Agenda
Minnetonka City Council
Regular Meeting, Monday, March 18, 2019
6:30 p.m.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Ellingson-Calvert-Schack-Carter-Happe-Bergstedt-Wiersum
4. Approval of Agenda
5. Approval of Minutes:
   A. Dec. 17, 2018 regular council meeting
   B. Jan. 7, 2019 regular council meeting
   C. Jan. 28, 2019 regular council meeting
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
   A. Bids for the Main Lift Station Junction Box
      Recommendation: Award contract to S.M. Hentges & Sons, Inc. (Majority vote)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Resolution amending Resolution No. 2019-011 regarding INVERNESS ESTATES
       Recommendation: Adopt the resolution
11. Consent Agenda - Items Requiring Five Votes: None

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12. Introduction of Ordinances:

A. Items concerning the demolition of an existing auto dealership building to construct a new auto dealership building at 15906 Wayzata Blvd.
   1) Ordinance replacing the existing master development plan and approving final site and building plans;
   2) Amendment of an existing conditional use permit; and
   3) Variance for parking setback

Recommendation: Introduce the ordinance and refer it to the planning commission (4 votes)

13. Public Hearings:

A. Items related to financing public safety facility improvements for the police and fire departments

Recommendation: Hold the public hearing, amend the 2019-2023 CIP, and adopt the resolution (5 votes)

B. Items regarding Boom Island Brewing at 5959 Baker Rd.
   1) Conditional use permit for a microbrewery and taproom at 5959 Baker Road.
   2) On-sale brewer’s taproom and Sunday liquor license and off-sale liquor license (for growlers) for Boom Island Brewing Company, LLC 5959 Baker Rd, Minnetonka.

Recommendation:
   1) Adopt the resolution approving the conditional use permit (4 votes)
   2) Continue the public hearing and grant the licenses (5 votes)

C. Resolution authorizing an application to the Minnesota Department of Employment and Economic Development for funding from the Minnesota Investment Fund for PeopleNet

Recommendation: Hold the public hearing and adopt the resolution (4 votes)

D. Surplus CDBG Block Grant Funds from 2014, 2015, 2016, and 2017

Recommendation: Hold the public hearing and adopt the resolution (4 votes)

E. On-sale liquor licenses for MTKA Pizza, LLC (DBA Station Pizzeria), at 13008 Minnetonka Boulevard

Recommendation: Open the public hearing and continue to April 15, 2019 (4 votes)
F. Items regarding Marsh Run (Doran Apartments)

1) Public hearing approving vacation of easements at 11650 and 11706 Wayzata Blvd

2) Marsh Run (Doran Apartments)

Recommendation:

1) Hold the public hearing and adopt the resolution approving the Request (4 votes)

2) Adopt the resolutions: (4 votes)
   a) Modifying a Development Program for Development District No.1, the establishment of the Marsh Run Tax Increment Financing District, and the adoption of a Tax Increment Financing Plan for Marsh Run Apartments at 11650 and 11706 Wayzata Blvd.
   b) Approving a contract for private development and construction addendum with the Economic Development Authority in and for the City of Minnetonka and DC-OV Minnetonka, LLC

14. Other Business:

A. Conditional use permit for a religious institution at 11021 Hillside Lane West; 2327, 2333 and 2339 Hopkins Crossroad; and 11170 Mill Run

Recommendation: Adopt the resolution approving the conditional use permit (4 votes)

B. Ordinances amending various sections of the city code regarding:

1) Residential zoning districts;

2) Wetland overlay district;

3) Shoreland overlay district;

4) Retaining walls;

5) Opus overlay district; and

6) Sign ordinance

Recommendation: Adopt the ordinance amendments (4 votes)

C. Resolution approving OAKLAND ESTATES, a 4-lot subdivision at 1922 Oakland Rd

Recommendation: Adopt the resolution approving the request (4 votes)

D. Drainage and utility easements within public properties
Recommendation: Adopt the resolution (4 votes)

E. Resolutions for the Carlson Parkway project

Recommendation: Adopt the resolution (4 votes)

F. Resolution approving providing park credits for RIDGEDALE CENTER TENTH ADDITION

Recommendation: Adopt the resolution (4 votes)

15. Appointments and Reappointments:

A. Appointment of representatives to various advisory boards, commissions and committees

Recommended: Approve the appointment (4 votes)

16. Adjournment
Minutes
Minnetonka City Council
Monday, Dec. 17, 2018

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 Patty Acomb, Mike Happe, Rebecca Schack, Deb Calvert, Tim Bergstedt, Bob Ellingson, and Brad Wiersum were present.

4. Approval of Agenda

Acomb moved, Schack seconded a motion to accept the amended agenda with addenda to Items 14A, 14C, 14D, and 14E; adding a new Item 6B and renumbering the existing Item 6B as 6C; pulling Item 10H; and, moving Item 10I to 11C. All voted “yes.” Motion carried.

5. Approval of Minutes: None

6. Special Matters: None

A. Recognize Brian Wagstrom as Minnesota Public Works Association Director of the Year

City Manager Geralyn Barone was pleased and excited for Public Works Director Brian Wagstrom to receive this high honor.

Richard McCoy, Public Works Director/City Engineer of Robbinsdale, spoke as Vice Chair of the Awards Committee of the American Public Works Association (Minnesota Chapter). Mr. McCoy read the recognition and presented the award.

Wagstrom thanked the Awards Committee, current and past councils, and the public work’s employees for their skill and hard work.

The council added the award was well deserved, Minnetonka was on the cutting edge in regard to public works, and that Wagstrom was a delight to work with.
B. Recognize Retirement of Bob Hill

Wiersum read the recognition and presented the award.

C. Recognition of City Councilmember Patty Acomb

Wiersum read the recognition.

Acomb expressed her gratefulness to the residents for their trust in her. She was thankful to staff for their dedication, hard work, and help. She also thanked the council for its support.

Barone thanked council member Acomb on behalf of staff. Barone noted that Acomb was thorough, asked the hard questions, respected staff, and represented the constituents well.

7. Reports from City Manager & Council Members

Barone reported on upcoming city events and council meetings.

Assistant City Manager Perry Vetter reported that the city staff had completed the final session with the introductory cohort of the Government Alliance on Race and Equity.

Calvert was honored to replace Acomb on the National League of Cities Energy, Environment & Natural Resources Federal Advocacy Committee.

Wiersum congratulated Acomb on her election victory. The council was losing a good member, but the state was gaining a good representative. Wiersum also wanted to recognize former President George H.W. Bush, who had passed, for signing the Americans with Disabilities Act.

8. Citizens Wishing to Discuss Matters not on the Agenda

Brian Golob, 2740 Mayflower Avenue, Hopkins, volunteer for the Minnetonka Climate Initiative, thanked the council for its service. He shared his concern over global warming and the group’s objectives. Mr. Golob asked the council to consider committing resources to develop a climate action plan and to establish an environmental sustainability commission.

Skylar Seeds, Vice President of Minnetonka High School Earth Club, asked the council for its support.
Lauren Marty, Vice President of Minnetonka High School Earth Club, shared that according to the United Nations Climate Change report there were only 12 years remaining until climate change becomes irreversible. She hoped the council would take action.

Linda Langin, 14401 Atrium Way Apartment 126, volunteer for the Minnetonka Climate Initiative, was proud of the students and their work. Ms. Langin thanked Acomb and Wagstrom for their work in environmental protection.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Twelve-month time extension of conditional use permit approval for a telecommunications tower at 4525 Williston Road

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

B. Resolution establishing polling places for the 2019 Municipal Primary and Municipal General Election

Ellingson moved, Schack seconded a motion to adopt resolution 2018-153 establishing polling places for the 2019 elections. All voted “yes.” Motion carried.

C. Extension of Republic Services recycling contract

Ellingson moved, Schack seconded a motion to approve the three-year contract extension with Republic Services, beginning Jan. 1, 2019. All voted “yes.” Motion carried.

D. Public Works Joint Powers Mutual Aid Agreement

Ellingson moved, Schack seconded a motion to approve Resolution 2018-162 authorizing the Public Works Joint Powers Mutual Aid Agreement. All voted “yes.” Motion carried.

E. Resolution delegating authority for electronic fund transfers

Ellingson moved, Schack seconded a motion to adopt Resolution 2018-154 delegating to the finance director the authority to make electronic fund transfers. All voted “yes.” Motion carried.
F. Ordinance authorizing the sale of city property adjacent to 2430 Winter Circle

Ellingson moved, Schack seconded a motion to adopt Ordinance 2018-19 authorizing the sale of a portion of city-owned property adjacent to 2430 Winter Circle. All voted “yes.” Motion carried.

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

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

H. Resolution approving providing park credits for RIDGEDALE CENTER TENTH ADDITION

This item was removed from the agenda at the request of the applicant.

11. Consent Agenda – Items requiring Five Votes:

A. Resolution accepting gifts, donations and sponsorships given to the city during 2018

Ellingson moved, Calvert seconded a motion to adopt Resolution 2018-155 accepting gifts, donations and sponsorships made to the city in 2018. All voted “yes.” Motion carried.

B. Applications for renewed precious metal and secondhand dealer licenses for 2019

Ellingson moved, Calvert seconded a motion to approve all of the renewals listed for the 2019 calendar year. All voted “yes.” Motion carried.

C. Resolution approving the preliminary plat of DORN ESTATES, a two-lot residential subdivision with a variance, at 5524 Nantucket Rd.

Bergstedt pulled the item from the Consent Agenda to discuss. He noted that there had been an addition to the home in 2000, but staff had agreed that the lot could still be divided. The owners could subdivide the property without variances with an irregular lot line; however, staff desired clear cut lot lines. Bergstedt agreed with staff’s recommendation to approve the variance. He disagreed with waiving the McMansion policy.
City Planner Loren Gordon gave the staff report and explained how staff came to its recommendation.

Calvert asked about protection of the bluff. Gordon explained the sloped on the backside of the property were not bluffs; regardless, a conservation easement was not needed.

Katie and David Dorn, the applicants, thanked the council for its service and explained that they had always planned on dividing the existing property into two, single-family lots and were attempting to formalize those plans. The applicants asked the council to support staff’s recommendation.

Bergstedt asked staff what restrictions keeping the McMansion policy would place on future property owners. Gordon answered the policy, if applicable, would apply by looking at all the lots along the street and would require the home to be similar to other homes. Bergstedt reiterated that he was most comfortable with keeping the McMansion policy in place.

Acomb mentioned that more information especially visuals would be helpful. Wiersum suggested voting or tabling the item. After the council continued discussing the proposal it requested the applicant choose between a vote or tabling the proposal to a future council meeting. The applicants responded that they felt put on the spot. The council discussed how to move forward.

Bergstedt said as the Ward 4 representative he felt it was his duty to address neighborhood concerns.

Calvert expressed a concern with the Dorn’s building across the lot line.

Wiersum said the most expedient thing to do would be to table the item and the applicant agreed.

Bergstedt moved, Calvert seconded a motion to table Item 10.I. Resolution approving the preliminary plat of DORN ESTATES, a two-lot residential subdivision with a variance, at 5524 Nantucket Road. All voted “yes.” Motion carried.

12. **Introduction of Ordinances: None**

13. **Public Hearings:**

   **A.** Resolution denying the vacation of a portion of a public drainage and utility easement at 323 Bellwether Path
City Engineer Will Manchester gave the staff report.

Wiersum opened the public hearing at 7:50 p.m.

Mike Roebuck, President Ron Clark Construction, understood staff’s desire to not set a precedent, but asked to point out the unique characteristics of the property.

Wiersum closed the public hearing at 7:54 p.m.

Acomb asked if it was legal to build a deck within an easement. Manchester replied that constructed improvements were not allowed within drainage and utility easements.

Bergstedt noted that the final plat approved in 2014 allowed additional front yard setbacks and decreased easements. He agreed that this would set an unwanted precedent.

Calvert moved, Schack seconded a motion to adopt Resolution 2018-163 denying the vacation of a portion of the drainage and utility easement. All voted “yes.” Motion carried.

B. Resolution amending and replacing Resolution No. 2004-072 for a conditional use permit for a special education school in the industrial district at 11140 Bren Road West for Intermediate School District (ISD) 287

Gordon gave the staff report.

Happe asked what percentage of the students enrolled were part of Minnetonka’s three school districts. Gordon noted that the applicant could answer that question during its remarks.

Schack asked about the process and repercussions to reimplement the school resource officer if the city deemed it necessary. Community Development Director Julie Wischnack described the relationship between the school and the police department and what negotiations would take place. If the school decided not to comply then it would be deemed out of compliance with its Conditional Use Permit.

Wiersum opened the public hearing at 8:05 p.m.

Sandy Lewandowski, Superintendent Intermediate District 287, answered Council member Happe’s question responding that there were 12-member
school districts with four major school sites. Approximately three-elevenths of the students were from Minnetonka’s three school districts, but that number varied.

Wiersum closed the public hearing at 8:08 p.m.

Acomb thanked Chief of Police Scott Boerboom for working with Ms. Lewandowski in order to create a new, working agreement. The only downside was the loss of good interaction between police officers and students.

Happe wanted to better understand the situation. He said part of the original agreement was for funding for two safety resource officers paid for by the school, but this request eliminated both officers and the funding. Happe was concerned that there would still be public safety needs at the school, but the cost would be born by Minnetonka residents.

Wischnack read from the 2004 resolution stating that the school and the police would work together to come to an agreement. Barone further explained that the resolution did not specify how the school would be staffed.

Chief Boerboom commented that since 2004 the working agreement had changed several times based on the current needs of the school. Recently the school had employed changes to handle more issues internally and Chief Boerboom did not want the police to be a barrier while the school continued to make changes. He, reluctantly, thought this was the best solution. Patrol would respond only when there was a need.

Happe was unhappy with the cost transfer from the school to the city and was interested in testing this agreement for one year. Barone said that essentially this was a test. Chief Boerboom reported that the police had an excellent relationship with 287 and would monitor the situation monthly. If there was a drain on resources then it would be revisited.

Calvert noted that most of the patients at United Health were not residents, but if the police were needed, they responded. However, she felt strongly that there was a lost opportunity for positive interaction between students and police.

City Attorney Corrine Heine requested the district representative to indicate on the record that it agrees with the conditions set forth in the resolution.
Schack recommended support of Chief Boerboom’s decision especially knowing that it would be closely monitored.

Bergstedt noted that the councils’ concerns were alleviated because there was a condition of approval that allowed the city to require a Safety Resource Officer if service calls became challenging.

Wiersum applauded 287’s efforts to innovate to deal with the population it served. He suggested seeing how it worked because of the flexibility to change it.

Lewandowski thanked the council for its comments and acknowledgement of the unique role it played. She welcomed the council to visit the site and indicated that the district would agree with the resolution as stated.

Calvert moved, Schack seconded a motion to adopt Resolution 2018-156 amending and replacing Resolution No. 2004-072 for a conditional use permit for a special education school at 11140 Bren Road West. All voted “yes.” Motion carried.

14. Other Business:

A. Items concerning VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road:

1) Ordinance rezoning the property from B-1 and R-1 to R-3; and
2) Resolution approving preliminary and final plats, with variances

Gordon gave the staff report.

Acomb talked about the Glen Lake Neighborhood Study guiding principles which highlighted having a sidewalk on the east side of Eden Prairie Road. She understood the challenges, but was hopeful the council would add an easement for a future sidewalk.

Bergstedt commented the current design was much better and was also in favor of an easement on the east side for a future sidewalk.

Blaine Waters, Vice President Quest Development, thought the project was consistent with the vision for Glen Lake and that the type of housing was a good addition to the area.
Grace Sheely, 14325 Grenier Road, thought the city and the developer had done a great job working together and she was supportive. Ms. Sheely asked if the group home on neighboring property would be in line with these homes, relative to setback from the roadway.

Gordon answered that the group home was generally in line with the three lots on the east side of the driveway.

Wiersum thanked the developer for his indulgence. He was excited about the plan and thought it had dramatically improved.

Acomb moved, Ellingson seconded a motion to adopt Ordinance 2018-20 rezoning the properties at 5517 and 5525 Eden Prairie Road to R-3, low or medium density residential district. All voted “yes.” Motion carried.

Acomb moved, Ellingson seconded a motion to adopt Resolution 2018-157 approving the preliminary and final plats, with variances, of VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road. All voted “yes.” Motion carried.

B. Resolution approving a comprehensive guide plan amendment from commercial to mixed use at 14317 Excelsior Blvd.

Gordon gave the staff report.

Wiersum asked if the recommendation came from staff because of the Metropolitan Council and comprehensive plan circumstances or came from the developer. Gordon answered that the comprehensive plan amendment was staff driven because of the time of year and because the Metropolitan Council was not reviewing plans for six months.

Grace Sheely, 14325 Grenier Road, asked if the amendment changed the density or height restrictions. She expressed concern over shifting traffic to small, residential roads.

Gordon explained that the comprehensive plan did not prescribe standards for height and setbacks.

Bergstedt believed this was very straightforward and that he was in favor.

Bergstedt moved, Calvert seconded a motion to adopt Resolution 2018-159 approving a comprehensive guide plan amendment from commercial to mixed use at 14317 Excelsior Blvd. All voted “yes.” Motion carried.
Wiersum called recess at 8:50 p.m. He called the meeting back to order at 9:00 p.m.

C. Items concerning Marsh Run redevelopment, a multi-family residential development by Doran, at 11650 and 11706 Wayzata Blvd.:

1) Ordinance rezoning the property from PID, Planned I-394 District, to PUD, Planned Unit Development and adopting the master development plan; Site and building plan review, with variances; Preliminary and final plats of MARSH RUN; and Comprehensive guide plan amendment from service commercial to mixed use

2) Resolution approving the contract for private development with the Economic Development Authority in and for the City of Minnetonka, Minnesota and Marsh Development, LLC

Gordon gave the staff report related to land use matters.

Wischnack continued the staff report concerning financing.

Acomb asked if there were height limitations in a Planned Industrial Development. Gordon answered that height was relational to setback.

Anne Behrendt, COO Doran Companies, talked about the 175-unit Class A mixed income project. She highlighted the major changes that had been made. She touched on parking, traffic, green building, sustainable design features, height and setbacks, and the affordability component.

Tony Kuechle, President of Development Doran Companies, talked about density, parking per unit, the landscaping plan, and the many changes that had been made to address neighbors’ concerns.

Wiersum asked if there had been parking complaints at comparable developments. Gordon answered that out of three, the Carlson had some complaints that had been heard but not observed concerning vehicles coming and going out front.

Ellingson asked where visitors would park. Kuechle replied that visitor parking would be in the garage.

Acomb asked if there was room for more parking stalls. Kuechle answered affirmatively and discussed a couple of options for increasing parking.
Bergstedt asked how the short-term parking would be monitored. Kuechle explained the plan had not been finalized, but the short-term parking would be signed for different lengths of times.

Wiersum asked about parking per unit. Kuechle explained the best way to regulate parking was to charge per stall.

Calvert asked if there had been conversations with neighboring businesses about overflow parking. Behrendt answered that the Carpenters have significant parking that could be used in the evenings if needed.

John Ferrier, Vice President of Architecture CSM Corporation, supported the development and talked about the vision for the neighborhood to be a walkable, livable, and accessible community. Doran’s proposed project fulfilled this vision.

Christine Wihlm, Resident of Gables of West Ridge, shared that his biggest concern continued to be the size and density of the project.

Sam Handler, 783 Fairfield Circle, Hopkins, believed the photos in Doran’s proposal did not accurately show the relationship between buildings. Mr. Handler presented a chart on size of apartment complexes in Minnetonka and expressed concern that this building would set a precedent.

Amy Denzen, 956 Fairfield Court, Hopkins, represented her community in opposition to the proposed project. She believed that a 175-unit apartment building was not compatible with the community and that there were three major hurdles including density, parking, and traffic. She suggested that 80 to 110 units was more appropriate.

Jim Nekich, 958 Fairfield Court, Hopkins, discussed safety, cost, and quality of life.

Barbara Fermon, 11484 Fairfield Road W Unit 201, Hopkins, believed that an increase in density was inevitable. But for the health and community, the 20% affordable housing was needed. Minnetonka needed people working and living there so she supported the project.

LouAnn Carpenter, St. Louis Park, spoke as one of the families with an ownership interest in the property. She talked about her positive experience when an apartment building was built in her neighborhood.

Bob Uhlhorn, 907 Fairfield Way, Hopkins, discussed traffic, location of bus stops, and access for emergency vehicles.
Pam Lewis, 980 Fairfield Court, Hopkins, said that the neighborhood was not against change or affordable housing, but was against this density in their neighborhood. Ms. Lewis showed pictures of narrow neighborhood streets and expressed concern that the streets would become turnarounds for vehicles.

Wiersum ended public comment and brought the discussion back to the council. He asked staff to provide instruction on how to move forward procedurally. Barone suggested the council have a general discussion on the project and financing.

Acomb asked if a condition of approval could be added requiring the developer to report back to the council concerning parking. Gordon answered yes; however, the options at that point would be somewhat limited because some of the options would need to be completed at time of construction.

Happe stated that from a land use perspective he was supportive. The site needed developing and the developer had made changes requested by the neighborhood and council.

Acomb noted that the affordable housing component had peaked her interest from the beginning, but she did not want the development to negatively impact the neighbor’s lives. She appreciated the changes that had been made by the developer including the storm water treatment, the change to the entrance, the increased buffer to the north, and the increased setbacks on the east and west. For those reasons, she was supportive of the project.

Schack thought the site was appropriate for residential and would likely be an apartment building. She was supportive of the Comprehensive Plan amendment, the finance package, the design and layout, the developer, and the affordability component. She believed that the workforce deserved the dignity of a nice building. However, she struggled with mass and traffic.

Calvert shared that she was very conflicted. She thought the structure was beautiful taken by itself, but the mass and density were a problem. She was also concerned with parking and traffic.

Bergstedt agreed with both sides. He said that affordable housing would not drive his decision, but would be part of his decision. His biggest concern was parking and expressed a need for No Parking signs on Fairfield Road.
Ellingson felt conflicted and agreed with all the previous comments. He did commend the developer for listening to the neighbors and council.

Wiersum thought the building was attractive, but councils should not be in the business of design. The building was big, but the issue was more complex because of affordability. He expressed a desire to see the building a bit smaller, but explained that it was difficult to compare it to other buildings that were built 20 years ago because of rising costs. Because of economics there would be more scale, more density, and more mass. Wiersum believed the developer had done a good job mitigating the neighborhood’s concerns. He expressed support for the affordable housing, but talked about the cost. The city would be contributing approximately $381 per month per unit, but the developer was putting in a comparable amount. The challenging question was that the city needed affordable housing, but how to pay for it. Wiersum leaned towards supporting the project and thought the benefits outweighed the negative.

Barone commented that it was appropriate to start with the financing motion and that all the motions would require four votes.

Acomb moved, Bergstedt seconded a motion to adopt Resolution 2018-158 approving the contract for private development with the Economic Development Authority in and for the City of Minnetonka, Minnesota and Marsh Development, LLC; contingent upon council approval of the items related to rezoning, site and building plan review, preliminary and final plat and amendment of the comprehensive guide plan. Acomb, Happe, Schack, Bergstedt, Ellingson, and Wiersum voted “yes.” Calvert voted “no.” Motion carried.

Acomb moved, Bergstedt seconded a motion to adopt:
1) Ordinance 2018-21 rezoning the properties at 11650 and 11706 Wayzata Blvd. from Planned I-394 District to Planned Unit Development and adopting the master development plan.
2) Resolution 2018-160 approving final site and building plans for a multi-family residential building at 11650 and 11760 Wayzata Blvd.
3) Resolution 2018-161 approving the preliminary and final plats of MARSH RUN at 16500 and 11706 Wayzata Blvd.
4) Resolution 2018-164 approving a comprehensive guide plan amendment from commercial to mixed use at 14317 Excelsior Blvd.

Acomb, Happe, Bergstedt, and Wiersum voted “yes.” Calvert, Schack and Ellingson voted “no.” Motion carried.
Barone suggested amending the agenda to continue Item 14E to the January 7, 2019 City Council meeting so that staff could give an appropriate presentation and Council could have a robust conversation.

Wiersum moved, Bergstedt seconded a motion to continue Item 14.E, 2040 Comprehensive Guide Plan to the January 7, 2019 City Council meeting.

Acomb highlighted the resiliency chapter and thanked staff for its work. She hoped it was the first step in working toward climate change issues.

All voted “yes.” Motion carried.

**D. At Large Seat B City Council Vacancy**

Barone gave the staff report.

Peggy Kvam, 13012 Jane Lane, Hopkins, asked the council to vote to hold a special election in the spring. She noted that Minnetonka had 82% of voters cast ballots in November’s midterm election. Voting was near and dear to the resident’s hearts and Ms. Kvam wanted citizens to be able to cast a vote for the person to represent them on the council.

David Haeg, 17045 Chiltern Hills Road, acknowledged that this was an issue without an obvious solution. Appointments, non-majority winners, and single digit voter turnout were not signs of a healthy election system. Mr. Haeg supported rank choice voting and described the benefits. He asked the council to take the opportunity to start the conversation of using rank choice voting in Minnetonka.

Calvert moved, Bergstedt seconded a motion to extend the meeting until 12:30 a.m. All voted “yes.” Motion carried.

Grace Sheely, 14325 Grenier Road, talked about past elections, believed an appointment gave the incumbent an unfair advantage, and supported having a special election in April. She indicated that Council Member Acomb had not supported mountain biking in Lone Lake Park, that the issue would be important in an election, and the that council should consider a special election.

Acomb clarified that while she was supportive of an environmental look into Lone Lake, she had never stated that she was not supportive of mountain biking in Lone Lake Park. Barone also clarified that there would be a special election. The question was whether it would be held in April or November.
Ellingson voiced support for a special election in April.

Acomb leaned toward a special election in April.

Happe commented that he had received feedback from residents on both sides of the issue. He also expressed disappointment that the turnout was low when he ran in April. He was in favor of an appointment process because it would be followed by a special election in November.

Schack shared that she had been contacted by about 15 residents and all of them except one requested a special election in April. She was in favor of the April special election.

Calvert noted that appointments were sometimes necessary and good. But one way to tell if someone wanted a job was how hard they campaign for it. She leaned toward a special election in April.

Bergstedt commented that he had received a lot of emails that suggested it would be irresponsible to make an appointment; however, he believed it was more complicated than that. Minnetonka had a long history of appointments and elections. His biggest concern was the lack of a primary in a city-wide race and someone winning with potentially 10% of the vote. Bergstedt was in favor of an appointment with a robust, truncated process.

Wiersum shared that a number of things said by residents on both sides of the issue had resonated with him. The charter was Minnetonka’s constitution and it gave the council two options. He agreed with a commenter that Minnesotans like to vote; however, the Ward 3 April vote had 13% turn. Even though the power of the incumbency was great, the voters would still have a chance to vote. As the Mayor, Wiersum was interested in having the seat filled sooner and was in favor of a robust appointment process.

Ellingson asked staff if a decision needed to be made tonight. Barone answered that staff was looking for guidance so a decision could be made on January 7 when the vacancy would be declared and staff could be directed to hold a special election or begin the appointment process. She informed the council that under the charter the council has 60 days to make a decision on whether to make an interim appointment and that, if the council doesn’t make the decision within 60 days, the mayor has 7 days to make an appointment. If the mayor does not make an appointment, the city clerk must call a special election.
Ellingson asked if the council could vote tonight and if Council Member Acomb could participate in that vote. Heine explained that the council could decide on a process and Acomb could participate; however, it would have to be made official on January 7, and Council Member Acomb would not be on the council at that time. Wiersum commented that a vote taken tonight would not be binding. Barone informed the council that staff would be prepared to go either way at the Jan. 7, 2019 City Council meeting.

