission, Council and neighbors.

Over the past eight (8) months, the Applicant has shown a remarkable commitment to responding to feedback received from neighbors, council members, planning commissioners and staff.

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A summary of the Project modifications is provided below but perhaps the most useful summary of modifications can be seen by reviewing the “Site Plan – Building Foot Comparison” that is included in your council packet.

<table>
<thead>
<tr>
<th></th>
<th>November 2017</th>
<th>June 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Height</strong></td>
<td>6 stories (75’)</td>
<td>4 stories (50’)</td>
</tr>
<tr>
<td><strong>Number of Units</strong></td>
<td>111 units</td>
<td>78 units</td>
</tr>
<tr>
<td><strong>Gross Square Footage</strong></td>
<td>253,404</td>
<td>174,060</td>
</tr>
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<td><strong>Building Footprint</strong></td>
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<td>43,140</td>
</tr>
<tr>
<td><strong>Total Parking</strong></td>
<td>250</td>
<td>178</td>
</tr>
</tbody>
</table>

The original proposal for this Project was presented in a concept plan meeting with the Planning Commission in November 2017. At the time, the planning commissioners expressed support for the concept of a high quality multi-family housing building at this location but noted some concerns about height and massing. Similar feedback was received from the City Council in December 2017. Following these meetings, and neighborhood input, the Applicant worked with its consultants to modify the plans and reduce the height and size of the proposed Project. In January 2018, the Applicant appeared before the Council with revised plans for an additional

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7 Commissioner Powers: “Ridgedale Center area is the right place for it so on that I’m in complete agreement with the developer”; then-Commissioner Calvert: “Ridgedale area is the likely spot for it”; Commissioner Schack: “the Ridgedale area is an area for high density”; Commissioner Sewall: “Land use is appropriate”; Commissioner Knight: “I think the density works for where it is sited”

8 Commission Chair Kirk: “I think the mass is probably too great…I think 4 [stories] would be safe, that’s my opinion”; Schack: “this mass seems pretty great to be adjacent directly to the neighborhood”; Calvert: “6 story building would be intrusive”. Commissioner Knight noted that he did not have concerns with the proposed height / size “It doesn’t look too big to me”

9 Councilmember Wagner: “I think high density use is appropriate”; Councilmember Bergstedt: “it’s a massive footprint and it’s also 6 stories high. I think that the use, the luxury apartments is just fine for the site”; then-Councilmember Wiersum: “that is a lot of mass and a lot of height in a relatively small area. I’m confident the developer did not expect to get a larger building than he proposed, but I don’t think he’s going to get that size either. It’s got to come down. I don’t want to be prescriptive at this point but it’s clearly got to be a smaller building to get my support”; Councilmember Acomb: “I think the massing is too big for the transition to the abutting single family neighborhood but also in connection with the office building on the site. So, I would be much more favorable about smaller mass building, lower scale”; Councilmember Ellingson: “I think it would be better if it weren’t as tall and weren’t as big”; then-Mayor Schneider: “higher density housing around, in the Ridgedale area, is still in my mind a top priority and there are far and few places that can be accommodated… I would expect if you wanted to move forward with [a] multi-family, high density apartment building, which I would encourage you to do, I would focus on working with those neighbors”
concept review. While the Council noted its appreciation for the proposed reduction in height, individual councilmembers continued to express concern about the “massing.”

Hearing the concerns, the Applicant further revised its plans and reduced the size of the proposed Project. The Applicant voluntarily extended the time line for review of the land use application to allow for the special election and the seating of a new council member so as to give the Council the benefit of the perspective of the newly elected individual.

At the April 30, 2018 Council meeting, where the Project application was formally introduced, staff noted the several reductions in size that had occurred since the concept plan meetings. The Council asked the Planning Commission to consider the PUD standards and to possibly review site circulation. When the staff report for the May 24, 2018 Planning Commission meeting was released, the Applicant was genuinely surprised that staff was recommending denial of the Project because the Applicant believed that it had addressed the concerns communicated by staff—namely concerns over massing and parking. The Applicant hired a traffic consultant to review the site circulation and to issue a report regarding safety and ease of maneuvering for not only vehicles, but bicyclists and pedestrians. The traffic consultant, after reviewing the plans, and the Minnetonka Code, concluded that “[o]verall, the internal operations of the development work well and supply pedestrians, bicycles and vehicles with sufficient routing and infrastructure for safe operations.”