E. 2040 Comprehensive Guide Plan

This item was continued to Jan. 7, 2019.

15. Appointments and Reappointments: None

16. Adjournment

Bergstedt moved, Schack seconded a motion to adjourn the meeting at 12:17 a.m. All voted “yes.” Motion carried.

Respectfully submitted,

Becky Koosman
Acting City Clerk
Minutes
Minnetonka City Council
Monday, Jan. 7, 2019

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 Mike Happe, Rebecca Schack, Deb Calvert, Tim Bergstedt, Bob Ellingson, and Brad Wiersum were present.

4. Approval of Agenda

City Manager Geralyn Barone noted that Item 11A required 2/3 majority vote for approval which would be four votes instead of five.

Schack moved, Calvert seconded a motion to accept the agenda with addenda to Items 13A and 14B, as presented. All voted “yes.” Motion carried.

5. Approval of Minutes: Nov. 26, 2018 and Dec. 3, 2018 regular council meetings

Calvert moved, Bergstedt seconded a motion to approve the minutes of the Nov. 26, 2018 regular council meeting, as presented. All voted “yes.” Motion carried.

Calvert moved, Bergstedt seconded a motion to approve the minutes of the Dec. 3, 2018 regular council meeting, as presented. All voted “yes.” Motion carried.

6. Special Matters:

A. Retirement recognition for Bonnie Rislund and Trish Sauer

Wiersum read the recognition and thanked both for their service to the city.
Barone, on behalf of staff, thanked both for all they had done over the years as the voice and face of Minnetonka. It was an honor to recognize their service.

B. Retirement recognition for Jo Colleran

Bergstedt read the recognition.

Colleran commented that she was proud to serve the city and residents of Minnetonka.

Barone noted that she had never seen as much passion for a job as Colleran displayed.

Calvert reiterated Barone’s comments and thanked Colleran for everything she accomplished.

Wiersum commented that Colleran had helped the council balance preserving the natural resources with being a growing city.

7. Reports from City Manager & Council Members

Barone reported on upcoming city events and council meetings.

Bergstedt noted that there were only six council members because former Council member Patty Acomb had resigned to serve on the state legislature. Her memory would continue to make a big difference in everything the council would do moving forward.

Wiersum agreed, but noted that she would do a great job representing the city at the state legislature.

8. Citizens Wishing to Discuss Matters not on the Agenda

Luann Toliver, 14801 Wychewood Road, asked the Council to review its policy on transparency. She had been opposed to the electric and gas franchise fees due to the lack of transparency and noted that the fees were not mentioned in various publications that discussed the city’s budget increase.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Resolution designating a new Acting Mayor and Alternate Acting Mayor
Ellingson requested that this item be pulled from the consent agenda. Wiersum announced that the resolution would designate Bergstedt as acting mayor and Calvert as alternate acting mayor for 2019.

Ellingson moved, Happe seconded a motion to adopt Resolution 2019-001 designating a new acting mayor and alternate acting mayor. All voted “yes.” Motion carried.

B. Designation of the city’s official newspaper for 2019

Ellingson moved, Calvert seconded a motion to designate Lakeshore Weekly News as the city’s official newspaper for 2018 legal notices. All voted “yes.” Motion carried.

C. Resolution supporting the DEED Job Creation Fund Application by Carlson Wagonlit Travel (CWT)

Ellingson moved, Calvert seconded a motion to adopt Resolution 2019-002 supporting the DEED Job Creation Fund Application by Carlson Wagonlit Travel (CWT). All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Resolution approving the preliminary plat of DORN ESTATES, a two-lot residential subdivision with a variance, at 5524 Nantucket Rd.

Bergstedt shared the only change in the resolution was the inclusion of the McMansion policy.

Bergstedt moved, Schack seconded a motion to adopt Resolution 2019-003 approving the preliminary plat, with variance, of DORN ESTATES, at 5524 Nantucket Rd. All voted “yes.” Motion carried.

12. Introduction of Ordinances: None

13. Public Hearings:

A. Ordinance amending the city charter regarding council terms of office and vacancies in office

City Attorney Corrine Heine gave the staff report.

Barone clarified that the changes come to the council as recommended by the Charter Commission. If the council wanted to make a change, it would
be reverted back to the commission. The changes would not be in effect for the council’s current vacancy.

Wiersum opened the public hearing at 7:11 p.m. No one spoke. He closed the public hearing at 7:12 p.m.

Happe moved, Bergstedt seconded a motion to adopt Ordinance 2019-01 amending the city charter regarding council terms of office and vacancies in office. All voted “yes.” Motion carried.

B. Utility rates related items:

1) Municipal water and sanitary sewer rates  
2) Municipal water and sanitary sewer connections fees (REC)  
3) Interest rate for SAC/REC deferral program  
4) Recycling fee  
5) Storm water fee

Finance Director Merrill King gave the staff report.

Happe asked what the impacts would be if the council did not approve the new rates and fees. King answered that construction projects would need to be halted. Barone explained the increases reflected discussions the council had as part of the five-year Capital Improvement Program. This would cover the costs of policy and funding decisions already made.

Wiersum opened the public hearing at 7:23 p.m.

Dennis Yockers, 3648 Hazelmoor Place, talked about the proposed storm water utility fee increases. He noted that the single-family unit month rate was not based on the size of the property despite the fact that a larger property would have a greater impact. He said he was an emeritus of natural resources management from the University of Wisconsin and recommended the city recognize citizens and businesses that were making significant commitments to water resource management through an adjusted fee structure. Mr. Yockers also encouraged the council to work with other agencies to provide more education and financial incentives for water resources management.

Wiersum closed the public hearing at 7:28 p.m.

Bergstedt said Mr. Yockers made compelling points and wanted the council to add this issue to a future study session.
Calvert thought incentivizing good behavior was interesting and wanted to study it further.

Schack agreed and wanted to add this issue to the study session when the council talked about sustainability.

Wiersum thanked Mr. Yockers for his comments and supported the utility increases as outlined.

Schack moved, Bergstedt seconded a motion to adopt Resolution 2019-004 providing for a change in municipal water rates and sanitary sewer rates. All voted “yes.” Motion carried.

Schack moved, Bergstedt seconded a motion to adopt Resolution 2019-005 establishing the interest rates for businesses participating in the SAC and REC deferral program. All voted “yes.” Motion carried.

Schack moved, Bergstedt seconded a motion to adopt Resolution 2019-006 increasing the city’s monthly recycling fee. All voted “yes.” Motion carried.

Schack moved, Bergstedt seconded a motion to adopt Resolution 2019-007 increasing stormwater utility fees. All voted “yes.” Motion carried.

14. Other Business:

A. Memorandum of Understanding related to Southwest

Community Development Director Julie Wischnack gave the staff report.

Happe moved, Calvert seconded a motion to approve a memorandum of understanding with Metropolitan Council for a pedestrian walkway easement. All voted “yes.” Motion carried.

B. 2040 Comprehensive Guide Plan

Barone informed the council that staff would present each section separately followed by time for questions and comments from the council.

City Planner Loren Gordon gave the report on the Regional Plan – Thrive MSP 2040.

Wischnack gave the report on the Housing Plan.
Calvert asked about the goal of 508 units of income-based housing at 30% area median income or below. Wischnack explained 30% area median income was the hardest housing to build, needed the most subsidy, and was the most difficult to finance.

Happe, after verifying that the plan was over 1,500 pages, acknowledged the huge amount of work that went into it. The Housing Plan started with the knowledge that the Metropolitan Council said Minnetonka would have 10,000 new residents over the next decade. Happe was on the board of a non-profit organization called Minnesota Home Ownership Center. Minnesota was among the worst states for a housing gap meaning the percentage of non-white people who owned homes was extremely low. He wanted to add a commitment to the majority of added units be owned to the goals of the plan. He also wanted to see an emphasis on making it easier for the work force such as first responders and city employees to be able to live in the city.

Schack had a different perspective. She didn’t want the city’s answer to the problem of affordability to always be rentals, but believed this was a structural issue that went beyond what the city could do. The only way to meet the growth was density and she felt the plan addressed the important issues.

Calvert mentioned some other issues that young people might be dealing with like student loans. She also noted that some people do not want to own or take care of a home.

Wiersum thought it was a complex issue. He would choose owner occupied affordable units every time if given the choice; however, the strength in the apartment market was driven by the recession. The only sure thing was that property values would continue to rise. He wanted to encourage owner occupied housing, but acknowledged the city would need both.

Calvert noted that most apartments were not large enough for families and suggested incentivizing developers to build more bedrooms per apartment.

Happe said with regard to housing the council had the ability to choose what the future would look like.

Barone asked if staff could talk a little more about the population growth numbers given to the city by the Metropolitan Council.
Gordon shared the numbers again and explained that the city needed to plan as if it would happen even if it did not. The math demonstrated that the city could accommodate the growth.

Wischnack commented there were 23,000 households in Minnetonka. Of the 23,000, 10,000 were affordable to 80% area median income or less. Of the 10,000, 5,000 were owner occupied housing. There were a lot of things that made the community accessible, the 1,000 units that were needed were only a small part of the bigger picture.

Bergstedt shared the plan had been chaired by former mayor Terry Schneider and thanked Mr. Schneider and the entire committee for taking on the responsibility. He commended the staff equally.

Gordon gave the report on the Land Use Plan.

Calvert asked if there was any discussion on making Minnetonka Industrial Park mixed use. Gordon said there was already a diverse group of businesses in the park and the committee decided to not open the door to residential. Wischnack noted that people thought that might change in the future, but not quite yet.

Gordon gave the report on the Parks and Trails Plan.

Gordon gave the report on transportation goals and roadway improvements.

Wischnack gave the report on the transit system.

Gordon gave the report on bike facilities.

Calvert reminded the council that former Council Member Tony Wagner was a big proponent of cut outs for buses. She also mentioned that in some areas ride share apps had caused more traffic congestion even as they improved parking.

Wiersum wanted to make sure the city had a strong emphasis moving forward on pedestrian safety.

Gordon gave the report on the Water Supply Plan.
City Engineer Will Manchester gave the report on the Water Resources Management Plan.

Calvert mentioned that there were places where she would like to see stronger language in terms of commitment to water resources protection and commitment to implementation.

Wiersum thought water was taken for granted in the “land of 10,000 lakes” and water quality was diminishing. He wanted the council to do everything it could through education and policy to protect water resources in the community.

Gordon gave the report on Resiliency.

Calvert was interested in incentivizing good behavior of citizens and businesses. She wanted the city to be proactive instead of just reactive.

Wiersum agreed that education of citizens as stakeholders was a big point.

Wischnack gave the report on the Economic Competitiveness Plan.

Gordon wrapped up staff’s presentation.

Wiersum thanked the steering committee.

Steering Committee Chair Terry Schneider complimented the council on its robust discussion of the plan. He thanked the steering committee and staff for their work and believed it was a great document that would help guide the city for the next 20 years.

Dennis Yockers, 3648 Hazelmoor Place, said water resources management was closely tied to water supply and talked about the importance of water infiltration. He thought it was very important to educate citizens because the majority of land in Minnetonka was single family homes.

Calvert moved, Bergstedt seconded a motion to adopt Resolution 2019-008. Schack, Calvert, Bergstedt, Ellingson, and Wiersum voted “yes.” Happe voted “no.” Motion carried.

C. At Large Seat B City Council Vacancy

Barone gave the staff report.
Happe commented that he had given this a lot of thought and had decided filling the vacancy quickly was very important from a governance standpoint. Spring election turn out was very low, but the council could have a fast, robust appointment process.

Bergstedt agreed with Happe. He noted that there would be an election either way. Bergstedt was concerned with an April election because of the lack of primary, low voter turnout, single issue candidates, and party politics.

Schack shared she did not have a strong opinion either way. Residents had reached out to her asking for an April election; however, some of those same residents had changed their minds. She felt comfortable pursuing an appointment until the November election.

Calvert had been a proponent of an April election; however, as she had talked through the pros and cons of the options with residents who had contacted her, all of the residents had moderated their views and acknowledged that the city would be fine regardless of the option that the council chose. She compared the voter turn out rates for April and November elections and was in favor of the higher turn out in November. Calvert leaned toward an appointment process.

Ellingson said as a practical matter it would be easier to appoint someone, but he preferred elections.

David Sanders, 11650 Cedar Pass, Hopkins, consented that the council was choosing between two arguments of democracy and understood that it was a close call. He respected the thought processes of each council member. He encouraged the council to think more about the process and less about the candidate; and, to be open to a disruptive influence on the council.

Luann Toliver, 14801 Wychewood Road, asked about the term length for the special election for the At Large Seat B city council vacancy.

Wiersum answered that the term length would run from the time of the election for two years. He said the process was a big deal. If there was an April election, the new member would be seated on May 6, 2019; however, if the council appointed an interim council member, the new member would be seated Mar. 4, 2019. The charter gave the council two options and did not push one over the other. Wiersum was supportive of an appointment because it was a better process and a shorter vacancy time.
Bergstedt moved, Happe seconded a motion to adopt Resolution 2019-009 declaring vacancy in the council for At Large Seat B. All voted “yes.” Motion carried. Ellingson voted “no.”

Barone outlined the steps moving forward.

15. Appointments and Reappointments:

A. Appointment of representatives to various advisory boards, commissions and committees

Barone gave the staff report.

Schack moved, Happe seconded a motion to approve the appointments. All voted “yes.” Motion carried.

B. Resolution designating Commissioners and Technical Advisory Committee members to the Bassett Creek Watershed Management Commission

Wiersum moved, Bergstedt seconded a motion to adopt Resolution 2019-010 designating commissioners and technical advisory committee members to the Bassett Creek Watershed Management Commission. All voted “yes.” Motion carried.

16. Adjournment

City Clerk David Maeda announced he had accepted a job as the State Elections Director with the Minnesota Secretary of State. He expressed his gratitude, shared memories, and commented that the City of Minnetonka had been a remarkable organization to work with.

Barone expressed her sincere gratitude. She commented that the city had a culture to allow employees to utilize their gifts and Maeda had done that with elections.

Wiersum said that Maeda was a true professional. This opportunity was an honor and very fitting. The council wished him the best.
Happe moved, Calvert seconded a motion to adjourn the meeting at 10:30 p.m.  
All voted “yes.”  Motion carried.

Respectfully submitted,

Becky Koosman  
Acting 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**

   Council Members Rebecca Schack, Deb Calvert, Tim Bergstedt, Bob Ellingson, Mike Happe, and Brad Wiersum were present.

4. **Approval of Agenda**

   Happe moved, Calvert seconded a motion to accept the agenda with addenda to Item 10C and remove Item 14D. All voted “yes.” Motion carried.

5. **Approval of Minutes:** None

6. **Special Matters:**

   A. **Recognition of Park Board Members Madeline Seveland and Peggy Kvam**

      Wiersum read the recognition.

      Peggy Kvam said it was a pleasure to serve on the Park Board. She explained that she was moving to Eden Prairie and was unable to renew her term.

      Madeline Seveland said she enjoyed learning about the city through the Park Board and said she would stay involved.

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

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

   Calvert shared she had met with several interested candidates for the appointment to the council and was looking forward to reading all of the applications. She had also attended a neighborhood session for a proposed development on Orchard Road.

   Wiersum summarized the performance evaluation for City Manager Geralyn Barone, which was performed in closed session on Jan. 14, 2019. The council evaluated Barone’s performance based on the city’s shared values and management competencies. The council determined Barone consistently meets or exceeds expectations on all six components of shared values. The council also determined
Barone consistently meets or exceeds expectations on all six management competencies. The council approved leadership goals for 2019 in the areas of management competencies and personal growth for the city manager.

Wiersum also reported that he had also participated in a panel for newly elected officials at a League of Minnesota Cities conference.

8. Citizens Wishing to Discuss Matters not on the Agenda

Vickie Schleuning, Lake Minnetonka Conservation District Executive Director, appeared on behalf of the Lake Minnetonka Conservation District, which represents 14 member cities and residents. She discussed lake safety, funding, and creating a master plan to address vegetation and aquatic invasive species.

Sue Shuff, Lake Minnetonka Conservation District Representative, discussed the harvesting program for aquatic invasive species.

Ellen Silva, 10209 Windsor Lake Lane, Hopkins, and Peter Sammond, 11816 Bren Road, Hopkins, represented Minnesota Citizens for Clean Elections. They talked about their dedication to educating citizens about ways to maintain and enhance the democratic power of ordinary citizens. The biggest concern was the cost of elections at all levels of government. Ms. Silva and Mr. Sammond requested the council study the issue and draft a resolution requesting action by the Minnesota Legislature.

9. Bids and Purchases:

A. Bids for the 2019 Mill and Overlay Project

Barone gave the staff report.

Bergstedt noted both projects were in his ward and after speaking with the city engineer, he felt very comfortable with the project.

Bergstedt moved, Calvert seconded a motion to award the contract. All voted “yes.” Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

A. Solar garden subscription agreement

Ellingson moved, Schack seconded a motion to approve the agreement. All voted “yes.” Motion carried.

B. 2019 Pay Equity Implementation Report

Ellingson moved, Schack seconded a motion to approve and authorize the submittal of the 2019 Pay Equity Implementation Report. All voted “yes.” Motion carried.
B. Preliminary plat of INVERNESS ESTATES, a two-lot subdivision at 13321 Inverness Road
Ellingson shared that a resident had expressed a concern over the front yard setback; however, the subdivision did comply with the ordinance.

Ellingson moved, Schack seconded a motion to adopt Resolution 2019-011 approving the preliminary plat. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

A. Waterstone Place Apartments vacation of easements

City Planner Loren Gordon gave the staff report.

Wiersum opened the public hearing at 7:20 p.m.

Jeff Gears, bdh+young Project Architect, thanked the council for reviewing the proposal.

Wiersum closed the public hearing at 7:21 p.m.

Happe moved, Calvert seconded a motion to adopt Resolution No. 2019-012, vacating the easements. All voted “yes.” Motion carried

14. Other Business:

A. Metro Transit Service Update

Community Development Director Julie Wischnack gave the staff report.

Steve Mahowald, Metro Transit, discussed Metro Transit’s intent to request a public hearing with the Metropolitan Council in order to eliminate Route 614. He talked about rider’s other options including Dial-A-Ride.

Calvert addressed the condition of the bus stops and asked what Metropolitan Council was doing to encourage people to ride. Mr. Mahowald answered that the top concern was reliability and amenities were a battle, but they were working on it.

Schack asked for the cost difference between transit link and the bus. Mr. Mahowald replied it was $2.50 more for the transit link.

Wiersum asked if people use the transit link or if service drops. Mr. Mahowald explained that historically there were other options.
Wischnack added the Transit Cooperative Agreement ran through next summer and the council would continue to hear more on this as it prepared for the light rail.

Wiersum thanked Mr. Mahowald for the report and for the work Metro Transit did in Minnetonka.

B. Resolution for the 2019 Ridgedale Drive Project

City Engineer Will Manchester gave the staff report.

Calvert asked if there would be any issues due to the project coinciding with other apartment construction projects. Gordon answered that it was a very important issue and staff would be working to get the projects in sync.

Bergstedt expressed a concern over the cost and time of maintaining the landscaping. Barone explained that staff had anticipated this need in the budget forecast going forwards.

Happe thought the plan was well thought out and thanked staff.

Schack thought the project would link everything together and was excited for the grand reveal.

Wiersum shared the council’s enthusiasm and hoped to keep the landscaping simple. He asked about the drivability of the roundabouts. Manchester answered that the roundabouts were spaced out nicely and definitely able to accommodate a positive driving experience.

Ellen Silva, 10209 Windsor Lake Lane, Hopkins, said landscapes that incorporated flowers had a big impact on pollinator diversity and numbers.

Schack moved, Calvert seconded a motion to adopt Resolution 2019-013, accepting plans and specifications and authorizing the advertisement for bids for the Ridgedale Drive area, Project No. 19401, All voted “yes.” Motion carried.

C. Resolution for the Plymouth Road Trail Project

Manchester gave the staff report.

Schack moved, Calvert seconded a motion to adopt resolution 2019-014, accepting plans and specifications and authorizing the advertisement for bids for the Plymouth Road Trail project from Amy Lane to Minnetonka Boulevard. All voted “yes.” Motion carried.

D. Preliminary plat of WILLISTON HEIGHTS ADDITION, a four-lot subdivision at 4716 and 4724 Williston Rd. The proposed preliminary plat does not meet the tree ordinance for subdivision
This item was removed from the agenda.

**E. Public Safety Facility**

Gordon gave the staff report.

Assistant City Manager Perry Vetter introduced John McNamara with Wold Architects and Engineers. Mr. McNamara talked about the existing site, site plan, tree inventory, tree preservation, steep slope and wetlands, finish plan, storm water management, and exterior massing.

Calvert asked whether, when a project encroaches on a woodland preservation area, if the woodland preservation area footprint would be reduced when considered for future projects. Gordon answered that staff does update the woodland preservation maps to reflect reductions due to projects. Staff keep natural resource data as current as possible and that as an area changes, which can be due to a number of factors, it would be looked at in that moment of time. Wischnack added there is significant restoration with the project and that the hope was that the restoration would be added as woodland preservation area in the future. Calvert noted she was very grateful that beautiful, high priority oak trees were being saved and she was excited about the sustainable features.

Happe shared that even though the project had a price tag of twenty-five million dollars, he had not heard one negative response which showed the support in the community for the police and firefighters.

Bergstedt agreed with Calvert and Happe and offered kudos to everyone involved.

Schack thought it was great and was glad that the city was holding itself to a high standard.

Ellingson complimented the architect and staff.

Wiersum said public safety was paramount. The facility would do a number of things, but it would also communicate to residents, police, and firefighters that the city values what they do. He appreciated the great work.

Bergstedt moved, Happe seconded a motion to adopt the Ordinance 2019-02 amending existing master development for the Minnetonka Civic Center at 14500 and 14600 Minnetonka Boulevard and Resolution 2019-015 approving a conditional use permit and site and building plan review for a new fire station and remodeled police station at 14500 and14600 Minnetonka Boulevard. All voted "yes." Motion carried.

Barone provided next steps and her thanks to staff and the architects for tackling this complicated project.

**15. Appointments and Reappointments:**
A. Appointments and reappointments to Minnetonka Boards and Commissions

Wiersum read the appointments and reappointments.

Wiersum moved, Schack seconded a motion to approve the recommended appointments and reappointments. All voted “yes.” Motion carried.

16. Adjournment

Calvert moved, Schack seconded a motion to adjourn the meeting at 8:47 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

Becky Koosman
Acting City Clerk
Brief Description: Bids for the Main Lift Station Junction Box

Recommended Action: Award contract to S.M. Hentges & Sons, Inc.

Background:

The city has two primary alignments of large diameter forcemain (pressure sewers) in the city. The first route is from the public works main lift station to Guilliams Field where 18-inch and 30-inch diameter pipes convey a majority of the city’s waste for treatment. The second route is from the Williston lift station, located at Minnetonka Boulevard and Williston Road, easterly along Minnetonka Drive to Guilliams Field, where the forcemains converge and flow south to Cottage Lane and TH 7.

On July 14, 2013, the 30-inch forcemain ruptured near Prestige Lane and an emergency repair was made. On Jan. 9, 2014, another break occurred in the same general area on the 18-inch forcemain, and flow was diverted back to the 30-inch pipe while repairs were made.

A consultant analyzed the condition of the forcemain pipes and determined that the most cost effective remedy to fix the pipes was to line the inside of the pipes with a resin-impregnated liner. Rehabilitation of the 18 and 30-inch pipes from the public works main lift were completed between 2014 and 2016.

Following rehabilitation of the 18 and 30-inch pipes the city began the process of rehabilitating the forcemain from the Williston lift station. This consisted of directional drilling of 9,350 feet of a new 12-inch secondary forcemain from Williston Road to Guilliams Field. This work began in 2018 and is scheduled to be completed in the summer of 2019. Once completed, the final phase of system rehabilitation will involve using the new pipe to carry the flow when the current pipe is taken out of service and lined in 2020.

This year’s project involves the construction of a new junction collection box structure near the Guilliams Field parking lot where the two forcemain pipes from the Williston lift station will converge into the two pipes from the public works main lift station. This structure allows utility crews to alternate flow between the forcemain pipes dependent on seasonal flows and will also allow for the lining of the existing 24-inch forcemain from the Williston lift station.

Bid Opening:

On March 9, 2019 four bids were received in response to the call for bids and the results are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Base Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>S.M. Hentges &amp; Sons, Inc.</td>
<td>$1,166,944.00</td>
</tr>
<tr>
<td>Lametti and Sons, Inc.</td>
<td>$1,287,700.00</td>
</tr>
<tr>
<td>PCiRoads, LLC</td>
<td>$1,357,000.00</td>
</tr>
<tr>
<td>Minger Construction Co., Inc.</td>
<td>$1,385,000.00</td>
</tr>
<tr>
<td><strong>Engineer’s Estimate</strong></td>
<td><strong>$1,184,000.00</strong></td>
</tr>
</tbody>
</table>
The low bidder, S.M. Hentges & Sons, Inc., has completed projects in Minnetonka, and based on the bids received and past experience, the city's consultant engineer is recommending to award the contract to the low bidder.

**Project Funding & Schedule:**

This project is contained in the 2017-2021 Capital Improvements Program with funding from the Utility Fund. The low bid is within the range of the engineer’s estimate and within the CIP budget. If the recommended action is approved by council, construction is expected to begin in June and be completed by September. The schedule is set in order to be completed in advance of the 24-inch forcemain lining and Williston lift station rehabilitation projects.

**Recommendation:**

Award the contract for the Main Lift Station Junction Box to S.M. Hentges & Sons, Inc., in the amount of $1,166,944.00.

Submitted Through:
- Geralyn Barone, City Manager
- Merrill King, Finance Director
- Brian Wagstrom, Public Works Director

Originated by:
- Chris LaBounty, P.E., Acting Water and Sewer Utility Manager
City Council Agenda Item #10A
Meeting of Mar. 18, 2019

Brief Description
Resolution amending Resolution No. 2019-011 regarding INVERNESS ESTATES

Recommendation
Adopt the resolution

Proposal

On Jan. 28, 2019, the city council approved Resolution No 2019-011, a preliminary plat for INVERNESS ESTATES, proposed by Whitten Associates, Inc. The project proposed dividing the existing 1.3-acre property into two, single-family lots.

Upon trying to record the plat, an error was discovered in the resolution. The resolution inaccurately identified the validity date as:

5. This approval will be void on Jan. 28, 2019, if: (1) a final plat is not approved; and (2) the city council has not received and approved a written application for a time extension.

The correct date should read as:

5. This approval will be void on Jan. 28, 2020, if: (1) a final plat is not approved; and (2) the city council has not received and approved a written application for a time extension.

Staff Recommendation

Adopt the resolution amending Resolution No. 2019-011 regarding INVERNESS ESTATES.

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

Originator: Loren Gordon, AICP, City Planner
Resolution No. 2019-
Resolution amending Resolution No. 2019-011 regarding INVERNESS ESTATES

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

Section 1. Background.


1.02 Resolution No. 2019-011 affects and concerns real property legally described as:
Tract A, REGISTERED LAND SURVEY NO. 0855 Hennepin County, MN

1.03 Resolution No. 2019-011 contains an error at Section 4.01, paragraph 5.

Section 2. Council Action.

2.01 Resolution No. 2019-011 is amended by substituting the paragraph below for Section 4.01, paragraph 5 of the resolution

   5. This approval will be void on Jan. 28, 2020, if: (1) a final plat is not approved; and (2) the city council has not received and approved a written application for a time extension.

2.02 Except as amended by this Resolution, the provisions of Resolution No. 2019-011 are in all respects confirmed and remain in full force and effect.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting 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 March 18, 2019.

_______________________________
Becky Koosman, Acting City Clerk
City Council Agenda Item #12A  
Meeting of March 18, 2019

Brief Description  
Items concerning the demolition of an existing auto dealership building to construct a new auto dealership building at 15906 Wayzata Blvd.

1) Ordinance replacing the existing master development plan and approving final site and building plans;

2) Amendment of an existing conditional use permit; and

3) Variance for parking setback.

Recommendation  
Introduce the ordinance and refer it to the planning commission.

Proposal

Jack Grotkin (R.J. Ryan Construction), on behalf of Walser Nissan-Wayzata, is proposing to demolish the existing car dealership to construct a new car dealership at 15906 Wayzata Blvd. (See attached.) The proposal requires approval of:

- **Master Development Plan Amendment.** The applicant’s proposal would remove the existing building to construct a new building. As such, a new master development plan is required. Master development plans may be approved only by ordinance.

- **Site and Building Plan Review.** By city code, site and building plan review is required for any change to a property that results in a different intensity of use.

- **Conditional Use Permit Amendment:** The subject site was issued a conditional use permit for outside display and auto sales within the Planned I-394 District in 1996. This approval will need to be amended for the subject proposal.

- **Variance.** By city code, surface parking lots must be setback at least 20 feet from public right-of-ways and exterior property lines. The current site has a 0-foot setback to the west property line and a 17-foot setback to the east property line. The applicant has proposed 10-foot setbacks to both the west and east property lines.

Background

The subject auto dealership has a long history within the City of Minnetonka. During its time, the site has gone through several changes, but has remained as an auto dealer since 1977. Specifically:

- **1977:** Conditional use permit approved for an auto dealership within the B-4 District.
- **1978:** Site and building plan approved for building.
- **1983:** The city council approved a sign plan for the subject site.
- **1988:** Site and building plan approved for parking lot expansion.
• **1996**: Guide plan and conditional use permit amendment with site and building plan approved to add to the existing structure.

• **1999**: Master development plan amendment and site and building plan approved for addition.

**Issue Identification**

The purpose of introducing an ordinance is to give the city council the opportunity to review a new application before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval.

Based on preliminary review of the proposal, staff has identified the issues that will be particularly analyzed as the formal review continues:

1. **Variance Standard.** State statute and city code outline very specific standards that must be met for approval of a variance. Staff will review the applicant’s request in light of these standards.

2. **Site and Building Standard.** City code outlines various standards pertaining to site and building review. Staff will review the applicant’s request in light of these standards.

3. **Natural Resources Protection.** The north side of the subject site contains a portion of a large wetland system. As such, staff will review the subject request with special attention to natural resource protection.

4. **Auto Sale Development Standards.** City code outlines specific approval standards for auto dealership developments. Staff will review the applicant’s request in light of these standards.

**Staff Recommendation**

Introduce the ordinance and refer it to the planning commission.

Submitted through:
- Geralyn Barone, City Manager
- Julie Wischnack, AICP, Community Development Director
- Loren Gordon, AICP, City Planner

Originated by:
- Drew Ingvalson, Planner
Location Map

Project: Walser Nissan Wayzata
Address: 15906 Wayzata Blvd

CITY OF MINNETONKA
Walser Nissan Wayzata Project Narrative

**Location:** 15906 Wayzata Boulevard
Minnetonka, MN 55391

**Applicant:** R.J. Ryan Construction, Inc. c/o Jack Grotkin

**Proposal:** Attached to this letter please find the applications of Wayzata Nissan Property LLC for Master Development Plan and Variance for the property located at 15906 Wayzata Boulevard in Minnetonka, MN. Through the attached applications, Wayzata Nissan is requesting approval for construction of a new dealership facility on the property while a portion of the existing building remains in operation. Upon completion of the new building, the existing building will be demolished and replaced with parking area. The Variance request is for a reduction to the Parking Setback from 20 feet to 10 feet. The Variance request would not alter the essential character of the neighborhood due to the existing average setbacks are 10 feet, with existing auto dealerships on both sides of this property.

The property is zoned PID (Planned I-394 District), in which exterior display, sales or storage of motor vehicles is a conditionally permitted use within districts No. 6 and No. 7. It appears the site is located in overlay district No. 1. However, the use of the site will not be changed and it appears that the new and existing building sizes are comparable; therefore it is assumed the proposed use will continue to be permitted.

Extensive landscaping restoration is proposed which will improve site aesthetics considerably. The exterior of the building will consist of ACM panels, glass and decorative precast; this redevelopment would be a significant improvement to the neighboring area.

**Company:** The philosophy of Walser Nissan Wayzata is to have a nice consumer experience.

**Operations:** No change to existing operations.

**Employment:** Walser Nissan Wayzata’s existing facility provides for 60 employees currently in the community.

**Landscaping & Screening:** Landscape screening between the proposed parking lot and adjacent businesses will meet the City’s mandated minimum requirements. A variety of coniferous, deciduous, and ornamental trees will be provided throughout the site. Trees will be a hardy mix of native of non-native species and will be provided within interior parking islands to minimize the heat island effect. On the north end of the auto storage area we propose a mix of buffer plantings. Native plants
are predominantly used in the 40’ wetland buffer. Shrubs and/or trees will wrap the west and east sides of the parking lot and create an aesthetically pleasing presentation. The service area is screened from the east by large shrub massings. At the front of the building more densely planted areas highlight the entry points.

**Signage:** The existing monument sign in the southeast corner will be replaced with a new monument sign. The new facility will have building signage similar to what they currently have on the site and building. Small navigational signage for guiding vehicle traffic is also proposed.

**Lighting:** Lighting will be in conformance with City Code. All lighting will be shielded as necessary to avoid any overlap to adjacent properties and programmable to reduce lighting during non-business hours.

**Adjacent Land Use:** Similar automotive uses are adjacent to this proposed site to the east and west.

**Parking:** 333 parking spaces are proposed for the Walser Nissan Wayzata redevelopment.

**Traffic Impacts:** None

**Hazards:** We do not feel there will be any negative impacts on neighboring properties due to noise, dust, odors, hazards, or lighting. No hazardous materials will be stored onsite that exceed NFPA requirements.

We respectfully request City support for the enclosed applications by Wayzata Nissan Property LLC for Master Development Plan and Variance for the 15906 Wayzata Boulevard parcel depicted on the enclosed Architectural and Civil/Landscape Plans. We look forward to reviewing this application with the City of Minnetonka in the weeks ahead.

Sincerely,
Jack Grotkin
R.J. Ryan Construction, Inc.

Chad Ayers, PE
Sambatek, Inc.
Preliminary Site Development Plans
for
Walser Nissan Wayzata
Minnetonka, Minnesota
Presented by:
R.J. Ryan Construction, Inc.
Subject property’s address is 15906 Wayzata Boulevard, its property identification number is 04-117-22-23-0013. The gross area of the subject property is 10.30 Acres or 448,605 Square Feet. The subject property is zoned PID I-394 District, per Minnetonka zoning map on City of Minnetonka web site. The building(s) and exterior dimensions of the outside wall at ground level are shown on the survey. It may not be the foundation wall.

### BENCHMARKS
1. The vertical datum is based on NAVD88. The originating bench marks are MNDOT BM 2789 AA and MNDOT BM 2789 BA, both referenced from the MnDOT Geodetic Database.

### SURVEY NOTES
3. The learning system for this survey is based on the Hennepin County coordinate system, NAD83 (1986 Adjust). The west line of the northwest quadrant, Section 04, Township 117N, Range 22W is assumed to bear N01° 15' 42"E. The originating monuments utilized to establish the horizontal position of this survey was the northwest section corner and the west quarter corner of said section.
4. Initial field work completed on 11/14/2018.
5. Additional field work completed on 12/31/2018.
SCARIFY SIDES OF TREE PIT WITH SPADE BY HAND

PRESSURE SO THAT ROOT BALL DOES NOT SHIFT

TAMP SOIL AROUND ROOT BALL BASE FIRMLY WITH FOOT

DIG PLANTING PIT 4" TO 6"

PLANTING SOIL, REFER TO SPECIFICATIONS, COMPACT TO 85%

SCARIFY SIDES OF TREE PIT WITH SPADE BY HAND

UNDISTURBED COMPACTED SOIL

MIN. 1.5 X A

EDGE CONDITION VARIES

WALSER NISSAN WAYZATA

WAYZATA BLVD

15% CONTINGENCY

PROPOSED 10' PARKING SETBACK

50' BUILDING SETBACK

50' BUILDING SETBACK

946.00

950.03

944

1100 MENDOTA HEIGHTS RD,

MINNETONKA, MN

DWELLING

CURB & GUTTER

LANDSCAPING REQUIREMENTS

LANDSCAPE CODE REQUIREMENTS

PLANT SCHEDULE

PLANT SCHEDULE

TREELINE

IRRIGATION

LANDSCAPE REQUIREMENTS:

LANDSCAPE REQUIREMENTS:

CONCRETE SIDEWALK

ASPHALT PAVING

BOULDERS & STONE WALLS

CONSTRUCTION,

R.J. RYAN

CONSTRUCTION,

CONCRETE PAVING

FILTRATION BASIN

CONSTRUCTION,

LANDSCAPING REQUIREMENTS:

LANDSCAPE CODE REQUIREMENTS

PLANT SCHEDULE

PLANT SCHEDULE

CONCRETE SIDEWALK

ASPHALT PAVING

BOULDERS & STONE WALLS

CONSTRUCTION,

R.J. RYAN

CONSTRUCTION,

CONCRETE PAVING

FILTRATION BASIN

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LANDSCAPING REQUIREMENTS:

LANDSCAPE CODE REQUIREMENTS

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ASPHALT PAVING

BOULDERS & STONE WALLS

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R.J. RYAN

CONSTRUCTION,

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FILTRATION BASIN

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LANDSCAPING REQUIREMENTS:

LANDSCAPE CODE REQUIREMENTS

PLANT SCHEDULE

PLANT SCHEDULE

CONCRETE SIDEWALK

ASPHALT PAVING

BOULDERS & STONE WALLS

CONSTRUCTION,

R.J. RYAN

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FILTRATION BASIN

CONSTRUCTION,

LANDSCAPING REQUIREMENTS:

LANDSCAPE CODE REQUIREMENTS

PLANT SCHEDULE

PLANT SCHEDULE

CONCRETE SIDEWALK

ASPHALT PAVING

BOULDERS & STONE WALLS

CONSTRUCTION,

R.J. RYAN

CONSTRUCTION,

CONCRETE PAVING

FILTRATION BASIN

CONSTRUCTION,

LANDSCAPING REQUIREMENTS:

LANDSCAPE CODE REQUIREMENTS

PLANT SCHEDULE

PLANT SCHEDULE

CONCRETE SIDEWALK

ASPHALT PAVING

BOULDERS & STONE WALLS

CONSTRUCTION,

R.J. RYAN

CONSTRUCTION,
Ordinance No. 2019-

An Ordinance approving a master development plan and approving an amendment to an existing conditional use permit and final site and building plans, with a variance, to demolish and construct a new auto use building at 15906 Wayzata Blvd

The City Of Minnetonka Ordains:

Section 1.

1.01 This ordinance hereby replaces the existing Walser Nissan-Wayzata master development plan. (Project 19005.19a). Adoption is based on the findings in the _____________, 2019, staff report. Approval includes the following variances:

- Surface parking setback from 20-foot to 10-foot from the east and west property lines.

1.02 The subject property covered by this approval is located at 15906 Wayzata Blvd. and is legally described as:

Section 3, Township 117, Range 22, West 356 feet of Southwest ¼ of Southwest ¼ Except Road

Section 2.

2.01 This ordinance is based on the following findings:

1. The proposal would meet the required standards and ordinances for a site and building plan approval.

2. The proposal would meet the required standards for a variance because:

   a. Undue Hardship:

   b. Unique Circumstance:

   c. Neighborhood Character:
3. The proposal would meet the required conditional use permit standards for outside auto display and sales within the Planned I-394 District.

Section 3.

3.02 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

   LIST PLANS AND DATES

   The above plans are hereby adopted as the master development plan and as final site and building plans.

   2. LIST ADDITIONAL CONDITIONS

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 __________, 2019.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, Acting City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: Mar. 18, 2019
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 correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on __________, 2019.

______________________________
Becky Koosman, Acting City Clerk
City Council Agenda Item #13A  
Meeting of March 18, 2019

**Brief Description:** Items related to financing public safety facility improvements for the police and fire departments

**Recommended Action:** Hold the public hearing, amend the 2019-2023 CIP, and adopt the resolutions authorizing the sale of $25,000,000 in general obligation bonds

**Background**

The city’s central fire station was constructed in 1974, and the police department was built in 1989. Neither facility has been expanded or extensively remodeled since then. Over time, aging facilities, security concerns, significant changes in public safety operations and personnel practices, along with the evolving needs and expectations of serving the community warranted an investigation on how to strategically position these services to meet the challenges of the future.

With that in mind, the 2016 capital budget allocated funding for a study of the public safety space and building needs at the Civic Center Campus with the intent to use the results to determine how these needs can be responsibly and proactively addressed in the development of the city’s five-year Capital Improvement Program (CIP). The study was completed and presented to the city council in September 2016.

Need for the project was affirmed via a detailed evaluation involving extensive research across a wide-range of related tasks including: a staff survey; review of site, utility and facility mapping; assessment of interior and exterior conditions; assessment of heating, ventilation and air conditioning systems; analysis of accessibility and life safety conditions; assessment of electrical systems; and technology/communications infrastructure and equipment.

As a result of the detailed evaluation conducted by the city’s consultant and additional public meetings and informational outreach, the city council approved a contract with Wold Architects and Engineers on June 12, 2017 to move forward with schematic and detailed designs with the right to terminate the contract at the city’s convenience. The council also authorized an internal loan to cover these preliminary costs that would be reimbursed with bond proceeds should they be issued to finance the project. Since that time, the city has continued to reach out to the public with information and for feedback on the project, design development has been underway, and the city council officially approved the project for land use purposes at its meeting of January 28, 2019.

**Authorization to issue bonds**

Throughout this process, staff conferred with the city’s financial consultants, Springsted, and its bond council, Kennedy & Graven. As explained in the attached letter from Julie Eddington of Kennedy & Graven, the city is authorized to finance the construction of these public safety capital improvements with general obligation debt under Minnesota Statutes, Chapter 475.521. Under that authority, the city council must first hold a public hearing concerning and adopt a
supplement to the city’s CIP specifically addressing aspects of the proposed improvements. The proposed CIP supplement is attached.

State law further provides the council must adopt a resolution as attached to amend the CIP and to provide preliminary approval to issue a specific maximum in general obligation tax-exempt debt to finance the proposed public safety capital improvements. The approval is subject to reverse referendum whereby the city clerk could receive a petition requesting a vote on the bond issuance that must be signed by voters equal to five percent (5%) of the votes cast in the city in the last municipal general elections.

A second resolution is attached for council consideration to specifically authorize the issuance and sale of $25,000,000 in bonding. It would be effective only if after thirty (30) days after this evening’s actions such a reverse referendum petition is not received. Also attached is the recommended issuance details provided by Springsted, which note the end date of the thirty-day period (April 17, 2019) and a date for council’s future consideration to award the bonds (May 6, 2019).

**Recommendation**

Staff recommends the city council take the following actions:

- Hold the public hearing regarding the attached supplement amendment to the 2019-2023 CIP;
- Adopt the resolution adopting the supplement to the CIP and providing preliminary approval to issue $25,000,000 in general obligation bonds under the amended plan; and
- Adopt the resolution providing for the issuance and sale of the $25,000,000 in general obligation bonds, provided no referendum petition is received within 30 days after council action in accordance with state law.

Submitted through:

   Geralyn Barone, City Manager

Originated by:

   Merrill King, Finance Director
March 4, 2019

Merrill King
Finance Director
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN  55345

Re:  Resolution approving a capital improvement plan and providing preliminary approval to the issuance of general obligation bonds under the plan

Dear Merrill,

The City of Minnetonka (the “City”) has proposed to undertake certain public safety capital improvements as described in the 2019-2023 Capital Improvements Program (the “CIP”) adopted by the City Council of the City (the “Council”) on June 4, 2018, as amended by the Supplement to the CIP to be considered by the City Council on March 18, 2019. The City is authorized to finance the construction of these public safety capital improvements, which include the construction of a new fire station and the repurposing of the existing police and fire facility into a remodeled police station, through the issuance of general obligation bonds under Minnesota Statutes, Chapter 475, as amended, specifically Section 475.521.

In order to issue general obligation bonds to finance the capital improvements, the Council must first conduct a public hearing on the adoption of a capital improvement plan, and the Council must approve the issuance of the general obligation bonds under the capital improvement plan by an affirmative vote of at least two-thirds of the Council members. The issuance of general obligation bonds under Minnesota Statutes, Section 475.521 is subject to reverse referendum: within thirty (30) days of the date of the adoption of the capital improvement plan and the approval of the issuance of the general obligation bonds, if the City Clerk receives a petition requesting a vote on the issuance of the general obligation bonds signed by voters equal to five percent (5%) of the votes cast in the City in the last municipal general election, the City may not issue the general obligation bonds until approved by a majority of voters voting on the question at an election.

Enclosed please find a resolution for consideration by the Council on March 18, 2019, following the public hearing. The resolution approves a Supplement to the CIP adopted on June 4, 2018 and also provides preliminary approval to the issuance of general obligation bonds under the plan in the maximum amount of $25,000,000 to finance the proposed public safety capital improvements. If the Council approves the resolution and a qualified petition is not received on or before April 17, 2019, the City may proceed with the issuance and sale of the general obligation bonds.
Please contact me with any questions you may have prior to the meeting.

Sincerely,

Julie Eddington
The City of Minnetonka’s Capital Improvements Program (CIP) is the city’s plan to provide and maintain facilities, infrastructure, our natural amenities and major equipment toward realizing our community’s desires within the constraints of limited resources. The plan is reevaluated on an annual basis and provides for individual capital projects needed over five years. With the adoption of the 2019-2023 plan on June 4, 2018, the Minnetonka City Council and staff carefully considered for each project and the overall plan:

- the condition of the city’s existing infrastructure, including the projected need for repair or replacement;
- the likely demand for the improvement;
- the estimated cost of the improvement;
- the available resources;
- the level of overlapping debt;
- the relative benefits and cost of alternative uses of the funds;
- the operating costs of the proposed improvements; and
- alternatives for providing services most efficiently through shared facilities with other cities or local government units.

This supplement of the city’s CIP includes details related to one project, the Public Safety Facility Improvements (p. 3-8 of the adopted 2019-2023 plan), which is to be funded by capital improvement bonds in accordance with Chapter 457 of Minnesota State Statutes. While much of the following information has been presented and discussed a number of times over the last two years in public settings to the city council and the community, it is outlined herein for adoption by the city council to meet statutory requirements.

Conditions of the city's existing public safety facilities

The city’s central fire station was constructed in 1974, and the police department was built in 1989. Neither facility has been expanded or extensively remodeled since then. Over time, aging facilities, security concerns, significant changes in public safety operations and personnel practices, along with the evolving needs and expectation of serving the community warranted an investigation on how to strategically position these services to meet the challenges of the future.

With that in mind, the 2016 capital budget allocated funding for a study of the public safety space and building needs at the Civic Center Campus with the intent to use the results to determine how these needs can be responsibly and proactively addressed in the development of the CIP. The study was completed and presented to the city council in September 2016. It incorporated the police and fire departments’ mission statements as well as the city’s strategic goals into the process to ensure alignment with the city’s vision. These guiding principles/statements were then developed and incorporated into the project plans:
• Focus on function and operations
• Sustainability (long-term use)
• Value without compromise to the Civic Center Campus
• Community pride
• Personnel recruitment and retention

Need for the project was affirmed via a detailed evaluation involving extensive research across a wide-range of related tasks including: a staff survey; review of site, utility and facility mapping; assessment of interior and exterior conditions; assessment of heating, ventilation and air conditioning systems; analysis of accessibility and life safety conditions; assessment of electrical systems; and technology/communications infrastructure and equipment.

Some of the operational needs of the project to be addressed were expressed as outcomes of the staff survey summarized as follows:

- Accommodate current space needs and growth
- Improve operational adjacencies (police)
- Expand duty crew space (fire)
- Develop secure, climate controlled areas for people and equipment (police)
- Develop improved apparatus layouts (fire)
- Secure entrancing (fire)
- Improve gender locker room facilities
- Develop shared training and fitness space
- Develop volunteer working space (police)
- Address gear storage and washing (fire)
- Address evidence storage capacity needs (police)
- Create strategically located spaces to meet with the public and support the operations and logistical needs of the department (fire)

As a result of the detailed evaluation conducted by the city’s consultant and additional public meetings and informational outreach, the city council approved a contract with Wold Architects and Engineers on June 12, 2017 to move forward with schematic and detailed designs with the right to terminate the contract at the city’s convenience. Since that time, the city has continued to reach out to the public with information and for feedback on the project, design development has been underway, and the city council officially approved the project for land use purposes at its meeting of January 28, 2019.

**Demand for the project**

The design of the public safety facility improvements project will address the following overlying and primary needs of the Police and Fire Departments:

- Improve safety and response
- Accommodate growth and changing workforce
- Protect investment in equipment

The project is to construct a new fire station and repurpose the existing police and fire facility into a remodeled police station. The new construction and remodeled space will be roughly 95,000 square feet in size. The combined facility will be sited generally north and east of the current police and fire facilities on the civic center campus. Most importantly, the facility design
addresses the needs of the two departments by providing tempered indoor parking for police vehicles; expanding storage for retained evidence; providing training and physical conditioning space for both departments; providing flexibility for future fire staffing scenarios; expanding locker room facilities and adding gender balance space; provides facility security; and maintains campus adjacency.

The project also provides needed square footage to address "hot zone" decontamination for fire fighters. Decontamination is an emerging health issue to deal with and remove carcinogens and cancer causing agents from the turnout gear and skin of employees in an efficient and safe manner. Using hot zones to decontaminate is a preventive measure to reduce carcinogens from entering the living and office areas of a fire station.

**Estimated cost of the project**

As provided on p. 3-8 of the adopted 2019-2023 CIP (copy attached), the estimated cost of the project is $25 million.

**Availability of resources**

The adopted 2019-2023 CIP assumes issuance of general obligation municipal bonds to support the costs of the public safety facilities improvement project. Issuance of the bonds would coincide with final payments of the largest portion of the city’s current debt for its 2001 Open Space & Park Referendum bonds. This timing would ensure the new debt service will have the least impact upon our community’s property tax payers, because debt service payments of the new general obligation bonds will also be levied on the city’s property tax. Current estimates indicate that a levy increase of approximately one percent would be required beginning with property taxes payable in 2020.

The city is also pursuing special state legislation to exempt the construction cost of the project from state sales tax. It is estimated the exemption could save as much as $850,000 in sales tax to offset project costs.

**Level of overlapping debt**

<table>
<thead>
<tr>
<th>Taxing Unit(a)</th>
<th>Adjusted Taxable Net Tax Capacity</th>
<th>Est. G.O. Debt As of 2-21-19(b)</th>
<th>Debt Applicable to Tax Capacity in City</th>
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</thead>
<tbody>
<tr>
<td>Hennepin County</td>
<td>$1,838,226,093</td>
<td>$1,047,495,000</td>
<td>5.41% $ 56,669,480</td>
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<tr>
<td>ISD No. 270 (Hopkins)</td>
<td>119,587,184</td>
<td>149,845,000</td>
<td>44.51 $66,696,010</td>
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<td>159,660,000</td>
<td>24.81 $39,611,646</td>
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<td>ISD No. 283 (St. Louis Park)</td>
<td>65,066,687</td>
<td>116,120,000</td>
<td>0.01  11,612</td>
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<td>ISD No. 284 (Wayzata)</td>
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<td>222,105,000</td>
<td>15.53 $34,492,907</td>
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<tr>
<td>Metropolitan Council</td>
<td>3,972,802,150</td>
<td>8,360,000(c)</td>
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<td>51,690,000</td>
<td>7.62  3,938,778</td>
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<td>Hennepin Co. Regional Railroad Authority</td>
<td>1,838,226,093</td>
<td>29,865,000</td>
<td>5.41  1,615,697</td>
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</table>

Total $208,751,896
(a) Only those units with outstanding general obligation debt are shown here.
(b) Excludes general obligation tax and aid anticipation certificates and revenue-supported debt.
(c) Excludes general obligation debt supported by wastewater revenues and housing rental payments. Includes certificates of participation.

Relative benefits and costs of alternative uses of the funds

As indicated earlier in this supplement, the size of the facilities, additional space and renovations are necessary for the high priority, public safety purposes of the city. There are no significant and higher priority, alternative uses for the funds designated for this project.

Operating costs of the project

While installation of energy efficient heating, lighting and construction materials will help to minimize operational cost increases, staff anticipates approximately $120,000 more in annual costs for building utilities. Additional janitorial services will also be required for daily maintenance of the expanded footprint.

Options for shared facilities with other cities or local governments

The city’s current central fire station provides space for one, Hennepin County Medical Center (HCMC), of the city’s two partners that deliver advanced life support ambulance services in the city. The new central fire station component of the public safety facility will continue to provide space to HCMC for its response within and in close proximity to Minnetonka.

The fire and police departments also have mutual aid agreements with our surrounding communities. In the case of the fire department, the relationship has a regular and consistent impact on its operations as an automatic call to service for all neighboring cities. The new public safety facility is pivotal to the continuation of those relationships and timely life and safety response.

Additionally, the new facility will provide training space for both the police and fire departments that will be used for the city’s own required training as well as to host regional trainings and joint meetings with other public safety departments in the Twin Cities. There currently are only a limited number of facilities that can accommodate such inter-departmental, coordinated sessions.

Otherwise, the entire space of the new public safety facility project will be occupied and used by the Minnetonka police and fire departments. If additional opportunities arise for sharing the new public safety facility, staff will review and analyze the options.
**Project Category:** Municipal Buildings  
**Project Title:** Public Safety Facility Improvements  
**Total Estimated Cost:** $25,000,000  
**Funding Priority:** 3  
**Account Number:** 4160.XXXX.S18199  

**Description:**
This project implements the findings of the 2016 Public Safety Facility Study. Improvements are planned for both the police and fire departments.

### Source of Project Funding

<table>
<thead>
<tr>
<th>Source of Project Funding</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
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</thead>
<tbody>
<tr>
<td>P. Safety Facility GO Bonds – Fire</td>
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<tr>
<td>P. Safety Facility GO Bonds – Police</td>
<td>11,000,000</td>
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</table>

**Justification:**

Fire Station #1, was built in 1975, and the Police Station was completed in 1988. The departments are located at the City Hall Campus on the east side of the complex. The Fire Department was originally designed and occupied with mostly volunteers and without 24-hour a day staffing. Since then, a duty crew model has been implemented to better serve the city and the needs of the fire staff.