Following several meetings with staff to discuss the lingering concerns, the Applicant again proposed revisions to the Project plans so as to further reduce the height and massing. These changes included the elimination of the outdoor pool and raised amenity deck. By making this change, not only did the Applicant reduce the building mass, but it was also able to address staff’s concerns about the lack of at-grade parking available to the office building tenants and guests as well as increase ground-level green space for both the office and apartment tenants.

While these modifications were presented to the Planning Commission at the May 24 meeting, because the revised plans had not been formally submitted, the Planning Commission voted on the “original application”—meaning the application that did not include the additional reduction in massing. The Planning Commission applauded the efforts of the Applicant to continue to modify

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10 Acomb: “I will say that while there has been some accommodations, for my liking, I don’t think there has been enough”; Wagner: “believe that high density housing is appropriate for the site… massing is still a little bit too great.”; Mayor Wiersum: “interesting project, attractive building…the mass is still too much”

11 The original Project proposal complied with the parking requirements of the Code. It is staff’s position that the Code requires more parking than is necessary so the Applicant has reduced the parking to a level that is consistent with what staff has indicated it expects to see in projects of this type.

12 See Technical Memorandum prepared by Bryant Ficek, PE, PTOE and Jonah Finkelstein, EIT from Spack Consulting dated May 24, 2018, a copy of which was provided to the Planning Commission and City staff.
When the May 24, 2018 Planning Commission meeting ended with a 3-3 deadlock, the Applicant again voluntarily extended the time to review the land use application and agreed to present its modified plans to the Planning Commission again on June 14, 2018. Unfortunately, only five (5) planning commissioners were present at the June 14, 2018 Planning Commission meeting. While these five (5) commissioners voted 3-2 to not recommend support of the applications, as outlined below, the Commissioners clearly articulated the struggle they felt between supporting staff’s analysis and supporting the project.

B. **There is a harmonious relationship between the office and apartment buildings.**

We recognize that the City has an interest in ensuring that the site is organized in a way that creates a harmonious relationship between the office and apartment building. Not surprisingly, the Applicant, as the owner of the existing office building, and the proposed apartment building, has a mutual interest in this same harmony.

Unfortunately, the determination of whether a site or a proposed development is “harmonious” is not an objective analysis, but rather, an analysis that requires a significant level of subjective review. The “building behind a building” plan for this site has existed for some time. Prior to the development of the Redstone restaurant, the site included a Norwest Bank building. When the Applicant proposed to develop the office building – behind the Norwest building – the issue of a building behind building development was not of concern to the council at that time.

A review of the Planning Commission meetings in May and June highlight the continued subjectivity of this analysis and the Planning Commissioner’s struggle with taking a position that was contrary to the staff recommendation. Specifically, the following excerpts from the May 24, 2018 Planning Commission meeting are instructive:

Commissioner O’Connell:

> So, by and large, I approve the development. The thing I’m hung up with and I understand staff’s concern of having an office building that can’t be seen by anybody, but I’m more of the opinion that that’s a risk for the land owner, the building owner to bear and if the market says that that’s a bad thing and therefore that diminution of value for that office building occurs they own that decision and I don’t really care. So, but I understand the idea of wayfinding and having hidden buildings, I think the massing is fine, I don’t have an issue with the massing. And I believe, quite frankly, that this would be probably well met with the market.

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13 Sewall: “So, I definitely am echoing what my other fellow commissioners that I really applaud the developer for making a lot of improvements, changes I should say, maybe not improvements, but changes from the original concept review to a much more manageable design and scale.”
Commissioner Hanson:

> Like my fellow commissioners, I don’t really see a problem, I think with the office building there they are relying on the market to rent the space behind there and I don’t know if that’s our call or not tonight to assess that but I don’t see any problem there.

But perhaps Commissioner Powers’ comments best summarize the frustration that the Applicant has experienced over the seemingly ever changing set of concerns over the Project and the amorphous standard related to “harmony” or “disharmony”:

Commissioner Powers:

> I don’t want to get into the beauty is in the eye of the beholder or anything like that, but I’m not exactly sure how anybody advances any idea before us if they’re constantly trying to figure out what we think looks pretty or what looks harmonious. They’re entitled to have, there’s nothing aberrational about this development. I mean I don’t think anybody’s used the words that this is just an oddity sitting out there in the middle of Ridgedale, I mean what is disharmony? I mean when you had music in the 50s and all of the sudden Elvis Presley comes along and they said that’s just terrible, that’s just disharmonious, that’s just awful, that’s the worst sound I’ve ever heard and the rest is history. So, I don’t see how you go down that road and invite developers, particularly developers like this who are bending over backwards to accommodate to the best of their ability even when we’re not even asking them to do anything….but more importantly, this idea that they have to be, they have to figure out what we think is pretty and harmonious I think puts a terrible burden on any developer.