Several issues affect the operation of the department currently: inefficient station layout, lack of sufficient male and female locker room space, office space, storage, laundry, barrier free accessibility and training facilities.

Similar to Fire, the Police Department lacks adequate space for investigators as well as training facilities. Also, police squad cars containing temperature sensitive and high-tech equipment sit outside in an unsecured area.

The project supports shared areas for meeting and training space, which can be utilized for both police and fire staffs.

**Scheduling and Project Status:**

Wold Architects and Engineers were given approval to undertake the schematic design and begin detail design of the proposed improvements following two study sessions with the city council. The architect has also determined that well 16B will not need to be relocated, however, a new watermain to WTP #16 will need to be installed as a result of the proposed construction.

**Relationship to General Plan and Other Projects:**

The item is consistent with the policy of maintaining the city’s infrastructure and making improvements to facilitate a paid on call/duty crew staffing system. The study will also support and expand upon the findings the Public Safety Study that was completed in 2009.

**Effect on Annual Operations Costs:**

While installation of energy efficient heating, lighting and construction materials will help to minimize operational cost increases, staff anticipates approximately $120,000 in annual costs for building utilities. Additional janitorial service will also be required for daily maintenance of the expanded footprint.
Resolution No. 2019-_____

Resolution adopting a capital improvement plan and providing preliminary approval for the issuance of bonds thereunder

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

Section 1. Recitals.

1.01. Pursuant to Minnesota Statutes, Section 475.521, as amended (the “Act”), cities are authorized to adopt a capital improvement plan and carry out programs for the financing of capital improvements.

1.02. The City has caused to be prepared a Supplement to the 2019-2023 Capital Improvements Program (together, the “Capital Improvement Plan”).

1.03. On the date hereof, the Council conducted a duly noticed public hearing regarding adoption of the Capital Improvement Plan pursuant to the requirements of the Act and the issuance of one or more series of general obligation bonds thereunder in a maximum principal amount of $25,000,000 to finance various capital improvements, including but not limited to public safety improvements for the police and fire departments.

1.04. In considering the Capital Improvement Plan, the Council has considered for each project and for the overall Capital Improvement Plan:

   1. the condition of the City’s existing infrastructure, including the projected need for repair and replacement;
   2. the likely demand for the improvement;
   3. the estimated cost of the improvement;
   4. the available public resources;
   5. the level of overlapping debt in the City;
   6. the relative benefits and costs of alternative uses of the funds;
   7. operating costs of the proposed improvements; and
   8. alternatives for providing services more efficiently through shared facilities with other local government units.

Section 2. Findings; Approvals.

2.01. The Capital Improvement Plan is hereby approved.
2.02. City staff are hereby authorized to do all other things and take all other actions as may be necessary or appropriate to carry out the Capital Improvement Plan in accordance with any applicable laws and regulations.

2.03. The City gives preliminary approval to the issuance of the bonds in the maximum principal amount of $25,000,000, provided that if a petition requesting a vote on issuance of the bonds, signed by voters equal to five percent (5%) of the votes cast in the last general election, is filed with City Clerk by April 17, 2019, the City may issue the bonds only after obtaining approval of a majority of voters voting on the question at an election.

Adopted by the City Council of the City of Minnetonka, Minnesota this 18th day of March, 2019.

__________________________
Brad Wiersum, Mayor

ATTEST:

__________________________
Becky Koosman, Acting 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 March 18, 2019.

__________________________
Becky Koosman, Acting City Clerk
Resolution No. 2019-________

Resolution providing for the issuance and sale of General Obligation Capital Improvement Plan Bonds, Series 2019A, in the proposed aggregate principal amount of $25,000,000

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 is authorized by Minnesota Statutes, Chapter 475, as amended, specifically Section 475.521 (the “Act”), to finance certain capital improvements under an approved capital improvement plan by the issuance of general obligation bonds of the City payable from ad valorem taxes. Capital improvements include acquisition or betterment of public lands, buildings or other improvements for the purpose of a city hall, library, public safety facility and public works facilities (excluding light rail transit or any activity related to it, or a park, road, bridge, administrative building other than a city hall, or land for any of those activities).

1.02. On the date hereof, the Council held a duly noticed public hearing (the “Public Hearing”) on and approved the Supplement to the 2019-2023 Capital Improvements Program (together, the “Capital Improvement Plan”) and the issuance of general obligation capital improvement plan bonds in the maximum principal amount of $25,000,000 thereunder. The Capital Improvement Plan authorizes the issuance of general obligation bonds to provide for the undertaking of certain capital improvements described in the Capital Improvement Plan, including but not limited to public safety improvements for the police and fire departments (the “Capital Improvements”).

1.03. It is necessary and expedient to the sound financial management of the affairs of the City to issue its General Obligation Capital Improvement Plan Bonds, Series 2019A (the “Bonds”), in the proposed aggregate principal amount of $25,000,000, pursuant to the Act, in order to finance the construction of the Capital Improvements; provided, however, that no petition for a referendum on the issuance of the Bonds pursuant to the Capital Improvement Plan is received within thirty (30) days after the date of the Public Hearing in accordance with the Act.

1.04. As required by the Act, the City has determined that: (i) the expected useful life of the project to be financed with the proceeds of the Bonds will be at least five years; and (ii) the amount of principal and interest due in any year on all outstanding bonds issued by the City under the Act, including the
Bonds, will not exceed 0.16 percent of the estimated market value of property in the City for taxes payable in 2019.

1.05. 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 $25,000,000, pursuant to the Act, to provide financing for the Capital Improvements. Such approval is contingent upon no receipt of a qualified petition described in Section 1.03 hereof. 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, May 6, 2019, 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.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting 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

$25,000,000*  
CITY OF MINNETONKA, MINNESOTA  
GENERAL OBLIGATION CAPITAL IMPROVEMENT PLAN BONDS, SERIES 2019A  
(Book Entry Only)

Proposals for the above-referenced obligations (the “Bonds”) will be received by the City of Minnetonka, Minnesota (the “City”) on Monday, May 6, 2019 (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 February 1, 2020. 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>$295,000</td>
</tr>
<tr>
<td>2022</td>
<td>$310,000</td>
</tr>
<tr>
<td>2023</td>
<td>$325,000</td>
</tr>
<tr>
<td>2024</td>
<td>$340,000</td>
</tr>
<tr>
<td>2025</td>
<td>$355,000</td>
</tr>
<tr>
<td>2026</td>
<td>$370,000</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 registrant 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, 2029, and on any day thereafter, to redeem Bonds due on or after February 1, 2030. 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.
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 $250,000 (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 June 20, 2019, 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 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 March 18, 2019

BY ORDER OF THE CITY COUNCIL

/s/ Becky Koosman
Acting City Clerk
City of Minnetonka, Minnesota
Recommendations for Issuance of Bonds

$25,000,000 General Obligation Capital Improvement Plan Bonds, Series 2019A

The Council has under consideration the issuance of bonds (the “Bonds”) to finance (i) various public safety capital improvements as outlined in the City's 2019-2023 Capital Improvement Plan (CIP), (ii) capitalized interest on the Bonds, and (iii) costs of issuance. This document provides information relative to the proposed issuance.

KEY EVENTS: The following summary schedule includes the timing of some of the key events that will occur relative to the Bond issuance.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public hearing held on CIP; Council sets sale date and terms of the Bonds</td>
<td>March 18, 2019</td>
<td></td>
</tr>
<tr>
<td>End of 30-day petition period</td>
<td>April 17, 2019</td>
<td></td>
</tr>
<tr>
<td>Rating conference is conducted</td>
<td>Week of April 22, 2019</td>
<td></td>
</tr>
<tr>
<td>Competitive proposals are received</td>
<td>May 6, 2019, 10:00 a.m.</td>
<td></td>
</tr>
<tr>
<td>Council considers award of the Bonds</td>
<td>May 6, 2019, 6:30 p.m.</td>
<td></td>
</tr>
<tr>
<td>Proceeds are received</td>
<td>June 20, 2019</td>
<td></td>
</tr>
</tbody>
</table>

RATING: An application will be made to Moody’s Investors Service (Moody’s) for a rating on the Bonds. The City’s general obligation debt is currently rated “Aaa” by Moody’s.

THE MARKET: Performance of the tax-exempt market is often measured by the Bond Buyer’s Index (“BBI”) which measures the yield of high grade municipal bonds in the 20th year for general obligation bonds rated Aa2 by Moody’s or AA by S&P (the BBI 20-Bond GO Index) and the 30th year for revenue bonds rated A1 by Moody’s or A+ by S&P (the BBI 25-Bond Revenue Index). The following chart illustrates these two indices over the past five years.

![BBI 20-Bond (GO) and 25-Bond (Revenue) Indices for 5 Years Ending 3/7/2019](Image)
POST ISSUANCE COMPLIANCE: The issuance of the Bonds will result in post-issuance compliance responsibilities. The responsibilities are in two primary areas: i) compliance with federal arbitrage requirements and ii) compliance with secondary disclosure requirements.

Federal arbitrage requirements include a wide range of implications that have been taken into account as this issue has been structured. Post-issuance compliance responsibilities for this tax-exempt issue include both rebate and yield restriction provisions of the IRS Code. In general terms, the arbitrage requirements control the earnings on unexpended bond proceeds, including investment earnings, moneys held for debt service payments (which are considered to be proceeds under the IRS regulations), and/or reserves. Under certain circumstances any “excess earnings” will need to be paid to the IRS to maintain the tax-exempt status of the Bonds. Any interest earnings on gross bond proceeds or debt service funds should not be spent until it has been determined based on actual facts that they are not “excess earnings” as defined by the IRS Code.

The arbitrage rules provide for spend-down exceptions for proceeds that are spent within either a 6-month, 18-month or, for certain construction issues, a 24-month period each in accordance with certain spending criteria. Proceeds that qualify for an exception will be exempt from rebate. These exceptions are based on actual expenditures and not based on reasonable expectations, and expenditures, including any investment proceeds will have to meet the spending criteria to qualify for the exclusion. The City expects to meet the 24-month spending exception.

Regardless of whether the issue qualifies for an exemption from the rebate provisions, yield restriction provisions will apply to Bond proceeds (including interest earnings) unspent after three years and the debt service fund throughout the term of the Bonds. These moneys should be monitored until the Bonds are retired.

Secondary disclosure requirements result from an SEC requirement that underwriters provide ongoing disclosure information to investors. To meet this requirement, any prospective underwriter will require the City to commit to providing the information needed to comply under a continuing disclosure agreement.

Springsted currently provides both arbitrage and continuing disclosure services to the City. Springsted will work with City staff to include the Bonds under the existing respective Agreement for Municipal Advisor Services.

SUPPLEMENTAL INFORMATION AND BOND RECORD: Supplementary information will be available to City staff including detailed terms and conditions of sale, comprehensive structuring schedules and information to assist in meeting post-issuance compliance responsibilities.

Upon completion of the financing, a bond record will be provided that contains pertinent documents and final debt service calculations for the transaction.

PURPOSE: Proceeds of the Bonds, along with $170,000 of available surplus debt service funds of the City, will be used to (i) finance various public safety capital improvements, which include the construction of a new fire station and the repurposing of the existing police and fire facility into a remodeled police station, (ii) pay capitalized interest, and (iii) pay associated costs of issuance.
AUTHORITY:  

Statutory Authority:  The Bonds are being issued pursuant to Minnesota Statutes, Chapter 475 and Section 475.521.

Statutory Requirements:  Minnesota Statutes, Section 475.521 authorizes the City to issue capital improvement plan bonds for purposes including the financing of a city hall, public safety facility, and public works facilities. Under this authority, cities may issue general obligation capital improvement plan bonds as long as the maximum amount of the principal and interest to become due in any year on all outstanding bonds issued under this authority, including the Bonds to be issued, does not exceed 0.16% of the City’s estimated market value in the year the Bonds are issued or sold. The City has no other obligations outstanding issued under this authority. The maximum principal and interest due on the Bonds is estimated to be $1,521,225, which is within the limitation as shown in the following calculation:

<table>
<thead>
<tr>
<th>2018 Estimated Market Value</th>
<th>$9,139,657,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory Maximum Principal &amp; Interest (0.16%)</td>
<td>$14,623,451</td>
</tr>
<tr>
<td>Estimated Max Debt Service</td>
<td>$1,521,225</td>
</tr>
<tr>
<td>Estimated Unused Capacity After Issuance of the Bonds</td>
<td>$13,102,226</td>
</tr>
</tbody>
</table>

Section 475.521 also requires that a public hearing be held relative to both the CIP and the issuance of CIP bonds. The City will conduct its public hearing on March 18, 2019 and approve the Bonds in an amount not to exceed $25,000,000.

SECURITY AND SOURCE OF PAYMENT:  

The Bonds will be a general obligation of the City, secured by its full faith and credit and taxing power. The Bonds will be paid from ad valorem property taxes.

The City will make its first levy in 2019 for collection in 2020. Each year’s collection of taxes will be used to make the interest payment due on August 1 of the collection year and the February 1 principal and interest payment due the following year. The February 1, 2020 interest payment on the Bonds will be paid wholly by use of existing debt service funds and proceeds of the Bonds.

STRUCTURING SUMMARY:  

In consultation with City staff, the Bonds have been structured around existing levy-supported debt service of the City to accommodate an approximately level total annual debt service.

SCHEDULES ATTACHED:  

Schedules attached for the Bonds include: (i) Sources and Uses of Funds, (ii) Estimated Pricing Summary, given current market conditions, and (iii) Estimated Net Debt Service, given current market conditions.

RISKS/SPECIAL CONSIDERATIONS:  

The outcome of this financing will rely on the market conditions at the time of the sale. Any projections included herein are estimates based on current market conditions.

The Bonds have been structured illustrating additional proceeds generated from a premium bid. There is no guaranty that the winning bidder will price this issue with a premium in the amount estimated, which could result in less or more additional proceeds than what is currently shown in the attached schedules, but the terms will require a minimum price of 103% of the par amount of the Bonds to enable a deposit of at least $25,000,000 to the project fund.
SALE TERMS AND MARKETING:  

**Variability of Issue Size:** A specific provision in the sale terms permits modifications to the issue size and/or maturity structure to customize the issue once the price and interest rates are set on the day of sale.

**Prepayment Provisions:** Bonds maturing on or after February 1, 2030 may be prepaid at a price of par plus accrued interest on or after February 1, 2029.

**Bank Qualification:** The City is issuing more than $10 million in tax-exempt obligations in 2019; therefore, the Bonds are not designated as bank qualified.

**Bidding Parameters:** Interest rates applied in the structuring of the Bonds are based on current market conditions and assume a reoffering premium sufficient to compensate the underwriter, fund the amount required for capitalized interest net of the $170,000 of available cash, and pay associated costs of issuance such that net proceeds available to the City for CIP purposes is no less than $25,000,000 under premium bidding of no less than 103%. Premium bidding requires that an underwriter bid not less than a specified percentage of the face amount of the Bonds.
## Sources & Uses

**Dated 06/20/2019 | Delivered 06/20/2019**

### Sources Of Funds

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Par Amount of Bonds</td>
<td>$25,000,000.00</td>
</tr>
<tr>
<td>Reoffering Premium</td>
<td>941,833.95</td>
</tr>
<tr>
<td>Available from Existing Debt Service Funds</td>
<td>170,000.00</td>
</tr>
<tr>
<td><strong>Total Sources</strong></td>
<td>$26,111,833.95</td>
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</tbody>
</table>

### Uses Of Funds

<table>
<thead>
<tr>
<th>Use</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Deposit to Project Construction Fund</td>
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<tr>
<td>Deposit to Capitalized Interest (CIF) Fund</td>
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<tr>
<td>From Bond Proceeds</td>
<td>422,626.85</td>
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<tr>
<td>From Existing Debt Service Funds</td>
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<tr>
<td>Total Underwriter's Discount (0.700%)</td>
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<td>Costs of Issuance</td>
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<td><strong>Total Uses</strong></td>
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## Pricing Summary

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<tr>
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<th>Coupon</th>
<th>Yield</th>
<th>Maturity Value</th>
<th>Price</th>
<th>YTM</th>
<th>Call Date</th>
<th>Call Price</th>
<th>Dollar Price</th>
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<tbody>
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<td>02/01/2021</td>
<td>Serial</td>
<td>5.000%</td>
<td>1.800%</td>
<td>295,000.00</td>
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<td>2.500%</td>
<td>755,000.00 c 116.995%</td>
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<td>02/01/2029 100.000%</td>
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<td>-</td>
<td>-</td>
<td>790,000.00</td>
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<td>100.000%</td>
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<td>-</td>
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<td>100.000%</td>
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<tr>
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<td>Term 1</td>
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<tr>
<td>02/01/2049</td>
<td>Term 2</td>
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<td>02/01/2029 100.000%</td>
<td>-</td>
<td>8,152,918.50</td>
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</tbody>
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| Total          |              |        |        |               |        |       |           |           | $25,941,833.95 |

## Bid Information

- **Par Amount of Bonds**: $25,000,000.00
- **Reoffering Premium or (Discount)**: $941,833.95
- **Gross Production**: $25,941,833.95
- **Total Underwriter's Discount (0.700%)**: $(175,000.00)
- **Bid (103.067%)**: $25,766,833.95
- **Total Purchase Price**: $25,766,833.95
- **Bond Year Dollars**: $475,397.22
- **Average Life**: 19.016 Years
- **Average Coupon**: 3.8042953%
- **Net Interest Cost (NIC)**: 3.6429915%
- **True Interest Cost (TIC)**: 3.5648069%
Preliminary

$25,000,000

City of Minnetonka, Minnesota
General Obligation Capital Improvement Plan Bonds, Series 2019A

NET DEBT SERVICE SCHEDULE
Date
02/01/2020
02/01/2021
02/01/2022
02/01/2023
02/01/2024
02/01/2025
02/01/2026
02/01/2027
02/01/2028
02/01/2029
02/01/2030
02/01/2031
02/01/2032
02/01/2033
02/01/2034
02/01/2035
02/01/2036
02/01/2037
02/01/2038
02/01/2039
02/01/2040
02/01/2041
02/01/2042
02/01/2043
02/01/2044
02/01/2045
02/01/2046
02/01/2047
02/01/2048
02/01/2049

Principal

Coupon

295,000.00
310,000.00
325,000.00
340,000.00
355,000.00
370,000.00
390,000.00
685,000.00
720,000.00
755,000.00
790,000.00
810,000.00
835,000.00
860,000.00
885,000.00
910,000.00
940,000.00
975,000.00
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1,045,000.00
1,085,000.00
1,125,000.00
1,165,000.00
1,210,000.00
1,260,000.00
1,310,000.00
1,360,000.00
1,415,000.00
1,470,000.00

5.000%
5.000%
5.000%
5.000%
5.000%
5.000%
5.000%
5.000%
5.000%
4.500%
2.700%
2.800%
2.950%
3.050%
3.150%
3.250%
3.350%
3.450%
3.750%
3.750%
3.750%
3.750%
3.750%
4.000%
4.000%
4.000%
4.000%
4.000%
4.000%

Total $25,000,000.00

-

Interest
592,626.85
965,365.00
950,615.00
935,115.00
918,865.00
901,865.00
884,115.00
865,615.00
846,115.00
811,865.00
775,865.00
741,890.00
720,560.00
697,880.00
673,247.50
647,017.50
619,140.00
589,565.00
558,075.00
524,437.50
486,750.00
447,562.50
406,875.00
364,687.50
321,000.00
272,600.00
222,200.00
169,800.00
115,400.00
58,800.00

Total P+I
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1,531,890.00
1,530,560.00
1,532,880.00
1,533,247.50
1,532,017.50
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1,533,075.00
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1,529,687.50
1,531,000.00
1,532,600.00
1,532,200.00
1,529,800.00
1,530,400.00
1,528,800.00

Cap.
Interest
(592,626.85)
-

$18,085,514.35 $43,085,514.35 (592,626.85)

Existing D/S
1,323,100.00
270,300.00
270,600.00
270,800.00
270,900.00
275,900.00
275,700.00
275,400.00
-

Net New D/S
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1,530,665.00
1,531,215.00
1,530,915.00
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1,533,075.00
1,529,437.50
1,531,750.00
1,532,562.50
1,531,875.00
1,529,687.50
1,531,000.00
1,532,600.00
1,532,200.00
1,529,800.00
1,530,400.00
1,528,800.00

105%
Overlevy
1,389,255.00
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1,607,775.75
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1,606,253.25
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1,606,305.75
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1,606,290.00
1,606,920.00
1,605,240.00

$3,232,700.00 $45,725,587.50 $48,011,866.88

SIGNIFICANT DATES
Dated Date.........................................................................................................................................................................................
Delivery Date.....................................................................................................................................................................................
First Coupon Date..............................................................................................................................................................................

6/20/2019
6/20/2019
2/01/2020

Yield Statistics
Bond Year Dollars.............................................................................................................................................................................
Average Life.....................................................................................................................................................................................
Average Coupon...............................................................................................................................................................................

$475,397.22
19.016 Years
3.8042953%

Net Interest Cost (NIC).......................................................................................................................................................................
True Interest Cost (TIC).....................................................................................................................................................................
Bond Yield for Arbitrage Purposes...................................................................................................................................................
All Inclusive Cost (AIC)......................................................................................................................................................................

3.6429915%
3.5648069%
3.5116284%
3.5934130%

IRS Form 8038
Net Interest Cost................................................................................................................................................................................
Weighted Average Maturity...............................................................................................................................................................

3.5283863%
18.730 Years

2019 GO CIP Bonds 2.27.19 | SINGLE PURPOSE | 3/ 5/2019 | 2:42 PM

Page 7


Brief Description
Conditional use permit for a microbrewery and taproom at 5959 Baker Road.

Recommendation
Adopt the resolution approving the conditional use permit.

Background
In 2018, the planning commission recommended approval of a conditional use permit for Brass Foundry Brewing Co. That applicant is no longer proposing the brewery. Boom Island Brewing is the new applicant for the same space. The applicant was proposing to operate a microbrewery and taproom in a vacant tenant space within the building at 5959 Baker Road. The applicant withdrew the request prior to city council consideration.

Current Proposal
Boom Island Brewing Company is now proposing to relocate its existing Minneapolis microbrewery and taproom to the tenant space at 5959 Baker Road.

Planning Commission Hearing
The planning commission considered the formal conditional use permit request on Feb. 21, 2019. The commission report and associated plans are attached. Staff recommended approval of the CUP, finding:

- Breweries and taprooms are conditionally-permitted uses in the industrial zoning district.
- The proposal would meet the conditional use permit standards.
- Anticipated parking demand could be accommodated on the site.

At the meeting, a public hearing was opened; no comments were received.

Planning Commission Recommendation
On a 5-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes are attached. There have been no changes to the proposal since the commission meeting.

Staff Recommendation
Staff recommends the city council adopt the resolution approving a conditional use permit for a microbrewery and taproom at 5959 Baker Road.

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

Originator:  Susan Thomas, AICP, Assistant City Planner
MINNETONKA PLANNING COMMISSION
Feb. 21, 2019

Brief Description
Conditional use permit for a microbrewery and taproom at 5959 Baker Road.

Recommendation
Recommend the city council adopt the resolution approving the conditional use permit.

History
In 2018, the planning commission recommended approval of a conditional use permit for Brass Foundry Brewing Co. The applicant was proposing to operate a microbrewery and taproom in a vacant tenant space within the building at 5959 Baker Road. The applicant withdrew the request prior to city council consideration.

Current Proposal
Boom Island Brewing Company is now proposing to relocate its existing Minneapolis microbrewery and taproom to the same tenant space at 5959 Baker Road.

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 east side of Baker Road, near its intersection with County Road 62. The 12-acre Baker Technology Plaza site is improved with three office/warehouse buildings. The proposed brewery and taproom would be located in the smallest and most southerly of the buildings.

- **Proposed Building.**

  Boom Island Brewing Co. would occupy the southernmost tenant space within the existing building. The roughly 9,000 square-foot space would divided between brewing operation and taproom/service areas. Interior remodeling would be necessary to accommodate the new business. While an outdoor seating space would be created west of the building, no exterior changes to the building are proposed at this time.

- **Proposed Hours.**

  Anticipated brewery and taproom hours are as follows:

<table>
<thead>
<tr>
<th>DAYS</th>
<th>HOURS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mon – Thurs</td>
<td>3 p.m. – 10 p.m.</td>
</tr>
<tr>
<td>Fri – Sat</td>
<td>Noon – 11 p.m.</td>
</tr>
<tr>
<td>Sun</td>
<td>11 a.m. – 6 p.m.</td>
</tr>
</tbody>
</table>
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 associated with the proposed brewery/taproom and staff’s findings.

- **Is the proposed brewery and taproom use appropriate?**

  Yes. Breweries and taprooms are conditionally-permitted uses in the industrial zoning district.

- **Would conditional use permit standards be met?**

  Yes. The proposal would meet all CUP standards. These standards are outlined in the “Supporting Information” section of this report.

- **Can anticipated parking demands be accommodated?**

  Yes. In staff’s opinion, parking demand could be accommodated for several reasons.

  1. The Baker Technology Plaza site is zoned for, and generally occupied by, office and warehouse uses. The 5959 Baker Road building is served by 111 parking spaces. The Institute of Transportation Engineers (ITE) parking demand data suggests that average peak parking demand for the building could be accommodated with 109 parking spaces.

<table>
<thead>
<tr>
<th>Use</th>
<th>Area</th>
<th>Parking Rate</th>
<th>Peak Parking Demand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taproom</td>
<td>4,000 sq.ft.</td>
<td>13.3 spaces/1000 sq.ft</td>
<td>53 spaces</td>
</tr>
<tr>
<td>Brewery</td>
<td>5,000 sq.ft.</td>
<td>0.41 spaces/1000 sq.ft</td>
<td>2 spaces</td>
</tr>
<tr>
<td>Office</td>
<td>18,873 sq.ft.</td>
<td>2.84 spaces/1000 sq.ft</td>
<td>54 spaces</td>
</tr>
<tr>
<td><strong>TOTAL REQUIRED</strong></td>
<td></td>
<td></td>
<td><strong>109 spaces</strong></td>
</tr>
</tbody>
</table>

  2. ITE suggests – and anecdotal evidence confirms – that office and warehousing uses have a very different peak hour demand than the proposed brewery/taproom. The 109 parking spaces outlined in the chart above presumes that peak parking demand for all uses in the building occurs at the same time.

  3. The 5959 Baker Road is the southernmost of three buildings located on the same property. The buildings have a shared parking agreement. This agreement significantly increases available parking.

- **Can future nuisance issues be addressed?**

  Yes. While similar to a restaurant, staff recognizes a brewery/taproom could generate smells, noise, and activity of a different sort and level than other existing uses in the
office/warehouse area. However, the city has mechanisms in place to address issues associated with real and perceived nuisances:

1. The city’s noise ordinance essentially establishes community “quiet hours” from 10:00 p.m. to 7:00 a.m.

2. As a condition of any conditional use permit, the city council may reasonably add or revise conditions to address any future unforeseen problems. In other words, if nuisance violations occur with frequency or regularity, the city may bring the conditional use permit back before the city council and additional conditions may be applied or the permit may be revoked.

Staff Recommendation

Recommend the city council adopt the resolution approving a conditional use permit for a microbrewery and taproom at 5959 Baker Road.

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

**Surrounding Land Uses**

The subject property is surrounded by other industrial zoned sites.

**Planning**

Guide Plan designation: Mixed Use
Existing Zoning: I-1, industrial

**Breweries**

By city code, a microbrewery is defined as a facility that manufactures and distributes malt liquor or wine in total quantity not to exceed 250,000 barrels per year. A taproom is an area within or adjacent to a brewery where the products of the brewery may be sold and consumed.

**Parking Requirements**

Were staff to strictly calculate parking by rates outlined in the city code, the 5959 Baker Road building would be “under-parked.”

<table>
<thead>
<tr>
<th>Use</th>
<th>Area</th>
<th>Parking Rate</th>
<th>Peak Parking Demand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taproom</td>
<td>4,000 sq.ft.</td>
<td>1 space/50 sq.ft.</td>
<td>80 spaces</td>
</tr>
<tr>
<td>Brewery</td>
<td>5,000 sq.ft.</td>
<td>1 space/1000 sq.ft.</td>
<td>5 spaces</td>
</tr>
<tr>
<td>Office</td>
<td>18,873 sq.ft.</td>
<td>1 space/250 sq.ft.</td>
<td>76 spaces</td>
</tr>
<tr>
<td><strong>TOTAL REQUIRED</strong></td>
<td></td>
<td></td>
<td><strong>161 spaces</strong></td>
</tr>
</tbody>
</table>

However, in this case, staff has determined no parking variance is necessary due to some flexibility also provided in the code. By City Code §300.28 Subd.12(a)(4), “a land use may provide the required off-street parking area for additional land uses on the same development site if the following conditions are met:

- because of the hours of operation of the respective uses, their sizes and their modes of operation there will be available to each use during its primary hours of operation an amount of parking sufficient to meet the needs of such use; and
- the joint use of the parking facilities shall be protected by a recorded instrument, acceptable to the city.”

This code provision essentially allows the city to approve unique parking arrangements/provisions on unique sites. The applicant’s proposal presents just such a unique situation. The primary land use on the site is office/warehousing. The additional land use proposed is the brewery/taproom. The different peak parking demands and the shared parking agreement between several buildings mitigate any “under-parking.”
The proposed microbrewery/taproom would meet the general CUP 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 requires a variance from the specific conditional use permit standards for microbreweries and taprooms as outlined in City Code §330.21 Subd.4(s):

1. Parking requirements: microbrewery, one parking space for each 1000 square feet of floor area. Taproom: one parking space for each 50 square feet of floor area.

**Finding:** Given the varied peak parking demands of building users and shared parking agreement, this provision is met.

2. Shall have parking and vehicular circulation in compliance with the requirements of section 300.28 of this code and which items must be adequate to accommodate the restaurant.

**Finding:** Given the varied peak parking demands of building users and shared parking agreement, this provision is met.

3. Shall only be permitted when it can be demonstrated that operation will not significantly lower the existing level of service as defined by the Institute of traffic engineers on the roadway system.

**Finding:** The proposal is not anticipated to significantly impact existing traffic volumes or levels of service.

Liquor License

As part of the Boom Island Brewing Company proposal, the owners are requesting a liquor license. The city council has the authority to approve or deny liquor licenses; such licenses are not the purview of the planning commission. The commission must consider the
Meetings of Feb. 21, 2019
Subject: Boom Island Brewing Co., 5959 Baker Road

Proposal’s conformance with the requirements and intent of conditional use permit standards.

**Neighborhood Comments**
The city sent notices to 59 property owners and has received no comments to date.

**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 permit.

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 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. A recommendation for approval requires an affirmative vote of a simple majority. The city council’s final approval requires an affirmative vote of a simple majority.

**Deadline for Action**
May 6, 2019
Location Map

Project: Boom Island Brewing Co
Address: 5959 Baker Rd
8. Public Hearings

A. Resolution approving a conditional use permit for a microbrewery and taproom at 5959 Baker Road.

Chair Kirk 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.

Dan Syverson, representing Boom Island Brewing Company, applicant, stated that he was happy to answer questions. Boom Island has a flawless record and was one of the first microbreweries in the state. He looks forward to moving to Minnetonka.

Powers asked if families and dogs would be welcome. Mr. Syverson answered affirmatively. He is in the process of applying for a permit with the state to allow dogs in the facility. There would be board games and bumper pool. There may be a fireplace with soft seating and tables to accommodate large groups of people and families. Food delivery to the site would be allowed. Prepackaged snacks would be available for purchase. Local restaurants would be advertised and patrons would be encouraged to have food delivered to the location.

Hanson asked if pedestrian and bicycle access had been considered. Mr. Syverson stated that there is a bike trail less than a half a mile away. Bike racks would be provided. Live music would be provided on the weekends inside the building. The proposed building would be quite a bit larger than the current facility. The tap room would be five times larger than the current location’s tap room.

Luke asked about the adjacent space. Mr. Syverson explained that the adjacent space would be part of the microbrewery’s leased space to provide a separate entrance and vestibule. A commercial kitchen could occupy that space in the future. Wischnack explained that a separate entrance would be required between a commercial kitchen and an area that would allow animals.

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

Powers liked that the proposal would provide a sense of community and belonging.

_Powers moved, second by Henry, to recommend that the city council adopt the resolution approving a conditional use permit for a microbrewery and taproom at 5959 Baker Road._

_Hanson, Henry, Luke, Powers, and Kirk voted yes. Sewall and Knight were absent. Motion carried._

9. Adjournment
Resolution No. 2019-
Resolution approving a conditional use permit for a microbrewery and taproom at 5959 Baker Road

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

Section 1. Background.

1.01 Boom Island Brewing Company, LLC. is requesting a conditional use permit to operate a microbrewery and taproom at 5959 Baker Road.

1.02 The property is legally described as:

Lot 1, Block 1, BAKER TECHNOLOGY PLAZA NO. 2

and

Lot 1, Block 1 BAKER TECHNOLOGY PLAZA NO. 3

Also

Tract B, RLS No. 1548

1.03 On Feb. 21, 2019 the planning commission held a public hearing on the request. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The commission recommended the city council approve the conditional use permit.

Section 2. Standards.

2.01 City Code §300.21 Subd.2 lists the following general conditional use permit 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;

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.

2.02 City Code §300.21 Subd.4(s) lists the following specific conditional use permit standards for microbreweries and taprooms:

1. Parking requirements: microbrewery, one parking space for each 1000 square feet of floor area. Taproom: one parking space for each 50 square feet of floor area.

2. Shall have parking and vehicular circulation in compliance with the requirements of section 300.28 of this code and which items must be adequate to accommodate the restaurant.

3. Shall only be permitted when it can be demonstrated that operation will not significantly lower the existing level of service as defined by the Institute of Traffic Engineers on the roadway system.

2.03 By City Code §300.28 Subd.12(a)(4), “a land use may provide the required off-street parking area for additional land uses on the same development site if the following conditions are met:

1. Because of the hours of operation of the respective uses, their sizes and their modes of operation there will be available to each use during its primary hours of operation an amount of parking sufficient to meet the needs of such use; and

2. The joint use of the parking facilities shall be protected by a recorded instrument, acceptable to the city.”

Section 3. FINDINGS.

3.01 The proposed microbrewery and taproom would meet the general conditional use permit standards as outlined in City Code §300.21 Subd. 2 and the staff report associated with the applicant’s request.

3.02 The proposed microbrewery and taproom would meet the specific standards as outlined in City Codes §300.21 Subd.4(s) and the staff report associated with the applicant’s request.
1. The site’s existing 111 parking spaces could accommodate anticipated parking demand.

2. The proposal is not anticipated to significantly impact existing traffic volumes or levels of service.

3.03 Parking is provided consistent with City Code §300.28 Subd.12(a)(4):

1. The subject property is zoned for, and generally occupied by, office and warehouse uses. The existing building is served by 111 parking spaces. The Institute of Transportation Engineers (ITE) parking demand data suggests that average peak parking demand for the building could be accommodated with 109 parking spaces.

2. ITE suggests – and anecdotal evidence confirms – that office and warehousing uses have a very different peak hour parking demand than the proposed brewery/tap room.

3. The 5959 Baker Road building is the southernmost of three buildings located on the same property. The buildings have a shared parking agreement. This agreement significantly increases available parking.

Section 4. City Council Action.

4.01 The above-described conditional use permit are 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, unless modified by the conditions below:

   • Site plan, dated Jan 17, 2019
   • Floor plan, dated Jan 17, 2019

2. Prior to issuance a building permit:

   a) This resolution must be recorded at Hennepin County.

   b) Submit a landscaping plan for review and approval of city staff. The plan must meet minimum requirements as outlined in city code.

3. The outdoor patio must:

   a) be controlled and cordoned off with an uninterrupted enclosure, with access only through the principal building;

   b) be equipped with refuse containers and regularly patrolled for litter
pick-up; and

4. The brewery/taproom must conform to all aspects of the City Code Chapter 8, Public Health and Public Nuisance Ordinances.

5. This resolution does not approve any signs. Sign permits are required.

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 will require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting City Clerk

SEAL
City Council Agenda Item #13B  
Meeting of March 18, 2019

**Brief Description**  
On-sale brewer’s taproom and Sunday liquor license, and off-sale liquor license (for growlers) for Boom Island Brewing Company, LLC 5959 Baker Rd, Minnetonka.

**Recommendation**  
Continue the public hearing and grant the licenses

**Background**

The city has received an application for an on-sale brewer’s taproom and Sunday liquor license, and off-sale liquor license for Boom Island Brewing Company, LLC, for use at 5959 Baker Rd. The applicants are proposing to establish a microbrewery at 5959 Baker Rd. Boom Island Brewing Company, LLC was founded in 2011 by husband and wife, Kevin and Qiuxia Welsh. The taproom is currently located in north Minneapolis. As of January 2019, Boom Island Brewing Company, LLC expanded to include three new owners. David Scott Becker, Daniel Syverson, and Tracy Gast. They have been searching for a new location to expand the microbrewery.

The tenant site is currently vacant. The brewery anticipates opening in June 2019, pending council approval.

**Business Ownership**

Boom Island Brewing Company, LLC, is owned by Kevin and Qiuxia Welsh who collectively own 42% of the business. David Scott Becker owns 26%, with Daniel Syverson and Tracy Gast each owning 11%. No single investor owns 5% or more of the remaining 10%.

**Business Operations**

The applicants are requesting to have a taproom and an off-sale license for growlers. The proposed hours for the taproom will be Mon-Thur 3pm-10pm, Fri-Sat Noon-11pm, and Sun 11am-6pm.

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

Employees of the brewery will request proper identification for all purchases. All employees will attend and pass an accredited Alcohol Server Awareness Program.

**Other Similar Actions**

The council previously approved a license for Unmapped Brewing Company, LLC determining that a brewery offered a distinctive specialty service as the only taproom in Minnetonka. The council granted on-sale taproom and off-sale liquor licenses (for growlers) in Dec. 2016.
Neighborhood Feedback

The city has not received any comments regarding the proposed liquor license.

Applicant Information

Application information and license fees have been submitted. The police department’s investigative report is complete and will be forwarded to the council prior to the continued public hearing. Staff has no concerns with the applicants.

Recommendation

Staff recommends that the city council continue the public hearing from Feb. 11, 2019 and grant the license.

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

Originated by:
   Fiona Golden, Community Development Coordinator
Location Map

Project: Boom Island Brewing Co
Address: 5959 Baker Rd
BUSINESS OPERATING PLAN

- **STAFFING PLAN**: 6 Full Time Staff (President, General Manager, Taproom Manager, 2 Wholesale Salespersons, Marketing Manager), 5 Part Time (combination of servers/bar tenders and brand ambassadors)
- **LIQUOR TO FOOD RATIO'S**: <2% Food, 34% Off Sale Beer, 54% Tap Room beer
- **HOURS OF OPERATION**: M-Th 3PM-10PM, Fri-Sat Noon – 11PM, Sun 11AM – 6PM
- **ENTERTAINMENT PLAN**: Background music, live music on occasion Wed or Thurs 7PM-9PM, Fri-Sat 7PM-10PM, Sun occasionally Noon-6PM. We will file for one time event permits if we hold Major are held outside.
- **REFUSE CONTROL**: Inside the Taproom, Brewery and Patio will be picked up and trash removed at closing time. Either after closing time or prior to opening the floors will be swept and mopped, all tables and chairs will be wiped down. Trash will be removed each evening and then the patio will be swept prior to opening. Inside the taproom trash and recycling receptacles will be placed in multiple locations. The kitchen and bar areas will be kept clean and sterile per the Minnetonka and Minnesota codes. We will provide food safety training to all servers and management.
- **NOISE MANAGEMENT**: Background music will be played as described in the entertainment description above. Sound levels will be kept at a level such that conversations of normal levels can be held. Sound absorbing materials will be added to the ceiling and/or trusses. In the event live music is held, we will insure that conversations at the far ends of the room can be held at normal levels.
- **UNDER AGE DRINKING**: Establish a strict policy against serving alcohol to anyone under age 21. All employees to be trained on the policy and advised failure to comply will result in immediate dismissal. Policy will include photo ID check required with proof of age, signage stating age limit & laws regarding underage consumption health and safety risks. All employees will be required to sign the Alcohol & Service Employee agreement stating the above.
- **MENU**: We will serve pre-packaged snacks, crackers and packaged dips, cheese & sausage plates, heat and serve flatbreads, panini's and stews.
- **PATIO**: we will have a small patio outside the taproom for patrons to relax when weather is favorable. The patio will have seating for up to 32 people and will be fully fenced in with 36” metal fencing with a gate for egress purposes. Access to the patio will be from inside the taproom and signage will restrict entering from the egress door. Patio surface to be hard material such as colored concrete and may have planters arranged with potted plants. The patio will be edged with a concrete curbing. An existing tree is integrated into the design and provide natural sunblock.
City Council Agenda Item #13C
Meeting of March 18, 2019

Brief Description: Resolution authorizing an application to the Minnesota Department of Employment and Economic Development for funding from the Minnesota Investment Fund for PeopleNet

Recommendation: Hold the public hearing and adopt the resolution

Background

Recently, the city was contacted by the Minnesota Department of Employment and Economic Development (DEED) and GreaterMSP about a company planning to expand within existing buildings at a site in Minnetonka. The company, PeopleNet Communications Corporation, is currently located at 4400 Baker Road and plans to consolidate its facilities at 4350 Baker Road and 4400 Baker Road. PeopleNet provides fleet mobility technology for North America’s land transportation industry that enables greater levels of safety, compliance, cost reduction and customer service. PeopleNet is a subsidiary of Trimble, Inc. which is known for GPS technology.

On Feb. 26, 2019, the city council approved a resolution supporting applications for the Job Creation Fund through DEED and Economic Development Investment Fund through Hennepin County. The company is now ready to apply for assistance through the Minnesota Investment Fund (MIF) through DEED and is requesting a public hearing and resolution supporting the application.

Proposal

PeopleNet is proposing to consolidate and expand its headquarters in Minnetonka. The company currently leases three offices in Minnetonka and a warehouse in Eden Prairie that temporarily functions as an office space. PeopleNet is proposing to enter into a long-term lease for approximately 146,500 square feet in Minnetonka in its existing office at 4400 Baker Road and add new space in an existing building at 4350 Baker Road. The project would allow the company to consolidate the Minnetonka and Eden Prairie offices and allow for significant growth of approximately 250 new full-time jobs while retaining the existing 483 jobs.

The project is estimated to cost approximately $12.5 million ($9.5 million for leasehold improvements and $3 million for furniture, fixtures, and equipment). The average compensation for the existing Minnetonka employees is approximately $90,000 with the option of a benefits package. The projected annual wage for the proposed 250 new jobs is approximately $80,000 a year.

MIF Application

The MIF program through DEED is designed to retain and create high-quality jobs, with focus on industrial, manufacturing, and technology related industries. The MIF program is also intended to be used to increase the local and state tax base and improve the economic vitality of the state. The city submits the application to DEED on behalf of the business and must hold a public hearing and provide a resolution of support for the application to be submitted. Cities then provide loans or grants to the business for such expenses as land, buildings, and equipment to assist in expansion. In order to receive the funds, the business is required to create a minimum
number of jobs at a certain wage level. Minnetonka has received various MIF funds for past projects, including NatureWorks.

The company is requesting up to $1 million to assist with the property improvements. If the project is awarded, the city’s role is to service the loan, which is entirely from state funds with cash flowing in and out through the city’s development fund. The city must also report on the businesses status of meeting job creation goals.

The exact terms of the agreement have yet to be determined between DEED, the city, and PeopleNet. The resolution authorizes the mayor and city manager to execute those documents. This action authorizes the city to hold a public hearing and adopt a resolution in consideration of a Minnesota Investment Fund loan application on behalf of PeopleNet. Awards over $500,000 also require a public hearing at the state.

**Recommendation**

Staff recommends the city council hold the public hearing and adopt the resolution authorizing an application to the Minnesota DEED for funding from the MIF for PeopleNet.

Submitted through:
- Geralyn Barone, City Manager
- Merrill King, Finance Director

Originated by:
- Julie Wischnack, AICP, Community Development Director
- Alisha Gray, Economic Development and Housing Manager

**Supplemental Information**

Location Map

[Feb. 25, 2019 – City Council Meeting – PeopleNet Job Creation Fund and Economic Development Investment Fund](#)
Location Map

Project: PeopleNet MIF Application
Address: 4350, 4400 Baker Road
Resolution No. 2019-

Resolution authorizing an application to the Minnesota Department of Employment and Economic Development for funding from the Minnesota Investment Fund for PeopleNet

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

Section 1. Background.

1.01 The Minnesota Department of Employment and Economic Development operates the Minnesota Investment Fund (MIF) program. Through the MIF program, the state provides funds to local government units, who in turn provide loans to assist expanding businesses.

1.02 The City of Minnetonka ("City") has received a request from PeopleNet to participate in the MIF program.

Section 2. Findings.

2.01. The City may act as the legal sponsor for the project contained in the Minnesota Investment Fund Application to be submitted on or about March 18, 2019.

The City has the legal authority to apply for financial assistance, and the institutional, managerial, and financial capability to administer the proposed project.

2.02. The City has not violated any Federal, State, or local laws pertaining to fraud, bribery, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice.

2.03. Upon approval of its application by the State, the City may enter into a Grant Contract with the State of Minnesota for the approved project, and City certifies that it will comply with all applicable laws, statutes, regulations and rules as stated in the Grant Contract and described in the Project Compliance Certification of the Application.

The City has obtained credit reports and credit information on PeopleNet Communications Corporation and Trimble, Inc. Upon review by the City and the City’s attorney, no adverse findings or concerns regarding, but not limited to, tax liens, judgments, court actions, and filings with state, federal and other regulatory agencies were identified. Failure to disclose any such adverse information could result in revocation or other legal action.

2.05. Council Action.

The City shall act as the legal sponsor for the Project, and Brad Wiersum, Mayor, and Geralyn Barone, City Manager, or their successors in office, are hereby

Section 3.
authorized to execute the Grant Contract and amendments, thereto, as are necessary to implement the project on behalf of the City.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

__________________________________________
Brad Wiersum, Mayor

Attest:

__________________________________________
Becky Koosman, Acting 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 March 18, 2019.

__________________________________________
Becky Koosman, Acting City Clerk
Brief Description: Surplus CDBG Block Grant Funds from 2014, 2015, 2016, and 2017

Recommended Action: Hold the public hearing and adopt the resolution

Background

The Community Development Block Grant (CDBG) program, overseen by the U.S. Department of Housing and Urban Development (HUD), provides federal funds to implement a range of economic and community development activities.

On June 12, 2017, the city of Minnetonka elected to change its entitlement city status and join the Hennepin Urban County CDBG Program. Under the Urban County CDBG program, the city is notified annually by Hennepin County of its CDBG allocation based on a formula used by HUD. This relationship allows Hennepin County to administer CDBG dollars on behalf of the city and ensure federal compliance. On Feb. 11, 2019, city council approved a resolution allocating $131,750 of 2019 funds for the city’s rehabilitation loan program. Hennepin County will manage the disbursement of those funds, and that allocation is not affected by the proposed activities described in this report.

Before the council action on June 12, 2017, the city of Minnetonka received its CDBG funds directly as an entitlement community. The entitlement status means that the city was itself responsible for the administration and distribution of CDBG grant funds. The city retains responsibility in managing any unspent funds from grant awards before the June 12, 2017 action.

Surplus 2014, 2015, 2016, and 2017 CDBG funds

Prior to 2018, Minnetonka was an entitlement community and administered its own CDBG funds to support public service programming and home rehabilitation. The city continues to collect loan repayments from 2017 and earlier, and distributes that money to Hennepin County under the Urban County agreement to continue to support home rehabilitation loans.

Due to a significant increase in loan repayments ($62,503 in 2017), instances of extreme weather, not fully expending prior year grants, and staffing changes, the city accumulated a surplus of CDBG funds over the last few grant years. In 2018, city council approved the allocation of surplus CDBG funds to business relocation, rehabilitation, and administration. These funds were largely unspent due to a significant delay on a development project where a large percentage of funds would be used to assist in business relocation costs. The current cash balance of the unspent funds is $224,413.

Staff is proposing to allocate the balance of the surplus funds to the following activities outlined below:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Recommended Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Assistance (Business Relocation)</td>
<td>$201,972</td>
</tr>
</tbody>
</table>
Business Relocation

In March 2015, the city purchased a commercial property at 4312 Shady Oak Road. The acquisition was part of a county road reconstruction project that significantly impacted the site. On Sept. 25, 2017, the city authorized the sale of the property to Shady Oak Crossing Limited Partnership for the redevelopment of the property.

Due to federal rules, the city is obligated to pay relocation costs for businesses operating on the property. The relocation is anticipated to occur once the developer acquires financing to complete the redevelopment, and the city intends to pay the relocation costs of the operating businesses at the property. The recommended CDBG funding of $201,972 will not cover the entire estimated relocation costs, but it does offer the city an opportunity to offset city funds needed to pay for the relocations (originally identified as from the development fund).

Administration

Staff expects that approximately 10 percent or $22,441 is needed to cover administrative costs. Costs are based upon staff time to administer the CDBG program, including quarterly reports to HUD, the annual action plan, end of the year report, and meetings with business relocation consultants.

Recommendation

1) Hold the public hearing on the use of 2014, 2015, 2016, and 2017 CDBG funds

2) Adopt the resolution reallocating 2014, 2015, 2016, and 2017, CDBG funds

Submitted through:
Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Alisha Gray, Economic Development and Housing Manager

Originated by:
Rob Hanson, Economic Development Coordinator
Supplemental information:

February 11, 2019 City Council Meeting – 2019 CDBG
Resolution No. 2019-

Resolution approving the use of surplus Community Development Block Grant funds from program years 2014-2017

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

Section 1. Background.

1.01. The City of Minnetonka previously applied to the U.S. Department of Housing and Urban Development for funding through the Community Development Block Grant (CDBG) program; and

1.02. The City of Minnetonka has developed a proposal for the use of CDBG funds made available to it, and held a public hearing on March 18, 2019 to obtain views of citizens on local housing and community development needs;

Section 2. Council Action.

2.01. The City Council hereby approves the following projects for funding from surplus Community Development Block Grant funds from 2014 through 2017 and authorizes submittal of the proposal to Hennepin County and the U.S. Department of Housing and Urban Development. Should the final CDBG funding amount be different, the funding amounts will be adjusted proportionally.

<table>
<thead>
<tr>
<th>Project</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Assistance (Business Relocation)</td>
<td>$201,972</td>
</tr>
<tr>
<td>Administration</td>
<td>$22,441</td>
</tr>
<tr>
<td>Total</td>
<td>$224,413</td>
</tr>
</tbody>
</table>

2.02. The mayor and city manager are authorized to execute such letters, agreements and other documents as may be necessary to implement these actions.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019

________________________
Brad Wiersum, Mayor

Attest:

________________________
Becky Koosman, Acting 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 March 18, 2019

__________________________
Becky Koosman, Acting City Clerk
City Council Agenda Item #13E
Meeting of March 18, 2019

Brief Description
On-sale liquor licenses for MTKA Pizza, LLC (DBA Station Pizzeria), at 13008 Minnetonka Boulevard

Recommendation
Open the public hearing and continue to April 15, 2019

Background
The city has received an application from MTKA Pizza, LLC (DBA Station Pizzeria) for a change in ownership regarding their liquor license for use at 13008 Minnetonka Boulevard. The change in ownership, which requires a new license, is contingent upon approval of the license by the city council.

Business Ownership
MTKA Pizza, LLC is owned equally by Clark Gassen and new owner, Jake Schaffer. Station Pizzeria has been a business at this location since 2016. A new general manager, Benjamin Morrill has also been hired.

Business Operations
Station Pizzeria is a full-service restaurant and bar. The concept is an upscale, family friendly pizza restaurant which highlights well executed pizzas, different unique sides as well as salads.

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

Recommendation
Staff recommends that the city council open the public hearing and continue the hearing to April 15, 2019.

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

Originated by:
Fiona Golden, Community Development Coordinator
Project: Station Pizzaeria
Address: 13008 Minnetonka Blvd

This map is for illustrative purposes only.
MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into effective as of the 13th day of December, 2018 (the "Effective Date") by and among MTKA Pizza, LLC, a Minnesota limited liability company (the "Company"), David Ellis, a Minnesota resident ("Ellis"), Jake Schaffer, a Minnesota resident ("Schaffer"), Ryan Burnet, a Minnesota resident ("Burnet") and Benji Morrill, a Minnesota resident ("Morrill").

WHEREAS, the Company has and holds an On-Sale Liquor License issued by the City of Minnetonka (the "City") for those certain premises located at 13008 Minnetonka Boulevard, Minnetonka, Minnesota, for the business purpose of operating a pizza restaurant known as "Station Pizzeria" (the "Business"), with Ellis designated as the Company’s General Manager, and Burnet designated as the Company’s Primary Officer for purpose of such license; and

WHEREAS, the Company and Ellis have entered into a Membership Interest Redemption Acknowledgment dated effective as of February 5, 2018, whereby the Company redeemed Ellis’s membership interest of the Company, and the Company and Burnet have entered into a Membership Interest Redemption Agreement dated effective as of December 15th, 2018, whereby the Company is redeeming Burnet’s membership interest of the Company; and

WHEREAS, the Company is in the process of securing, but has not obtained the necessary liquor license (by transfer of existing license or issuance of new license) from the City of Minnetonka, Minnesota with designation of the Company’s new Primary Officer, Schaffer, and the Company’s new General Manager, Morrill, to be used in the operation of the Business (the "License"); and

WHEREAS, Ellis and Burnet are willing to maintain limited control of the Business after the Effective Date, according to the terms and conditions of this Management Agreement, to ensure compliance with licensure requirements of the City of Minnetonka, Minnesota; and

WHEREAS, the parties wish to reduce their agreement to writing pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the following, the receipt and sufficiency of which is hereby fully acknowledged, the following is agreed to by the parties:

1. The above recitals are true and correct, and hereby incorporated into this Agreement.

2. Notwithstanding the execution of any other documents by and between the parties as of the date hereof, this Agreement shall govern the relationship between the parties during its term. The term of this Agreement shall commence upon the Effective Date and shall continue until the Company or its nominee has obtained the License.