Similar comments were made at the June 14, 2018 Planning Commission meeting. Of particular interest is the fact that some of the comments / concerns were raised by Commissioners – including Commission Chair Kirk – who ultimately voted to support the staff recommendation:

Commissioner Kirk:

> I do believe that I still do support the staff’s recommendations. But I, in terms of big mistakes that the city could make, and small mistakes that the city could make, I think that if this went through the council and was approved, I think this would be maybe a smaller mistake.

> And I think one of the reasons why I harbor a little guilt still supporting the staff’s opinion to deny this, is that the developer really has gone to great lengths, I believe, to respond to what the community and what the planning commission and I would say, what the city council has probably requested… So I struggle with that, because I want to support development in Minnetonka, and seeing everything they went through causes me to want to support this. But the office building sitting behind us
is still, I think, an issue...[but] Keep in mind that I think this office building and the restaurant were harmonious for the last 20 years or so, but I don’t know when the office building was built actually, but it has been hidden behind the restaurant.

Commissioner Powers:

I think that’s a very valid point. I mean it was, it’s always been this way. I mean, I never even knew the office building was there, and I went to Redstone for years. So I don’t think that changes.

Commissioner Knight:

Well, I know I’m struggling with it, but I do agree with Commissioner Powers and how they have downgraded the mass of the building. The office building, you know, it’s not a McDonald’s that needs to have a big sign out front. It isn’t your normal, kind of retail building that is attracting a lot of drive by stuff. I’m going to guess that the people that have been going there know where it is, they know how to find it. It probably isn’t that big of a deal that it’s tucked back behind there.

As acknowledged by several different Planning Commissioners, the “building behind a building” scenario is not being created by the proposed Project. Instead, this “issue” exists today on the Property and has existed – without problem – for quite some time. Any concern over wayfinding is an issue that will be addressed by the Applicant, as the owner of the Property who has even more motivation than the City to ensure that the uses can co-exist harmoniously. The Applicant has thoroughly reviewed the effect that the proposed apartment building will have on his existing and future prospective tenants and is confident that the apartment building will not have a detrimental impact on the office operations largely because, as noted by Commissioner Knight, the office building is designed to attract “destination tenants” whose customers or clients are not based on drive by visibility. In fact, the current tenant mix in the office building includes a pediatric chiropractor, a hair restoration clinic and the corporate headquarters for the Rotenberg Companies. The Applicant has explored converting a portion of the office space to a co-working office environment so as to provide office opportunities for residents of the future apartment building, which, in many ways, would make the office building an amenity for the apartment building residents. In addition, the existing wooded area surrounding the pond is one of the most desirable features of the site and has been integrated into the site plan and proposed building layout to make this an asset to both the office building and apartment building.

V. Conclusion

In conclusion, we ask the Council to recognize that it has the discretion to approve this Project and we respectfully request that you do so.

The Applicant, who is a long-time resident and tax payer in the City, has proposed a Project that will not only revitalize a key piece of property in the Ridgedale area, but that will provide the City
with a multi-million dollar mixed-use development that will increase the diversity of housing options available within the City. The Project meets the requirements set forth in the Code to justify rezoning to PUD and is consistent with the vision set forth in the 2030 Plan. Perhaps most importantly, the Applicant has repeatedly responded to feedback on its proposed plans and used professional engineers, architects and designers to present a Project that is not only harmonious with both internal and external site conditions, but also laid out in a way that ensures successful vehicular and pedestrian circulation. This site has been a mixed use site with a building-behind-building configuration for years. The Applicant, who is the long-term owner of the Property, is well aware of, and is prepared to address, the wayfinding challenges that must be addressed when you have a mixed use site such as this one.

For all of the reasons stated above, we respectfully request that the Council approve the Project.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Tammera R. Diehm

cc: Mr. Richard Rotenberg
Mr. Loren Gordon