3. Commencing on the Effective Date, the Company shall use best efforts to obtain the License.
4. During the term of this Management Agreement, Ellis and Burnet shall maintain a limited management role for the Business while Morrill and Schaffer operate the Business in its normal course; Morrill and Schaffer shall cause the Company to collect Business revenues, pay Business expenses and retain Business profits during the term hereof.

5. The Company shall indemnify and hold Ellis and Burnet harmless from any and all claims arising out of its operation of the Business during the term of this Agreement, and the Company's obligation to indemnify and hold Ellis and Burnet harmless shall continue following the term of this Agreement for any and all claims against Ellis and Burnet. This provision shall survive the termination of this Agreement.

6. The Company shall name Ellis and Burnet as an additional insured under any liquor liability insurance obtained by the Company or its nominees until the Company procures the License.

7. Ellis and Burnet shall remain on the existing license from the City of Minnetonka, Minnesota used in operating the Business until the Company obtains the License.

8. In the event that a party is required to pursue enforcement of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs incurred to enforce the same.

9. This Agreement contains the entire agreement between the parties hereto regarding the circumstances herein described, and shall be binding upon any successors or assigns. Any modifications of this Agreement must be in a writing signed by both parties. Notwithstanding any contrary terms in documents signed by the parties on this date, the language in this Agreement shall control and supersede any such document.

[Remainder of this page intentionally blank; signature page follows.]
IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by a duly authorized person or officer on the day and year set forth below.

MTKA Pizza, LLC,
a Minnesota limited liability company

Dated: December 13, 2018
By: Clark Gassen
Its: Manager

Dated: December __, 2018
David Ellis

Dated: December 13, 2018
Ryan Burnet

Dated: December 13, 2018
Jake Schaffer

Dated: December 13, 2018
Benji Morrill
**TAP BEER**

<table>
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<tr>
<th>Beer Name</th>
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<tr>
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<td>Golden, CO</td>
<td>Pale Lager</td>
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<td>Fulton Lonely Blonde</td>
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<td>LTD Brewing CO</td>
<td>Hopkins, MN</td>
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<td>India Pale Ale</td>
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<td>Lagunitas Pils</td>
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<td>Czech Pilsner</td>
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<td>Unmapped Topo Wit</td>
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<td>Belgian White</td>
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<td>BOTTLED BEER</td>
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<td>White Claw Hard Seltzer</td>
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<td>Longmont, CO</td>
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<td>Central Waters Mudpuppy</td>
<td>Amherst, WI</td>
<td>American Porter</td>
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<td>St. Pauli NA</td>
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<td></td>
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<tr>
<td>Brewing Co</td>
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**WINE**

**SPARKLING & ROSÉ**

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<td>Tiamo Prosecco</td>
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<td>Mas Fi Brut Cava</td>
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<td>7 / 26</td>
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<td>Penya Rose</td>
<td>Cotes Catalanes, France</td>
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**WHITE**

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<tr>
<td>Verus Sauvignon Blanc</td>
<td>Ormoz, Podravje, Slovenia</td>
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**RED**

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<tbody>
<tr>
<td>La Fiera Montepulciano</td>
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<td>6 / 24</td>
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</tr>
<tr>
<td>Olcaviana Cabernet Sauvignon</td>
<td>Castilla, Spain</td>
<td>8 / 30</td>
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<tr>
<td>Donna Laura Sangiovese</td>
<td>Toscana, Italy</td>
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<tr>
<td>Sallier de La Tour Syrah</td>
<td>Sicily, Italy</td>
<td>8 / 30</td>
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<tr>
<td>Cantine San Silvestro, &quot;Ottone I&quot;</td>
<td>Piedmont, Italy</td>
<td>9 / 34</td>
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<tr>
<td>MWC Victoria Pinot Noir</td>
<td>Victoria Australia</td>
<td>10 / 38</td>
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<tr>
<td>Zuccardi Malbec</td>
<td>Mendoza Argentina</td>
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**FROSÉ, FIZZ & SANGRIA**

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<tbody>
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<td>Mimosa</td>
<td>7</td>
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<td>Frosé</td>
<td>8</td>
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<tr>
<td>P.A. &amp; Co. Red Sangria</td>
<td>8</td>
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City Council Agenda Item #13F  
Meeting of March 18, 2019

Brief Description  
Public hearing approving vacation of easements at 11650 and 11706 Wayzata Blvd

Recommendation  
Hold the public hearing and adopt the resolution approving the request

Introduction
On Dec. 17, 2018, the city council approved the final plat of MARSH RUN and the plans for a 175-unit apartment building at 11650 and 11760 Wayzata Blvd. The approved plat established new drainage and utility easements along the new lot line and over existing and proposed utilities. The applicant is requesting the vacation of obsolete public easements.

Staff Comments
The requested vacation is reasonable, as:

- There are no public utilities within the easement areas that would be vacated.
- Following the approval of MARSH RUN, which included new easements, the easement areas are obsolete.

Staff Recommendation
Hold the public hearing and adopt the resolution vacating the easements on the properties at 11650 and 11706 Wayzata Blvd.

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

Originated by:
  Ashley Cauley, Senior Planner
Location Map

Project: Doran,
Address: 11650 & 11706 Wayzata Blvd
The Deeded and Utility Easement as retained in Document No. T0550638 W92°, and across the vacated U.S. Highway No. 12 right of way as depicted on the plan of MARSH RUN TWO and MARSH RUN TWO ADDITION, Hennepin County, Minnesota.
MARSH RUN TWO 2ND ADDITION

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me, this 22 day of November, 1969, by Joe R. Nelson, Chief Executive Officer of M. R. N. Ll, Inc., a Minnesota corporation, on behalf of M. R. N. Ll, Inc., a Minnesota corporation, in accordance with the laws of the State of Minnesota.

I hereby certify that I have surveyed and platted the land described on this plat in accordance with the laws of said state, and that all divisions are correctly shown in the plat and boundaries of all lots and monuments have been correctly placed in the ground as shown, that the proper boundary lines are correctly designated on said plat, and that there are no methods to be designated as said plat.

The foregoing Surveyor's Certificate was acknowledged before me, this 22 day of November, 1969, by J. Nelson, land Surveyor, Minnesota License No. 401.

This plat of MARSH RUN TWO 2ND ADDITION has been prepared and accepted by the City Council of Minneapolis, Minnesota at a regular meeting held this 22 day of November, 1969, and the said plat is hereby accepted for filing for recording. The plat and cadastral survey of this plat are made in accordance with the requirements of Minnesota Statutes, Section 347.025, Subdivision 2.

The City Council of the City of Minneapolis, Minnesota, has determined and recommended the platting of said plat for recording, and the plat is hereby accepted for recording in the Office of the Register of Titles, Hennepin County, Minnesota.

The plat of MARSH RUN TWO 2ND ADDITION is approved by the City Council of Minneapolis, Minnesota, and has been approved by the City Surveyor, as required by Minnesota Statutes, Section 347.025, Subdivision 2.

Property Taxation Department, Hennepin County, Minnesota

This plat of MARSH RUN TWO 2ND ADDITION is approved by the City Council of Minneapolis, Minnesota at a regular meeting held this 22 day of November, 1969, and the said plat is hereby accepted for filing for recording. The plat and cadastral survey of this plat are made in accordance with the requirements of Minnesota Statutes, Section 347.025, Subdivision 2.

Verona T. Doke, Tax Clerk

R. Cole, Hennepin County Surveyor

Registration of Titles, Hennepin County, Minnesota

The plat of MARSH RUN TWO 2ND ADDITION is approved by the City Council of Minneapolis, Minnesota at a regular meeting held this 22 day of November, 1969, and the said plat is hereby accepted for filing for recording. The plat and cadastral survey of this plat are made in accordance with the requirements of Minnesota Statutes, Section 347.025, Subdivision 2.

R. Cole, Tax Clerk

Official Plat

025.32

608

RT DOC NO. 1615620

Hansen Thorp + Pellinen Olson Inc.
Surveying Engineers, Land Surveyors, Hennepin County, Minnesota

MERRIVALE AVE.

MARSH RUN TWO 2ND ADDITION

OUTLOT A

LOT 5

LOT

U.S. HWY. NO. 12

Hennepin County Monument

s

375.56

376.45

376.41

50

100

200

SHERIFF'S LINES OF 1851

SHERIFF'S LINES OF 1851

SHERIFF'S LINES OF 1851

0

100

200

300

400

500

600

700
Boulevard Gardens
HENNEPIN CO., MICH.

OUT LOT A

MARSH RUN TWO

Pellinen, Inc.

KNOW All Men BY THESE PRESENTS: That Jon R. Nelson and Robert M. Price, Jr. and Mary M. Price, the following described property, situated in the County of Hennepin, State of Minnesota, to wit:

That part of Lots 17 and 18, Block 2, BOULEVARD GARDENS, according to the recorded plat thereof on file and of record in the files of the Registrar of Titles, Hennepin County, Minnesota, being in the County of Hennepin, State of Minnesota, Minnesota license No. 13637. The foregoing Surveyor's Certificate was acknowledged before me this 30th day of May, 1983, by Paul A. Thorp, Land Surveyor, Hennepin County, Minnesota.

This plat of MARSH RUN TWO has been approved and accepted by the City Council of Minnetonka, Minnesota at a regular meeting thereof held this 20th day of August, 1982. This plat has been approved by the City of Minnetonka, Minnesota, and the highway and drainage improvements shown thereon.

DEED TO REGISTRY DEPARTMENT, HENNEPIN COUNTY, MINNESOTA

I hereby certify that this plat of MARSH RUN TWO was filed for record in this office this 20th day of August, 1982, at 9:30 a.m. by R. Dan Carlson, Registrar of Titles.

R. Dan Carlson, Registrar of Titles
KNOW ALL PERSONS BY THESE PRESENTS: That Marsh Development, LLC a Minnesota limited liability company, fee owner of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

Lots 1 to 6 inclusive, Block 1, MARSH RUN TWO; and that part of U.S. Highway No. 12 dedicated by the plat of MARSH RUN TWO.

Lots 1 to 5 inclusive, Block 1, MARSH RUN TWO 2ND ADDITION; and that part of U.S. Highway No. 12 dedicated by the plat of MARSH RUN TWO 2ND ADDITION.

Lot 16, Block 2, BOULEVARD GARDENS, Hennepin County, Minnesota, except that part thereof embraced within the plat of MARSH RUN TWO 2ND ADDITION.

Has caused the same to be surveyed and platted as MARSH RUN, and does hereby dedicate to the public for public use the easements as shown on this plat for drainage and utility purposes only.

In witness whereof said Marsh Development, LLC a Minnesota limited liability company, has caused these presents to be signed by its proper officer this ________ day of ________, 20____.

SIGNED: Marsh Development, LLC
By: ___________________________, Chief Manager
Kelly J. Doran

STATE OF MINNESOTA
COUNTY OF HENNEPIN
The foregoing instrument was acknowledged before me this ________ day of ________, 20____, by Kelly J. Doran, Chief Manager of Marsh Development, LLC a Minnesota limited liability company, on behalf of the company.

Signature: ___________________________
Notary Public, County, Minnesota
My Commission Expires

MARK R. SALO, LICENSED LAND SURVEYOR, MINNESOTA LICENSE NO. 43933
I hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly licensed land surveyor in the state of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within ________ feet of the boundary lines as of the date of this certificate; that the plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within ________ feet of the boundary lines; and that this plat accurately shows the location of the public utility lines as of the date of this certificate.

Dated this ________ day of ________, 20____.
Mark R. Salo, Licensed Land Surveyor,
Minnesota License No. 43933

STATE OF MINNESOTA
COUNTY OF HENNEPIN
The foregoing instrument was acknowledged before me this ________ day of ________, 20____, by Mark R. Salo.

Signature: ___________________________
Notary Public, County, Minnesota
My Commission Expires

MINNETONKA, MINNESOTA
I hereby certify that this plat of MARSH RUN was approved by the City Council of Minnetonka at a regular meeting thereof held this ________ day of ________, 20____. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minn. Statutes, Section 505.03, Subd. 2.

Mayor
City Clerk

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota
I hereby certify that taxes payable in 20____ and prior years have been paid for land described on this plat, dated this ________ day of ________, 20____.

Mark V. Chapin, County Auditor
By: ___________________________, Deputy

Pursuant to Minnesota Statutes Section 383B.565 (1969), this plat has been approved this ________ day of ________, 20____.

Chris F. Mavis, County Surveyor
By: ___________________________, Deputy

I hereby certify that the within plat of MARSH RUN was filed in this office this ________ day of ________, 20____, at ________ o'clock ________ M.

Martin McCormick, Registrar of Titles
By: ___________________________, Deputy

MARKED BY LICENSE NUMBER 43933 UNLESS NOTED OTHERWISE
C. Items concerning Marsh Run redevelopment, a multi-family residential development by Doran, at 11650 and 11706 Wayzata Blvd.:

1) Ordinance rezoning the property from PID, Planned I-394 District, to PUD, Planned Unit Development and adopting the master development plan; Site and building plan review, with variances; Preliminary and final plats of MARSH RUN; and Comprehensive guide plan amendment from service commercial to mixed use

2) Resolution approving the contract for private development with the Economic Development Authority in and for the City of Minnetonka, Minnesota and Marsh Development, LLC

Gordon gave the staff report related to land use matters.

Wischnack continued the staff report concerning financing.

Acomb asked if there were height limitations in a Planned Industrial Development. Gordon answered that height was relational to setback.

Anne Behrendt, COO Doran Companies, talked about the 175-unit Class A mixed income project. She highlighted the major changes that had been made. She touched on parking, traffic, green building, sustainable design features, height and setbacks, and the affordability component.

Tony Kuechle, President of Development Doran Companies, talked about density, parking per unit, the landscaping plan, and the many changes that had been made to address neighbors’ concerns.

Wiersum asked if there had been parking complaints at comparable developments. Gordon answered that out of three, the Carlson had some complaints that had been heard but not observed concerning vehicles coming and going out front.

Ellingson asked where visitors would park. Kuechle replied that visitor parking would be in the garage.

Acomb asked if there was room for more parking stalls. Kuechle answered affirmatively and discussed a couple of options for increasing parking.
Bergstedt asked how the short-term parking would be monitored. Kuechle explained the plan had not been finalized, but the short-term parking would be signed for different lengths of times.

Wiersum asked about parking per unit. Kuechle explained the best way to regulate parking was to charge per stall.

Calvert asked if there had been conversations with neighboring businesses about overflow parking. Behrendt answered that the Carpenters have significant parking that could be used in the evenings if needed.

John Ferrier, Vice President of Architecture CSM Corporation, supported the development and talked about the vision for the neighborhood to be a walkable, livable, and accessible community. Doran’s proposed project fulfilled this vision.

Kristine Wihlm, Resident of Gables of West Ridge, shared that his biggest concern continued to be the size and density of the project.

Sam Handler, 783 Fairfield Circle, Hopkins, believed the photos in Doran’s proposal did not accurately show the relationship between buildings. Mr. Handler presented a chart on size of apartment complexes in Minnetonka and expressed concern that this building would set a precedent.

Amy Denzen, 956 Fairfield Court, Hopkins, represented her community in opposition to the proposed project. She believed that a 175-unit apartment building was not compatible with the community and that there were three major hurdles including density, parking, and traffic. She suggested that 80 to 110 units was more appropriate.

Jim Nekich, 958 Fairfield Court, Hopkins, discussed safety, cost, and quality of life.

Barbara Fermon, 11484 Fairfield Road W Unit 201, Hopkins, believed that an increase in density was inevitable. But for the health and community, the 20% affordable housing was needed. Minnetonka needed people working and living there so she supported the project.

LuAnn Carpenter, St. Louis Park, spoke as one of the families with an ownership interest in the property. She talked about her positive experience when an apartment building was built in her neighborhood.

Bob Uhlhorn, 907 Fairfield Way, Hopkins, discussed traffic, location of bus stops, and access for emergency vehicles.
Pam Lewis, 980 Fairfield Court, Hopkins, said that the neighborhood was not against change or affordable housing, but was against this density in their neighborhood. Ms. Lewis showed pictures of narrow neighborhood streets and expressed concern that the streets would become turnarounds for vehicles.

Wiersum ended public comment and brought the discussion back to the council. He asked staff to provide instruction on how to move forward procedurally. Barone suggested the council have a general discussion on the project and financing.

Acomb asked if a condition of approval could be added requiring the developer to report back to the council concerning parking. Gordon answered yes; however, the options at that point would be some what limited because some of the options would need to be completed at time of construction.

Happe stated that from a land use perspective he was supportive. The site needed developing and the developer had made changes requested by the neighborhood and council.

Acomb noted that the affordable housing component had peaked her interest from the beginning, but she did not want the development to negatively impact the neighbor’s lives. She appreciated the changes that had been made by the developer including the storm water treatment, the change to the entrance, the increased buffer to the north, and the increased setbacks on the east and west. For those reasons, she was supportive of the project.

Schack thought the site was appropriate for residential and would likely be an apartment building. She was supportive of the Comprehensive Plan amendment, the finance package, the design and layout, the developer, and the affordability component. She believed that the workforce deserved the dignity of a nice building. However, she struggled with mass and traffic.

Calvert shared that she was very conflicted. She thought the structure was beautiful taken by itself, but the mass and density were a problem. She was also concerned with parking and traffic.

Bergstedt agreed with both sides. He said that affordable housing would not drive his decision, but would be part of his decision. His biggest concern was parking and expressed a need for No Parking signs on Fairfield Road.

Ellingson felt conflicted and agreed with all the previous comments. He did commend the developer for listening to the neighbors and council.

Wiersum thought the building was attractive, but councils should not be in the business of design. The building was big, but the issue was more complex
because of affordability. He expressed a desire to see the building a bit smaller, but explained that it was difficult to compare it to other buildings that were built 20 years ago because of rising costs. Because of economics there would be more scale, more density, and more mass. Wiersum believed the developer had done a good job mitigating the neighborhood’s concerns. He expressed support for the affordable housing, but talked about the cost. The city would be contributing approximately $381 per month per unit, but the developer was putting in a comparable amount. The challenging question was that the city needed affordable housing, but how to pay for it. Wiersum leaned towards supporting the project and thought the benefits outweighed the negative.

Barone commented that it was appropriate to start with the financing motion and that all the motions would require four votes.

Acomb moved, Bergstedt seconded a motion to adopt Resolution 2018-158 approving the contract for private development with the Economic Development Authority in and for the City of Minnetonka, Minnesota and Marsh Development, LLC: contingent upon council approval of the items related to rezoning, site and building plan review, preliminary and final plat and amendment of the comprehensive guide plan. Acomb, Happe, Schack, Bergstedt, Ellingson, and Wiersum voted “yes.” Calvert voted “no.” Motion carried.

Acomb moved, Bergstedt seconded a motion to adopt:
1) Ordinance 2018-21 rezoning the properties at 11650 and 11706 Wayzata Blvd. from Planned I-394 District to Planned Unit Development and adopting the master development plan.
2) Resolution 2018-160 approving final site and building plans for a multi-family residential building at 11650 and 11760 Wayzata Blvd.
3) Resolution 2018-161 approving the preliminary and final plats of MARSH RUN at 16500 and 11706 Wayzata Blvd.
4) Resolution 2018-164 approving a comprehensive guide plan amendment from commercial to mixed use at 14317 Excelsior Blvd.

Acomb, Happe, Bergstedt, and Wiersum voted “yes.” Calvert, Schack and Ellingson voted “no.” Motion carried.
Resolution No. 2019-

Resolution vacating drainage and utility easements at 11650 and 11706 Wayzata Blvd.

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

Section 1. Background.

1.01 Doran has petitioned the Minnetonka City Council to vacate several easements located at 11650 and 11706 Wayzata Blvd.

1.02 The easements are legally described on Exhibit A.

1.03 In accordance with City Charter Section 12.06, a hearing notice on said petition was published in the City of Minnetonka’s official newspaper and written notice was mailed to the owners of each abutting property and to all landowners in the plat.

1.04 On March 18, 2019, the City Council held a hearing on such petition, at which time all persons for and against the granting of said petition were heard.

Section 2. Standards.

2.01 Section 12.06 of the City Charter states that “No vacation shall be made unless it appears in the interest of the public to do so...”

Section 3. Findings.

3.01 The Minnetonka City Council makes the following findings:

1. There are no public utilities located within the easement.

2. There is no anticipated public need for the easement.

3. The vacation is not counter to the public interest.

4. New easements were dedicated within the MARSH RUN plat approved on Dec. 17, 2018.

4.01 The city council vacates the above-described easements. This vacation is valid only upon the filing of the MARSH RUN final plat.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting City Clerk
Exhibit A

Vacate the drainage and utility easement as retained in Document No. T05520638 lying over, under and across the vacated U.S. Highway No. 12 right of way as depicted on the plats of MARSH RUN TWO and MARSH RUN TWO 2ND ADDITION, Hennepin County, Minnesota.

Also vacate all drainage and utility easement as dedicated on the plat of MARSH RUN TWO, Hennepin County, Minnesota.

Also vacate all drainage and utility easements as dedicated on the plat of MARSH RUN TWO 2ND ADDITION, Hennepin County, Minnesota.
Brief Description  Marsh Run (Doran Apartments)

Recommendation  Adopt the resolutions:

1) Modifying a Development Program for Development District No. 1, the establishment of the Marsh Run Tax Increment Financing District, and the adoption of a Tax Increment Financing Plan for Marsh Run Apartments at 11650 and 11706 Wayzata Blvd.

2) Approving a contract for private development and construction addendum with the Economic Development Authority in and for the City of Minnetonka and DC-OV Minnetonka, LLC

Background

Doran formally submitted an application and plans for the redevelopment of the property at 11650 and 11706 Wayzata Blvd. introduced at the city council meeting on Nov. 5, 2018 and approved at the Dec. 17, 2018 meeting. The project includes the removal of the office buildings in order to construct a 175-unit apartment building. The developer also submitted a request for Tax Increment Financing (TIF) for affordable housing.

The developer is requesting that the city consider providing up to $4.8 million in TIF for a term of 17 years to assist with providing 35 affordable units (a mix of 7 alcove units, 21-one bedroom units, and 7-two-bedroom units). These units will be available to households earning up to 50% of the Area Median Income (AMI). The developer also agreed to keep the units affordable for 30 years.

On Dec. 17, 2018, the council approved the first draft of the contract for private development. At the time, the TIF financing was being considered but was not yet approved. Staff worked with the developer over the past few months and is proposing that the council and EDA consider revisions to the draft contract along with the establishment of the TIF district. The amount of financing remains the same as approved at the Dec. 17 meeting; the terms of the agreement were updated to reflect the TIF conditions.

The public hearing notice for the proposed adoption of a Modification to the Development Program for Development District No. 1 and the establishment of the Marsh Run Tax Increment Financing District and Plan was posted for the Feb. 11, 2019 city council meeting; the hearing was continued to the Feb. 25, 2019 and March 18, 2019 council meetings.

The action to expand the boundaries of Development District #1 was a recommendation by the city’s financial advisor during the review of the 2018 TIF Management Plan on Oct. 15, 2018. The new boundary of Development District #1 will be coterminal with the corporate boundaries of the city and will be expanded to include seven additional TIF Project Areas. This change
allows for greater use of “pooled dollars” for affordable housing production and flexibility for use of the city 10% administrative fee allotment for tracking of expenditures.

**Contract for Private Development**

In Dec. 2018, the developer agreed to provide 20% of the units affordable at 50% AMI and has requested $4.8 million in TIF Housing assistance to provide the affordable housing units. The city’s financial consultant, Stacie Kvildang of Ehlers, analyzed the request and prepared the attached memo detailing the analysis of the request for financing.

The city’s legal counsel, Julie Eddington of Kennedy & Graven, drafted the attached Contract for Private Development based upon the request for city assistance by the developer with feedback from the EDAC and city council. The attached memo from Ms. Eddington outlines the actions requested for March 18, 2019. Gina Fiorini of Kennedy & Graven will attend the March 18 meeting to answer any questions related to the Contract for Private Development.

Highlights of the Contract for Private Development are listed below:

**TIF Housing Assistance**

The developer has asked the city to consider a “pay-as-you-go” TIF Note over a term of 17 years in the amount of $4.8 million to assist with financing the project. The qualified improvements include land acquisition, site preparation, and underground parking. The interest rate on the TIF Note will be set at the lesser of 5% or the developer’s actual interest rate.

**Commencement and Completion of Construction**


**Declaration of Restrictive Covenants**

The developer is proposing to provide 20% of the units affordable to those at 50% AMI or less. It is the city’s position to require a minimum of 30 years of affordability.

As an example, rents are anticipated to be $885 - $1,061 per month (depending on the size of the unit). When considering what that means for someone who is at 50% AMI, the maximum estimated annual income allowable for one person is approximately $33,050 ($15.89/hourly). For a four-person household, the estimated annual income allowable is approximately $47,150 ($22.69/hourly). In similar developments in Minnetonka, residents earning these incomes indicated employment in service, retail, administrative, and health professional careers.

Note the above rent structure is specific to TIF and not for tax credit projects, which have different requirements (e.g., Mariner and Dominium).

The declaration also states that the developer cannot adopt any policies specifically prohibiting or excluding rental to tenants holding Section 8 certificates/vouchers during the 30-year affordability period.
The owner must provide a 90-day notification to the renter and the city in the event of a sale.

**Look Back and Reduction of TIF Provision**

A look back and reduction of tax increment assistance section was added to the contract following the December 2018 meeting. This section of the contract outlines the process for reviewing qualified costs at the time construction is completed and at the time of any sale or refinancing. There are three components of the look back:

- At the completion of the project, staff will review the qualified costs. If the qualified costs are less than anticipated, the TIF Note will be reduced on a dollar for dollar basis.

- At project stabilization, generally one year after occupancy, the TIF assistance will be reviewed based on a cumulative average annual cash on cash return of 10%. If the cash on cash return exceeds 10%, the TIF Note will be adjusted.

- If the developer refinances or sells the property during the first 10 years of the term of the agreement, the city’s financial advisor will review the actual project cash flow. If the project has exceeded a 15% internal rate of return during that period, then 50% of the excess amount of actual cash flow would be applied to reduce the TIF Note.

**Minimum Improvements**

The project consists of construction of a varied three-to-six story building with approximately 175-units (subject to affordability requirements) with approximately 238 underground parking spaces and seven first-floor parking spaces.

**Minimum Assessment Agreement**

The developer agrees to not cause a reduction on the Minimum Market Value assessed in respect to the minimum improvements.

**Qualified Costs**

The developer will be eligible for reimbursement for qualified costs for improvements related to land acquisition, site preparation costs (demolition, storm water improvements, remediation, and underground parking) in the amount up to $4.8 million.

**Recommendation**

Staff recommends the city council:

1) Hold the public hearing and adopt the resolution for a Modification to the Development Program for Development District No. 1, the establishment of the Marsh Run Tax Increment Financing District, and the adoption of a Tax Increment Financing Plan or Marsh Run Apartments at 11706 Wayzata Blvd; and
2) Adopt the resolution approving the contract for private development and construction addendum with the Economic Development Authority in and for the City of Minnetonka and DC OV Minnetonka, LLC; and authorize city officials to approve non-substantive changes to the contract for private development.

Submitted through:
- Julie Wischnack, AICP, Community Development Director
- Geralyn Barone, City Manager
- Merrill King, Finance Director

Originated by:
- Alisha Gray, EDFP, Economic Development and Housing Manager

Additional Information

Location Map

Memo from Julie Eddington – Kennedy and Graven

Memo from Stacie Kvilvang – Ehlers

Draft Contract for Private Development
- Construction Addendum

TIF Financing Plan for Marsh Run TIF District

TIF Policy

2005 EDA Resolution

History of Affordability and Assistance

Minnetonka Housing Action Plan (2011-2020 Affordable Housing Goals)

Unapproved Minutes – Nov. 8, 2018 EDAC Meeting (attached)

December 17, 2018 – City Council Meeting
Location Map

Project: Doran - Marsh Run Apartments
Address: 11650 & 11706 Wayzata Blvd
March 4, 2019

Alisha Gray
Economic Development and Housing Manager
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN  55345-1502

Re:  Resolutions approving Contract for Private Development between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, and DC-OV Minnetonka, LLC

Dear Alisha,

DC-OV Minnetonka, LLC, a Minnesota limited liability company (the “Developer”), has proposed to develop an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the median income, including underground and structured first-floor parking (the “Development”), within the Marsh Run Tax Increment Financing District (the “TIF District”) to be established within Development District No. 1 in the City of Minnetonka (the “City”). In order to make the Development economically feasible, the Economic Development Authority in and for the City of Minnetonka (the “Authority”) is contemplating reimbursing the Developer for a portion of the land acquisition costs and certain site improvement costs related to the Development through tax increment generated from property within the TIF District.

Enclosed are resolutions for consideration by the Board of Commissioners of the Authority and the City Council of the City on March 18, 2019, approving the execution and delivery of a Contract for Private Development (the “Agreement”) between the Developer, the Authority, and the City, relating to the terms of construction and development of the Development and the issuance of a tax increment revenue note (the “TIF Note”) by the Authority to reimburse the Developer for qualified project costs related to the Development, and the execution and delivery of a Construction Addendum (the “Construction Addendum”) between the Developer, the Authority, and the City, relating to the construction of certain site improvements described in the Agreement. The resolutions also approve the execution and delivery by the Authority and the City of other documents related to the Agreement and the Construction Addendum.

Upon compliance by the Developer with Section 3.4 of the Agreement, the Board of Commissioners of the Authority will consider a resolution approving the issuance of the TIF Note by the Authority.
Gina Fiorini will be attending the meetings on March 18, 2019 and can answer any questions that may arise during the meetings. Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie Eddington
Memo

To: Alisha Gray – Economic Development and Housing Manager
From: Stacie Kvivang - Ehlers
Date: March 18, 2019
Subject: Marsh Run TIF District and TIF Agreement Approval

Doran Companies is proposing to construct a 175-unit apartment complex at 11650 and 11706 Wayzata Boulevard. They intend to provide 20% of the units (35) affordable to persons at or below 50% of AMI. The 2018 income limits (2019 income limits won’t be available until April) as calculated by the United States Department of Housing and Urban Development are:

<table>
<thead>
<tr>
<th>Household Size</th>
<th>50% AMI</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$33,050</td>
</tr>
<tr>
<td>2</td>
<td>$37,750</td>
</tr>
<tr>
<td>3</td>
<td>$42,450</td>
</tr>
<tr>
<td>4</td>
<td>$47,150</td>
</tr>
</tbody>
</table>

The City will be establishing a Housing TIF District for the project, after consideration at a public hearing on March 18, 2019. The term of the TIF district will be 26 years, with the first TIF expected in 2019, thus terminating on December 31, 2046. Even though the term of the TIF Note expires in year 17, the City Council at that time can decide to keep the TIF district open for the remaining term of the District to provide an on-going source of funding for affordable rental or owner-occupied project (since Doran is required to keep the units affordable for 30 years and document that affordability to the City annually). At this time, it is estimated that the annual TIF available will be approximately $513,000 (inclusive of the 10% administrative fee) and would provide approximately $4.6 million by the end of 2046 for the City’s affordable housing fund.

As part of establishment of the TIF District, we recommend that the EDA approve an interfund loan for the District for up to $50,000 (attached in the packet). This is to cover any administrative or other costs not covered by the Developer’s escrow, which the EDA may incur prior to the City receiving TIF for the project.

In addition to creation of the TIF District, the City will be expanding the boundaries of Development District No. 1 (the “Project Area”) to be coterminous with the corporate boundaries of the City. This Project Area was the first one created for the City and was established in 1983 for the Ridgebury TIF District (decertified) and also includes the Boulevard Gardens TIF District, which is still active. In addition, the City currently has seven (7) additional Project Areas, which coincide with following TIF Districts:

1. Development District No. 2 - Created for the Hedberg Soils District which is now decertified
2. Glen Lake Station Redevelopment district – Created for the Beacon Hill (Housing) and Glenhaven (Redevelopment) TIF Districts
3. Housing Development and Redevelopment Project – Created for the Minnetonka Mills TIF District which is now decertified

4. Tonka on the Creek – Created for Tonka on the Creek Housing TIF District

5. Applewood Point Redevelopment Project – Created for Applewood Point Redevelopment TIF District

6. Rowland Housing Redevelopment Project – Created for Rowland Housing TIF District

7. Opus Redevelopment - Created for the Dominium Housing TIF District

Pooling of TIF Dollars between districts and use of the 10% administrative fee allotment can only happen if they are in the same Project Area. Therefore, we are recommending modifying the Project Area to (i) provide the City maximum flexibility to pool TIF between districts, (ii) provide the City maximum flexibility to use its 10% administrative fee allotment on eligible and documented uses; and (iii) provide for ease of administration of future TIF districts through removal of tracking specific Project Area boundaries and tracking pooling and administrative expenditures within those boundaries.

The second item for consideration by the City Council this evening is the modified TIF Agreement, which was originally approved on December 17, 2018, at the request of the Developer for their financing and closing on the property. As you recall, after review of their development proforma, we recommended providing them a $4.8 million pay-as-you-go TIF Note for 17 years. Following are the significant changes to the Agreement:

1. **Name of Developer** – Changed from Marsh Development LLC to DC-OV Minnetonka, LLC

2. **Definitions** - Material change was updated to add that a reduction of five (5) units as a material change and that anything under that was not. This also provided that the prior definition, which only included an increase in the number of units, would also need 5 units to be a material change. This is relevant because a material change requires City Council approval.

3. **Section 3.8** - A lookback provision was added that requires:
   a. Proof of qualified cost in the amount of the TIF Note of $4.8 million (or lesser amount as documented).
   b. Upon reaching 90% occupancy, the Developer is required to submit their actual costs, revenues and expenditures for review by the City. If their cumulative cash-on-cash (COC) return (cash flow divided by equity) exceeds 10% then the principal amount of the TIF Note will be reduced to an amount that shows a stabilized COC of 10% over the term of the TIF Note.
   c. If the Developer sells the property with ten (10) years of the Agreement, then the Developer has to provide to the City documentation of their internal-rate-of-return (IRR), which is cash flow to date, plus any sales proceeds net of sales expenses and payoff of existing debt. To the extent this exceeds 15%, then the TIF note will be reduced by 50% of the excess amount for them to obtain a 15% IRR.

4. **Section 4.3** - Commencement of construction was updated to include demolition and grading and moved from June 30, 2019 to December 31, 2019 and substantial completion was moved from June 30, 2021 to December 31, 2021.
5. **Section 4.5 (c)** - No discount on parking fees for persons occupying affordable units (everyone pays $100/stall initially).

6. **Section 6.4** - The Developer is prohibited from applying for 4d tax classification during the term of the TIF Note.

7. **Section 7.4** – City and EDA agree to consenting making a collateral assignment of the Agreement to their construction lender and lender that provides permanent financing.

Please contact me at 651-697-8506 with any questions.
CONTRACT

FOR

PRIVATE DEVELOPMENT

between

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF MINNETONKA, MINNESOTA,

CITY OF MINNETONKA, MINNESOTA,

and

DC-OV MINNETONKA, LLC

Dated: _______________, 2019

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota  55402
Telephone:  612-337-9300
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CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the ________ day of ____________, 2019 (the “Agreement”), between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “City”), and DC-OV Minnetonka, LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development project known as Development District No. 1 (hereinafter referred to as the “Development District”) in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended; and

WHEREAS, the City and the Authority have established within the Development District the Marsh Run Tax Increment Financing District (the “TIF District”) and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Development District and promote the development of affordable housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Developer proposes to acquire certain property described in EXHIBIT A attached hereto (the “Development Property”) within the TIF District and construct an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking; and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Developer to construct, the Authority is prepared to reimburse the Developer for a portion of the land acquisition costs and certain site improvement costs related to the Minimum Improvements; and

WHEREAS, the Authority and the City believe that the development and redevelopment of the Development Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Development District has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:
ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Administrative Costs” means the costs described in Section 3.5 hereof.

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Assessor” means the assessor of the City.

“Authority” means the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State, or any successor or assign.

“Authority Representative” means the Executive Director of the Authority.

“Available Tax Increment,” means, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding the Payment Date. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement; provided, however, once an Event of Default is cured, any Tax Increment previously withheld shall be deemed Available Tax Increment on the next Payment Date.

“Board” means the Board of Commissioners of the Authority.

“Certificate of Completion” means the certification provided to the Developer pursuant to Section 4.4 hereof.

“City” means the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision organized and existing under its Charter and the constitution and laws of the State.

“City Representative” means the City Manager or person designated in writing by the City Manager to act as the City Representative of the City.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Development Property, including the Minimum Improvements, which (a) must be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) must include at least the following: (1) site plan; (2) foundation plan; (3) floor plan for each floor; (4) cross sections of each floor plan (length and width); (5) elevations (all sides, including a building materials schedule); (6) landscape and grading plan; and (7) other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Hennepin County, Minnesota.

“Declaration” means the Declaration of Restrictive Covenants attached as EXHIBIT D hereto.
“Developer” means DC-OV Minnetonka, LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Development District Plan” means the Amended and Restated Development Plan for the Development District approved and adopted by the Board of the Authority and the City Council of the City.

“Development District” means the real property located within the boundaries of the Development District No. 1.

“Development Property” means the real property described in EXHIBIT A attached hereto.

“EDA Act” means Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Event of Default” means an action by the Developer listed in Article IX hereof.

“Holder” means the owner of a Mortgage.

“HRA Act” means Minnesota Statutes, Sections 469.001 through 469.047, as amended

“Material Change” means a change in Construction Plans that adversely affects generation of tax increment or changes the number of units of rental housing. Any increase in units or a decrease of more than five units will be considered a Material Change. A decrease in units of five or less units will not be considered a Material Change.

“Maturity Date” means the date that the TIF Note has been paid in full or terminated, whichever is earlier.

“Minimum Assessment Agreement” means the Minimum Assessment Agreement establishing a Minimum Market Value of the Development Property and the Minimum Improvements substantially in the form attached hereto as EXHIBIT G.

“Minimum Improvements” means the development on the Development Property, which will include (i) a varied three- to six-story, approximately 175-unit apartment building subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and (ii) approximately 238 underground parking spaces and approximately 7 first-floor parking spaces.

“Minimum Market Value” means a minimum market value for real estate tax purposes of $12,863,000 with respect to the Development Property and Minimum Improvements as of January 2, 2020 for taxes payable beginning in 2021 and $36,750,000 on January 2, 2021 for taxes payable beginning in 2022 through the Maturity Date.

“Mortgage” means any mortgage made by the Developer which is secured, in whole or in part, with the Development Property and which is a permitted encumbrance pursuant to the provisions of Article VII hereof.

“Net Proceeds” means the gross proceeds from an insurance claim remaining after payment of all expenses (including attorneys’ fees and any expenses of the Developer) incurred in the collection of such gross proceeds.
“Qualified Costs” has the meaning given such term in Section 3.4(a) hereof.

“Qualified Improvements” means the improvements to be constructed by the Developer described in Section 3.4(a) hereof.

“Rental Housing Units” means the rental housing units constructed as part of the Minimum Improvements.

“Site Improvements” means the improvements described in EXHIBIT H.

“Stabilization” means the Minimum Improvements are at least ninety percent (90%) leased.

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“Tax Increment District” or “TIF District” means the Marsh Run Tax Increment Financing District.

“Tax Increment Plan” or “TIF Plan” means the Marsh Run Tax Increment Financing Plan for Tax Increment Financing District, as approved February 11, 2019, and as it may be amended from time to time.

“Tax Official” means any County assessor; County auditor; County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“TIF Note” means a Tax Increment Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, lockouts or other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, State or local governmental unit (other than the Authority in properly exercising its rights under this Agreement) which directly result in delays, unavailability or shortage of supply of construction materials or construction labor, other than by reason of non-payment of the costs for such supplies or labor. Unavoidable Delays shall not include delays experienced by the Developer in obtaining permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required by Section 4.3 hereof.

(The remainder of this page is intentionally left blank.)
ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations:

(a) The Authority is an economic development authority organized and existing under the laws of the State. Under the provisions of the EDA Act and HRA Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder, and execution of this Agreement has been duly, properly and validly authorized by the Authority.

(b) The Authority proposes to assist in financing certain land acquisition costs, site improvement costs, and the costs of constructing affordable housing necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Development District Plan.

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for persons of low or moderate income and their families.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority’s knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.2. Representations by the City. The City makes the following representations:

(a) The City is a home rule city duly organized and existing under its Charter and the laws of the State. Under the provisions of the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for persons of low or moderate income and their families.

(c) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the City, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which the City or any of its property is or may be bound; or (ii) legislative
act, constitution or other proceedings establishing or relating to the establishment of the City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City’s knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.3. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Development District Plan and all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) that are applicable to the Development Property and all improvements constructed thereon.

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer, the City or the Authority in the Development District may be or will be in violation of any environmental law or regulation. As of the date of this Agreement, the Developer is not aware of any facts that would cause the Developer to be in violation of or give any person a valid claim under any local, State or federal environmental law, regulation or review procedure.

(d) The Developer will construct the Minimum Improvements in accordance with all local, State or federal laws or regulations that are in effect at the time of construction.

(e) The Developer will use commercially reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Developer did not obtain a building permit for any portion of the Minimum Improvements before February 11, 2019, the date of approval of the TIF Plan for the TIF District.

(f) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(g) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

(h) The Developer will promptly advise the City and the Authority in writing of all litigation or claims materially affecting the operation of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the operation of the Minimum
Improvements or materially affecting Developer or its business which may delay or require Material Changes in construction of the Minimum Improvements.

(i) The Developer represents that, during the term of the Declaration, no more than twenty percent (20%) of the square footage of the Minimum Improvements will consist of commercial, retail or other nonresidential use. For purposes of this covenant, the underground parking, the common areas and amenity areas constructed for use by the tenants of the Minimum Improvements constitute residential uses.

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ARTICLE III

Tax Increment Assistance

Section 3.1. Status of Development Property. The Developer has entered into a purchase contract for the acquisition of the Development Property. Neither the Authority nor the City has any obligation to acquire any portion of the Development Property.

Section 3.2. Environmental Conditions.

(a) The Developer acknowledges that the Authority and the City make no representations or warranties as to the condition of the soils on the Development Property or the fitness of the Development Property for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property, and that the assistance provided to the Developer under this Agreement neither implies any responsibility by the Authority or the City for any contamination of the Development Property or poor soil conditions nor imposes any obligation on such parties to participate in any cleanup of the Development Property or correction of any soil problems.

(b) Without limiting its obligations under Section 8.3 hereof, the Developer further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their respective governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants on the Development Property as a result of the actions or omissions of the Developer, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the indemnitees. Nothing in this Section will be construed to limit or affect any limitations on liability of the City or the Authority under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02.

Section 3.3. Reimbursement of Certain Developer Costs. The Authority is authorized to acquire real property and convey real property to private entities at a price determined by the Authority in order to facilitate development of the property. The Authority has determined that, in order to make development of the Minimum Improvements and the Qualified Improvements financially feasible, it is necessary to reduce the cost of acquisition of the Development Property and certain site improvements necessary for the Minimum Improvements. The Authority has also determined that, in light of potential liability that could be incurred by the Authority if the Authority takes title to the Development Property, it is in the best interest of the Authority for the Developer to acquire the Development Property directly. The Authority will reimburse the Developer for a portion of the actual cost of acquiring the Development Property and the actual cost of the Qualified Improvements in accordance with the terms of this Agreement.

Section 3.4. Issuance of Pay-As-You-Go Note.

(a) In consideration of the Developer constructing the Minimum Improvements and the Qualified Improvements and to finance the reimbursement of the land acquisition, site preparation costs, and any other expenditures eligible to be reimbursed with Tax Increment incurred by the Developer, the Authority will issue and the Developer will purchase the TIF Note in the principal amount of up to $4,800,000 in substantially the form set forth in the EXHIBIT B attached hereto. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note will consist of the Developer’s payment of a portion of the costs of land acquisition, demolition, site preparation, remediation, underground parking, and any other improvements that are constructed within the TIF District and are eligible for reimbursement with tax increment (collectively, the “Qualified Costs”), which
are incurred by the Developer in at least the principal amount of the TIF Note. The Developer will be reimbursed for such costs in the following maximum amounts:

<table>
<thead>
<tr>
<th>Type of Cost</th>
<th>Maximum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of Land</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Demolition, Storm Water Improvements, Remediation, Underground Parking</td>
<td>$2,800,000</td>
</tr>
</tbody>
</table>

The Authority shall issue the TIF Note within forty-five (45) days of receiving from the Developer satisfactory evidence of Qualified Costs and upon satisfaction of the following conditions:

(i) the Developer has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority (the Authority has approved the Construction Plans);

(ii) the Developer has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof; and

(iii) the Developer has delivered to the Authority an investment letter in substantially the form set forth in EXHIBIT C attached hereto or another form reasonably satisfactory to the Authority.

The TIF Note shall not be delivered to the Developer if the Developer has not delivered the executed Declaration and Minimum Assessment Agreement to the Authority in recordable form.

(b) The Developer understands and acknowledges that the Authority makes no representations or warranties regarding the amount of Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal of and interest on the TIF Note. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely.

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. The Authority consents to this type of assignment, conditioned upon receipt of an investment letter from the lender in a form reasonably acceptable to the Authority. If the Authority and/or the City are required to execute any documents related to an assignment of the TIF Note, such documents must be approved by the Board of the Authority.

Section 3.5. Payment of Administrative Costs. The Authority acknowledges that the Developer has deposited with the City and the Authority $15,000. The City and the Authority will use such deposit to pay “Administrative Costs,” which term means third-party, out-of-pocket costs incurred by the Authority, attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Development Property. At the Developer’s request, but no more often than monthly, the Authority and the City will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority and the City determine that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within thirty (30) days after receipt of a written notice from the Authority and the City containing evidence of the unpaid costs. If any balance of funds deposited remains upon the issuance of the Certificate of Completion pursuant to
Section 4.4 hereof, the Authority shall promptly return such balance to the Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.6. Records. Prior to the Maturity Date, the Authority and its representatives will have the right at all reasonable times during normal business hours after reasonable notice to inspect, examine and copy all books and records of Developer relating to the development and construction of the Minimum Improvements and the costs for which the Developer has been reimbursed with Tax Increment.

Section 3.7. Purpose of Assistance. The parties agree and understand that the purpose of the Authority’s financial assistance to the Developer is to facilitate development of housing and is not a “business subsidy” within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

Section 3.8. Look Back and Reduction of Tax Increment Assistance. The financial assistance to be provided to the Developer pursuant to this Agreement is based on certain assumptions regarding the projected costs and expenses associated with constructing the Minimum Improvements (as provided in the Pro Forma attached as Exhibit I and the Qualified Costs). The Authority and the Developer agree that those assumptions will be reviewed at the time of completion of construction of the Minimum Improvements, and at the time of any sale or refinancing of the Minimum Improvements as follows:

(a) At the time of completion of construction of the Minimum Improvements, if the aggregate amount of Qualified Costs incurred is less than the aggregate amount of Qualified Costs projected in Exhibit I, the tax increment financing assistance for Qualified Costs will be reduced on a dollar for dollar basis in the amount of such deficiency and the principal amount of the TIF Note will be adjusted accordingly.

(b) Upon Stabilization, the amount of the TIF assistance provided pursuant to this Agreement will be subject to adjustment based on a targeted cumulative average annual cash on cash return of 10%. Within sixty (60) days of Stabilization, the Developer must deliver to the Authority’s municipal advisor (the “Consultant”) evidence of its annual cash on cash return. The cash on cash return shall be calculated by the Authority’s Consultant based on the Developer’s pro forma financial statement submitted to the Authority’s Consultant (to be calculated in a manner comparable to the sample attached as Exhibit I (cumulative cash flow divided by number of years of cash flow, assuming 95% occupancy)).

If the annual cash on cash return exceeds 10%, then the principal amount of the TIF Note issued to the Developer will be reduced to an amount that shows a stabilized cash on cash return of 10% over the new term of the TIF Note, in which case the Developer shall deliver the TIF Note in exchange for a new TIF Note in the adjusted principal amount upon the Authority’s written request.

(c) If the Developer sells the Minimum Improvements to an unrelated third party or refinances (provided, however, the placement of permanent debt on the Project and the Development Property will not constitute a refinance giving rise to the review as described in this Section 3.8 (c)) during the first 10 years of the term of this Agreement, the Developer agrees to provide to the Authority’s Consultant reasonable background documentation related to the Minimum Improvements income and expenses for the period from the date of this Agreement through such anticipated sale or refinance date (provided that the Developer and the Authority agree that the calculation will occur prior to the actual transfer). If the Consultant determines, based on such review, that the actual cash flows realized by the Developer has exceeded a 15% internal rate of return during that period of up to 10 years, then 50% of the
excess amount of such actual cash flows over the amounts that would provide for a 15% internal rate of
return will be applied to reduce the amount payable under the TIF Note and the principal amount of the
TIF Note will be reduced accordingly. Such reduction will be effective upon delivery to Developer of a
written notice stating the amount of such excess profit as determined by the Authority in accordance with
this Section 3.8(c), accompanied by the Consultant's report.

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ARTICLE IV

Construction and Maintenance of Minimum Improvements and Site Improvements

Section 4.1. Construction of Minimum Improvements. Subject to Unavoidable Delays, the Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the approved Construction Plans. The Developer further agrees that, at all times prior to the Maturity Date, it will operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The City and the Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer will submit to the Authority the Construction Plans. The Construction Plans must provide for the construction of the Minimum Improvements and must be in substantial conformity with the Development District Plan, this Agreement, and all applicable State and local laws and regulations. The Authority Representative will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Development District Plan; (iii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources (including the Developer’s equity) for construction of the Minimum Improvements; and (vi) no Event of Default has occurred. Approval may be based upon a review by the City’s Building Official of the Construction Plans. No approval by the Authority Representative will relieve the Developer of the obligation to comply with the terms of this Agreement or of the Development District Plan, applicable federal, State and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority Representative will constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, the Construction Plans will be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. The rejections must set forth in detail the reasons therefor, and must be made within twenty (20) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Developer must submit new or corrected Construction Plans within twenty (20) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans will continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative’s approval will not be unreasonably withheld, delayed or conditioned. Said approval will constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority’s satisfaction with the provisions of this Agreement relating thereto.

The Construction Plans were approved by the City Council in December 2018 and are hereby approved by the Authority.

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve
the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change. The Authority’s approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer must commence construction of the Minimum Improvements by December 31, 2019 and will substantially complete construction of the Minimum Improvements by December 31, 2021. Construction is considered to be commenced upon the beginning of demolition and grading on the site.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property must be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Development Property through the construction of the Minimum Improvements thereon, and that, subject to Unavoidable Delays, the construction will in any event be commenced and completed within the period specified in subdivision (a) above. Until construction of the Minimum Improvements has been completed, the Developer will make reports, in the detail and at the times as may reasonably be requested by the Authority, as to the actual progress of the Developer with respect to the construction.

Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement, the Authority will furnish the Developer with a Certificate of Completion in substantially the form attached as EXHIBIT E. The certification by the Authority will be a conclusive determination of the satisfaction and termination of the agreements and covenants in the Agreement with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. The certification and the determination will not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 will be in the form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority refuses or fails to provide any certification in accordance with the provisions of this Section 4.4, the Authority will, within fifteen (15) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain the certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Developer has received a final (or temporary with conditions reasonably acceptable to the Authority) certificate of occupancy from the City for all Residential Housing Units.
Section 4.5. Affordability Covenants; Qualification of the TIF District. Developer agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Developer expects that the Minimum Improvements will include the mix of Rental Housing Units found in EXHIBIT F attached hereto. The Developer will cause at least twenty percent (20%) of the Rental Housing Units in the Minimum Improvements to be available to families at or below fifty percent (50%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT D. Notwithstanding anything to the contrary in the TIF Act, the restrictions will remain in effect for the thirty (30) year period described in the Declaration. On the date of execution of this Agreement, the Developer will deliver the executed Declaration to the Authority in recordable form.

(b) The Developer agrees to distribute the affordable Rental Housing Units among the different Rental Housing Unit types by setting aside twenty percent (20%) of each unit type or a larger unit as affordable units. For example, based on the mix of Rental Housing Units found in EXHIBIT F attached hereto, of the twenty percent (20%) of the Rental Housing Units that are income and rent-restricted, at least 7 Rental Housing Units must be alcove studio units or larger units; at least 21 Rental Housing Units must be one-bedroom units or larger units; and at least 7 Rental Housing Units must be two-bedroom units.

(c) The Developer intends to rent parking spaces in the underground garage to tenants of the Minimum Improvements for approximately $100 per parking space per month initially. The Developer agrees that the monthly rental rate charged for each underground parking space will be the same for all tenants of the Minimum Improvements.

(d) During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant’s status as such a certificate/voucher holder.

(e) The Developer will promptly notify the Authority if at any time during the term of the Declaration the number of Rental Housing Units in the Minimum Improvements occupied by Qualifying Tenants (as defined in the Declaration) or held vacant and available for occupancy by Qualifying Tenants pursuant to the Declaration are fewer than the number required by the terms of the Declaration.

(f) In consideration for the issuance of the TIF Loan, the Developer agrees to provide the Authority with at least ninety (90) days’ notice of any proposed sale of the Minimum Improvements.

(g) The Authority and its representatives will have the right at all reasonable times during normal business hours while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of the Developer and its successors and assigns relating to the covenants described in this Section and in the Declaration.

(h) Pursuant to Section 4.6, the Developer must submit evidence of tenant incomes, showing that the Minimum Improvements meet the income requirements set forth in the Declaration. The City will review the submitted evidence related to the income restrictions required by Section 469.1761 of the TIF Act on an annual basis to determine that the TIF District remains a housing district under the TIF Act.

(i) If the Authority determines, based on the reports submitted by the Developer or if the Authority or the City receives notice from the State Department of Revenue, the State Auditor, any Tax
Official or any court of competent jurisdiction that the TIF District does not qualify as a “housing district”
due to action or inaction of the Developer, this type of event will be deemed an Event of Default of the
Developer under this Agreement; provided, however, that the Authority and the City may not exercise
any remedy under this Agreement so long as the determination is being contested and has not been finally
adjudicated. In addition to any remedies available to the Authority and the City under Article IX hereof,
the Developer will indemnify, defend and hold harmless the Authority and the City for any damages or
costs resulting therefrom.

Section 4.6. Affordable Housing Reporting. At least annually, no later than April 1 of each year
commencing on the April 1 first following the issuance of the Certificate of Completion for the Minimum
Improvements, the Developer shall provide a report to the Authority evidencing that the Developer
complied with the income affordability covenants set forth in Section 4.5 hereof during the previous
calendar year. The income affordability reporting shall be on the form entitled “Tenant Income
Certification” from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable,
any similar form. The Authority may require the Developer to provide additional information reasonably
necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the
Developer shall send affordable housing reports to the Authority until the Declaration terminates.

Section 4.7. Property Management Covenant. The Developer shall cause its property manager to
operate the Minimum Improvements in accordance with the policies described in this Section. For any
documented disorderly violations by a tenant or guest, including but not limited to prostitution,
gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of
firearms, illegal activity, or drug complaints (each a “Violation”), the Developer agrees and understands
that the following procedures shall apply:

(a) After a first Violation regarding any unit in the Minimum Improvements, the City police
department will send notice to the Developer and the property manager requiring the Developer and the
property manager to take steps necessary to prevent further Violations.

(b) If a second Violation occurs regarding the same tenancy within twelve (12) months after
the first Violation, the City police department will notify the Developer and the property manager of the
second Violation. Within ten (10) days after receiving such notice, the Developer or the property
manager must file a written action plan with the Authority and the City police department describing steps
to prevent further Violations.

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous
months after the first Violation, the City police department will notify the Developer and the property
manager of the third Violation. Within ten (10) days after receiving such notice, as and to the extent
permitted under the tenant’s lease and applicable law, the Developer or the property manager shall
commence termination of the tenancy of all occupants of that unit (or, if possible under the lease and
applicable law, only the at-fault occupants of that unit). The Developer shall not enter into a new lease
agreement with the evicted tenant(s) for at least one (1) year after the effective date of the eviction.

(d) If the Developer or the property manager fails to comply with any the requirements in
this Section, then the Authority may provide at least ten (10) days’ written notice to the Developer and the
property manager directing attendance at a meeting to determine the cause of the continuing Violations
and provide an opportunity for the Developer and the property manager to explain their failure to comply
with the procedures in this Section.

(e) If the Developer and property manager fail to respond to the written notice under
paragraph (d) above, or at least two (2) additional Violations occur with respect to the same tenancy
within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Developer to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Developer but approved by the Authority.

Section 4.8. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the Authority, subject to the limitations set forth in this Sections 4.8 and Section 4.9, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT H attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018-160 and Resolution No. 2018-161.

(c) Building permits for the Site Improvements will be issued only in conformance with conditions in Resolution 2018-160. Unless otherwise authorized by the City in writing, no certificates of occupancy will be provided until the following is completed:

(i) Site grading is completed and approved by the City;
(ii) All public utilities have been tested, approved, and accepted by the City Engineer;
(iii) All curbing is installed and backfilled;
(iv) The first lift of bituminous is in place and approved by the City; and
(v) All required fees have been paid in full.

Upon completion of the Site Improvements, the City shall issue a certificate of occupancy. The receipt of a certificate of occupancy for one or more of the Site Improvements shall confirm that the conditions referred to in this Section 4.8(c) have been met for the applicable Site Improvement unless so stated in the certificate of occupancy.

Section 4.9. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.

Section 4.10. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately $875,000 in park dedication fees (assuming that the Minimum Improvements include 175 Rental Housing Units). The park dedication fee is calculated at a rate of $5,000 per unit.

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ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Developer or the general contractor engaged by the Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder’s risk insurance, written on the so-called “Builder’s Risk – Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy. The interest of the Authority must be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than $2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used). The Authority must be listed as an additional insured on the policy; and

(iii) Workers’ compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer must maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority will furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering the risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of $2,000,000, and must be endorsed to show the City and the Authority as an additional insured.

(iii) Other insurance, including workers’ compensation insurance respecting all employees, if any, of the Developer, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers’ compensation.

(c) All insurance required in this Article V of this Agreement must be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority policies evidencing all the insurance, or a certificate or certificates or binders of the respective insurers stating that the insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement each policy must contain a provision that the insurer will not cancel nor
modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer will deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding $100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event this type of damage or destruction occurs, the Developer will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing the damage and, to the extent necessary to accomplish the repair, reconstruction and restoration, the Developer will apply the Net Proceeds of any insurance relating to the damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by the Developer is sufficient to pay for the same. Any Net Proceeds remaining after completion of the repairs, construction and restoration will be the property of the Developer.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of $100,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within twenty-four months from the date of damage (or another timeline agreed to by the Developer, the Authority, and the City), the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, the termination will constitute the Authority’s sole remedy under this Agreement as a result of the Developer’s failure to repair, reconstruct or restore the Minimum Improvements. Thereafter, the Authority will have no further obligations to make any payments under the TIF Note.

(f) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V will terminate upon the Maturity Date.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance will, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII hereof.
ARTICLE VI
Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In this type of suit, the Authority will also be entitled to recover its costs, expenses and reasonable attorney fees. Nothing in this Agreement in any way limits or prevents the Developer from contesting the assessor’s proposed market values for the Development Property or the Minimum Improvements, but the Developer recognizes that the action may affect the amount of Available Tax Increment.

Section 6.2. Minimum Assessment Agreement.

(a) At the time of execution of this Agreement, the Authority and the Developer shall execute the Minimum Assessment Agreement for the Development Property and Minimum Improvements. The Assessment Agreement shall specify the Minimum Market Value, notwithstanding any failure to start or complete the Minimum Improvements on the Development Property by the Maturity Date or any failure to reconstruct the Minimum Improvements after damage or destruction before the Maturity Date.

(b) Nothing in the Minimum Assessment Agreement shall limit the discretion of the Assessor to assign a market value to the Minimum Improvements or the Development Property in excess of the Minimum Market Value or prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in the market value established pursuant to subsection (a) above; provided, however, that the Developer shall not seek a reduction of such market value below the Minimum Market Value set forth in the Minimum Assessment Agreement in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect until the Maturity Date; provided that, if at any time before the Maturity Date, the Minimum Assessment Agreement is found to be terminated or unenforceable by any Tax Official or court of competent jurisdiction, the Minimum Market Value described in this Section 6.2 shall remain an obligation of the Developer or its successors and assigns (whether or not such value is binding on the Assessor), it being the intent of the parties that the obligation of the Developer to maintain, and not seek reduction of, the Minimum Market Value specified in this Section 6.2 is an obligation under this Agreement as well as under the Minimum Assessment Agreement, and is enforceable by the Authority against the Developer, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement or the Minimum Assessment Agreement to the contrary, the Developer shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Development Property, or any substantial portion thereof, is acquired by a public entity through eminent domain prior to the Maturity Date.
Section 6.3. Reduction of Taxes. The Developer agrees that prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (a) willful destruction of the Development Property or any part thereof (except for any demolition required for the construction of the Minimum Improvements); or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Developer also agrees that it will not, prior to the Maturity Date, apply for a deferral of property tax on the Development Property pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the Development Property would result in the Development Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the City or Authority in accordance with this Agreement).

The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Development Property reduced. Prior to seeking a reduction in the estimated market value, the Developer must provide the Authority with written notice indicating its intention to do so. The Developer acknowledges and understands that this type of action will result in less Tax Increment being disbursed by the Authority for payment of the principal of and interest on the TIF Note.

Upon receiving notice from the Developer of its intentions to cause the reduction of the estimated market value of the Development Property, or otherwise learning of the Developer’s intentions, the Authority may suspend or reduce payments due under the TIF Note, until the actual amount of the reduction in market value is determined, whereupon the Authority will make the suspended payments less any amount that the Authority is required to repay the County as a result any retroactive reduction in market value of the Development Property. During the period that the payments are subject to suspension, the Authority will make partial payments on the TIF Note, from the amounts subject to suspension, if it determines, in its reasonable discretion, that the amount retained will be sufficient to cover any repayment which the County may require.

The Authority’s suspension of payments on the TIF Note pursuant to this Section will not be considered a default under Section 9.1 hereof.

Section 6.4. Property Tax Classification. Prior to the Maturity Date, the Developer shall not apply for the “class 4d” property classification rate for rental properties under Minnesota Statutes, Section 273.13, subdivision 25(a).

Section 6.5. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon transfer of the Development Property to another person or entity, the Developer will no longer be obligated under Sections 6.1 and 6.2 hereof, unless the transfer is made in violation of the provisions of Section 8.2 hereof.

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ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Developer must submit to the Authority evidence of one or more commitments for financing which, together with committed equity for the construction, is sufficient for payment of the cost of the Minimum Improvements. The commitments may be submitted as short term financing, long term mortgage financing, a bridge loan with a long term take-out financing commitment, mezzanine financing, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subdivision (a) above, then the Authority will notify the Developer in writing of its approval. The approval will not be unreasonably withheld and either approval or rejection will be given within ten (10) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to the evidence of financing will be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it will do so in writing specifying the basis for the rejection. In any event the Developer will submit adequate evidence of financing within ten (10) days after any rejection.

Section 7.2. Authority’s Option to Cure Default on Mortgage. In the event that any portion of the Developer’s funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to Article VII hereof, the Developer will cause the Authority to receive copies of any notice of default received by the Developer from the holder of the Mortgage. Thereafter, the Authority will have the right, but not the obligation, to cure any Mortgage default on behalf of the Developer within the cure periods as are available to the Developer under the Mortgage documents.

Section 7.3. Modification; Subordination. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the City and the Authority agree to subordinate their respective rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing or any subsequent financing, under terms and conditions reasonably acceptable to the Authority and the City. If the Authority and/or the City are required to execute any documents related to the subordination of the Authority’s and City’s rights under this Agreement, such documents must be approved by the Board of the Authority and the City Council.

Section 7.4. Assignment to Lender. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the City and the Authority agree to consent to the Developer making a collateral assignment of this Agreement to the lender or lenders securing construction or permanent financing or any subsequent financing, under terms and conditions reasonably acceptable to the Authority and the City. If the Authority and/or the City are required to execute any collateral assignment agreement, such documents must be approved by the Board of the Authority and the City Council.

(The remainder of this page is intentionally left blank.)
ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. The Developer represents and agrees that its purchase of the Development Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of development of the Development Property and not for speculation in land holding.

Section 8.2. Prohibition Against Developer’s Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant), without the prior written approval of the City and the Authority unless the Developer remains liable and bound by this Agreement in which event the City and the Authority’s approval is not required. Any transfer of this type will be subject to the provisions of this Agreement.

(b) In the event the Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the City and the Authority will be entitled to require, except as otherwise provided in this Agreement, as conditions to any release that:

   (i) Any proposed transferee will have the qualifications and financial responsibility, in the reasonable judgment of the City and the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

   (ii) Any proposed transferee, by instrument in writing satisfactory to the City and the Authority and in form recordable among the land records, will, for itself and its successors and assigns, and expressly for the benefit of the City and the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and the Authority) deprive the City and the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the City or the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City or the
Authority would have had, had there been no transfer or change. In the absence of specific written agreement by the City and the Authority to the contrary, no transfer or approval by the City and the Authority thereof will be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, must be in a form reasonably satisfactory to the City and the Authority.

In the event the foregoing conditions are satisfied then the Developer will be released from its obligation under this Agreement.

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the Development Property or the Developer’s interest in this Agreement without the prior written consent of the City and the Authority. The Developer shall provide to the Authority and the City notice of any such transfer or assignment. Any transferee or assignee is bound by all the Developer’s obligations hereunder. The Developer must submit to the City and the Authority written evidence of any transfer or assignment, including the transferee or assignee’s express assumption of the Developer’s obligations under this Agreement. If the Developer fails to provide evidence of transfer and assumption, the Developer will remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority, the City and their respective governing body members, officers, agents, servants and employees thereof will not be liable for and agrees to indemnify and hold harmless the Authority, the City and their respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the Authority, the City and their respective governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Minimum Improvements.

(c) The Authority, the City and their respective governing body members, officers, agents, servants and employees thereof will not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority and the City contained herein will be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and the City and not of any governing body member, officer, agent, servant or employee of the Authority or the City in the individual capacity thereof.
ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within 30 days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) Failure by the Developer, the City, or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement;

(b) The Developer:
   (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;
   (ii) makes an assignment for benefit of its creditors;
   (iii) admits in writing its inability to pay its debts generally as they become due; or
   (iv) is adjudicated as bankrupt or insolvent.

(c) Prior to the Maturity Date, the Developer appeals or challenges the Minimum Market Value of the Development Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.

(d) The Developer fails to comply with the requirements of the Declaration.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs and is continuing, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) Suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement.

(b) For any Event of Default described in Section 9.1(b), cancel and rescind or terminate this Agreement.

(c) Upon a default by the Developer, the Authority may suspend payments under the TIF Note or terminate the TIF Note and the TIF District, subject to the provisions of Section 9.3 hereof.
(d) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. Termination or Suspension of TIF Note. After the Authority has issued its Certificate of Completion for the Minimum Improvements, the Authority and the City may exercise its rights under Section 9.2(c) hereof only upon and during the continuance of the following Events of Default:

(a) the Developer fails to pay real estate taxes or assessments on the Development Property or any part thereof when due, and the taxes or assessments have not been paid, or provision satisfactory to the Authority made for their payment; provided that, upon Developer’s failure to pay real estate taxes or assessments on the Development Property or any part thereof when due, if uncured after thirty days’ written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer complies with said obligations. If the Developer fails to comply with said obligations for a period of eighteen months, the Authority may terminate the TIF Note and the TIF District;

(b) the Developer fails to comply with Developer’s obligation to operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition, pursuant to Sections 4.1 and 5.1(c) hereof; provided that, upon Developer’s failure to comply with Developer’s obligations under Sections 4.1 or 5.1(c) hereof, if uncured after thirty days’ written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer complies with said obligations. If the Developer fails to comply with said obligations for a period of eighteen months, the Authority may terminate the TIF Note and the TIF District; or

(c) the Developer fails to comply with the income restrictions or to deliver annual income reports as provided in Section 4.5 hereof and the Declaration; provided that, upon the Developer’s failure to provide annual reports, if uncured after thirty days’ written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer delivers said reports. If the Developer fails to deliver income reports for a period of six months following the date the reports are due after written notice to the Developer of the failure, the Authority may terminate the TIF Note and the TIF District.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority, the City or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair any right or power or will be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it will not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other concurrent, previous or subsequent breach hereunder.
Section 9.6. **Attorneys’ Fees.** Whenever any Event of Default occurs and if the City or the Authority employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten days of written demand by the City or the Authority, pay to the City or the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City and the Authority.

(The remainder of this page is intentionally left blank.)
ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority has any personal interest, direct or indirect, in the Agreement, nor has any member, official, or employee participated in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Authority will be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and its successors and assigns, will use the Development Property solely for the development of residential rental housing in accordance with the terms of this Agreement, and will not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or will be merged by reason of any deed transferring any interest in the Development Property and any deed will not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other will be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at DC-OV Minnetonka, LLC, 7803 Glenroy Road, Suite 200, Bloomington, Minnesota 55439, Attention: Legal Department, with a copy to Brian S. McCool, Fredrikson & Byron P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402;

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attention: Community Development Director;

(c) in the case of the City, is addressed to or delivered personally to the City at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attention: City Manager;
or at any other address with respect to any party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument.

Section 10.8. **Recording.** The Authority may record this Agreement and any amendments thereto with the Hennepin County recorder. The Developer must pay all costs for recording.

Section 10.9. **Amendment.** This Agreement may be amended only by written agreement approved by the City, the Authority and the Developer.

Section 10.10. **Authority and City Approvals.** Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative and any approval required by the City under this Agreement may be given by the City Representative.

Section 10.11. **Termination.** This Agreement terminates on the Maturity Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Maturity Date.

Section 10.12. **Dates.** If the final day of a period or a date of performance under this Agreement falls on a Saturday, Sunday, or legal holiday, then the final day of any such period or any such date of performance will be deemed to fall on the next day which is not a Saturday, Sunday, or legal holiday.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, the City has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, and the Developer has caused this Agreement to be duly executed in its name and behalf, all as of the date first above written.

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its President

By ________________________________
Its Executive Director

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of ______________, 2019, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of ______________, 2019, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public
CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

STATE OF MINNESOTA       )
COUNTY OF HENNEPIN       ) SS.

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, on behalf of the City.

____________________________________
Notary Public

STATE OF MINNESOTA       )
COUNTY OF HENNEPIN       ) SS.

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

____________________________________
Notary Public

(Signature Page of City to the Contract for Private Development)
DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: ________________________________
Name: Anne T. Behrendt
Its: President

STATE OF MINNESOTA   )
      ) SS.
COUNTY OF __________   )

The foregoing instrument was acknowledged before me this _____ day of ____________, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer.

_____________________________________
Notary Public

(Signature Page of Developer to the Contract for Private Development)
EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
EXHIBIT B

FORM OF TIF NOTE

UNITED STATE OF AMERICA
STATE OF MINNESOTA
HENNEPIN COUNTY
ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE
CITY OF MINNETONKA

No. R-1 $______

TAX INCREMENT Revenue NOTE
SERIES 20____

Rate                  Date
[5.00% or the developer’s actual rate of financing, whichever is less] __________

The Economic Development Authority in and for the City of Minnetonka, Minnesota (the
“Authority”), for value received, certifies that it is indebted and hereby promises to pay to DC-OV
Minnetonka, LLC, a Minnesota limited liability company, or registered assigns (the “Owner”), the principal
sum of $_______ and to pay interest thereon at the rate of ______________% per annum, as and to the extent
set forth herein.

1. Payments. Principal and interest (the “Payments”) will be paid on August 1, 2021, and
each February 1 and August 1 thereafter to and including February 1, 2038 (the “Payment Dates”), in the
amounts and from the sources set forth in Section 3 herein. Payments will be applied first to accrued
interest, and then to unpaid principal.

2. Interest. Interest at the rate stated herein will accrue on the unpaid principal,
commencing on the date of original issue. Interest shall accrue on a simple basis and will not be added to
principal. Interest will be computed on the basis of a year of three hundred sixty (360) days and charged
for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in
the amount of and solely payable from Available Tax Increment. “Available Tax Increment” means, on
each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development Property
and paid to the Authority by Hennepin County, Minnesota in the six (6) months preceding the Payment
Date, all as the terms are defined in the Contract for Private Development, dated ______________,
20____ (the “Agreement”), between the Authority and the Owner. Available Tax Increment will not
include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default (as defined in
the Agreement) under the Agreement; provided, however, once an Event of Default is cured, any Tax
Increment previously withheld shall be deemed Available Tax Increment on the next Payment Date.

The Authority will have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date will not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority will have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment on February 1, 2038.

4. Optional Prepayment. The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment will affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Termination. At the Authority’s option, this Note will terminate and the Authority’s obligation to make any payments under this Note will be discharged upon the occurrence of an Event of Default on the part of the Developer as defined in Section 9.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 9.2 of the Agreement.

6. Nature of Obligation. This Note is one of an issue in the total principal amount of $____ all issued to aid in financing certain public development costs and administrative costs of a Development District undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the “Resolution”) duly adopted by the Authority on December 17, 2018, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

8. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Community Development Director of the City, by the Owner hereof in person or by the Owner’s attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the Authority, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the Authority with respect to the transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.
This Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the Authority, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, has caused this Note to be executed with the manual signatures of its President and Executive Director, all as of the Date of Original Issue specified above.

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

________________________________________
Executive Director

________________________________________
President

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Authority’s Executive Director, in the name of the person last listed below.

<table>
<thead>
<tr>
<th>Date of Registration</th>
<th>Registered Owner</th>
<th>Signature of Executive Director</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DC-OV Minnetonka, LLC</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7803 Glenroy Road</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Suite 200</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bloomington, MN 55439</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Federal ID #_____________________</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT C

FORM OF INVESTMENT LETTER

To: Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”)
Attention: Executive Director

Date: ___________________________

Re: Tax Increment Revenue Note, Series 20___, in the original aggregate principal amount of
$________

The undersigned, as owner (the “Owner”) of $__________ in principal amount of the above-captioned Note (the “Note”) pursuant to a resolution of the Authority adopted on December 17, 2018 (the “Resolution”), hereby represents to you as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this date pursuant to the Resolution and the Contract for Private Development, dated ______________, 20___ (the “Contract”), between the Authority, the City of Minnetonka, Minnesota, and the Owner.

2. We understand that the TIF Note is payable as to principal and interest solely from Available Tax Increment as defined in the TIF Note and the provisions of the Contract.

3. We understand that the TIF Note accrues interest as provided in the TIF Note.

4. We further understand that any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District, the Contract or the TIF Note are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

5. We acknowledge and understand that, if at any time, the Owner fails to meet the housing income restrictions required for a housing tax increment district as set forth in Minnesota Statutes, Section 469.174, subdivision 11 and Section 469.1761, and therefore, the tax increment district will no longer qualify as a housing tax increment district, no further payments will be made under the TIF Note.

6. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the above-stated principal amount of the TIF Note.

7. We acknowledge that no offering statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the Authority and the TIF Note has been issued or prepared by the Authority, and that, in due diligence, we have made our own inquiry and analysis with respect to the Authority, the TIF Note and the security therefor, and other material factors affecting the security and payment of the TIF Note.

8. We acknowledge that we have either been supplied with or have access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the TIF Note and the security

C-1

546802v10 JAE MN140-201
therefor, and that as a reasonable investor we have been able to make our decision to purchase the above-stated principal amount of the TIF Note.

9. We have been informed that the TIF Note (i) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, or under federal securities laws or regulations, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

10. We acknowledge that neither the Authority nor Kennedy & Graven, Chartered has made any representations as to the status of interest on the TIF Note for state or federal income tax purposes.

11. All capitalized terms used herein have the meaning provided in the Contract unless the context clearly requires otherwise.

12. The Owner’s federal tax identification number is ______________.

13. We acknowledge receipt of the TIF Note as of the date hereof.

**DC-OV MINNETONKA, LLC**

By: Marsh Development, LLC, a Minnesota limited liability company  
Its: Manager

By: ____________________________________________  
Name: Anne T. Behrendt  
Its: President
EXHIBIT D

FORM OF DECLARATION OF restrictive COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) dated as of ____________, 20__, by DC-OV Minnetonka, LLC, a Minnesota limited liability company (the “Developer”), in favor of the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated ____________, 20__, filed ____________, 20__ in the Office of the Registrar of Titles for Hennepin County as Document No. ____________ (the “Contract”), between the Authority, the City of Minnetonka, Minnesota (the “City”) and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of approximately 175 housing units of rental housing (the “Project”) on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

WHEREAS, in consideration of the financial assistance provided to the Developer by the Authority for the Project, Section 4.5 of the Contract requires that the Developer cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Contract; and

WHEREAS, the Developer intends, declares, and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property during the Qualified Project Period (as defined herein) and binding upon all subsequent owners of the Property for such period, and are not merely personal covenants of the Developer; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Contract unless otherwise defined herein.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer agrees as follows:

1. Term of Restrictions.

   (a) Occupancy Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the date the Project receives a certificate of occupancy. The period from commencement to termination is the “Qualified Project Period.”

   (b) Termination of Declaration. This Declaration shall automatically terminate upon the date that is thirty (30) years after the commencement of the Qualified Project Period.
(c) **Removal from Real Estate Records.** Upon termination of this Declaration, the Authority shall, upon request by the Developer or its assigns, file any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. **Project Restrictions.**

   (a) The Developer represents, warrants, and covenants that:

   (i) All leases of units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) shall contain clauses, among others, wherein each individual lessee:

   (1) Certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

   (2) Agrees that the family income at the time the lease is executed shall be deemed substantial and material obligation of the lessee’s tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining Qualifying Tenant status from the Developer or the Authority, and that the lessee’s failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the lessee’s tenancy.

   (ii) The Developer shall permit during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect the books and records of the Developer pertaining to the income of Qualifying Tenants residing in the Project.

3. **Occupancy Restrictions.**

   (a) **Tenant Income Provisions.** The Developer represents, warrants, and covenants that:

   (i) **Qualifying Tenants.** From the commencement of the Qualified Project Period, at least twenty percent (20%) (i.e., 35) of the rental housing units in the Project (“Rental Housing Units”) shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean those persons and families who shall be determined from time to time by the Developer to have combined adjusted income that does not exceed fifty percent (50%) of the Minneapolis-St. Paul metropolitan statistical area (the “Metro Area”) median income for the applicable calendar year adjusted for family size. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are “students,” as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”), not entitled to an exemption under the Code. The determination of whether an individual or family are Qualifying Tenants shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined annually. If during their tenancy a Qualifying Tenant’s income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Next Available Unit will not continue to be treated as a Qualifying Unit. The annual recertification and Next Available Unit Rule requirements of this paragraph shall not apply to a given year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Qualifying Tenants.
(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant shall be required annually to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in the form attached as EXHIBIT B hereto, or in such other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies that he or she is a Qualifying Tenant. In addition, such person shall be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant within the meaning of Section 3(a)(i) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Developer in renting any Rental Housing Units in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Eligibility Certification.

(iv) Annual Report. The Developer covenants and agrees that during the Qualified Project Period, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the Rental Housing Units which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of such certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing such certificate after due inquiry, all such units were rented or available for rental on a continuous basis during such year to members of the general public and that the Developer was not otherwise in default under this Declaration during such year.

(v) Notice of Non-Compliance. The Developer will promptly notify the Authority if at any time during the term of this Declaration the number of Rental Housing Units required to be occupied by Qualifying Tenants are not occupied by or are not available for occupancy by Qualifying Tenants as required by the terms of this Declaration.

(b) Section 8 Housing. During the term of this Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, because of such prospective tenant’s status as such a certificate/voucher holder.

4. Notice of Sale. In consideration for the tax increment assistance provided for the Project, the Developer agrees to provide the Authority with at least ninety (90) days’ notice of any proposed sale of the Minimum Improvements.

5. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of the Occupancy Restrictions provided herein (the “Transfer”) that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Developer under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Occupancy Restrictions.
provided herein (the “Assumption Agreement”). The Developer shall deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Reserved]

7. **Enforcement.**

(a) The Developer shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Developer regarding the Project with respect to the incomes of Qualifying Tenants.

(b) The Developer shall submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial continuing compliance with the provisions specified in this Declaration.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Project on the Property, hereby agrees and consents that the Authority shall be entitled, upon any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Developer understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

8. **Indemnification.** The Developer hereby indemnifies, and agrees to defend and hold harmless, the Authority from and against all liabilities, losses, damages, costs, expenses (including attorneys’ fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the Developer to comply with the terms of this Declaration, or on account of any representation or warranty of the Developer contained herein being untrue.

9. **Agent of the Authority.** The Authority shall have the right to appoint an agent to carry out any of its duties and obligations hereunder, and shall inform the Developer of any such agency appointment by written notice.

10. **Severability.** The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

11. **Notices.** All notices to be given pursuant to this Declaration must be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:
To the Authority: Economic Development Authority in and for the City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345  
Attention: Community Development Director

To the Developer: DC-OV Minnetonka, LLC  
7803 Glenroy Road  
Suite 200  
Bloomington, Minnesota 55439  
Attention: Legal Department

with a copy to: Brian S. McCool  
Fredrikson & Byron, P.A.  
200 South Sixth Street  
Suite 4000  
Minneapolis, MN 55402

12. **Governing Law.** This Declaration shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

13. **Attorneys’ Fees.** Whenever any Event of Default occurs and if the Authority employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the Authority prevails in the action, the Developer agrees that it will, within ten days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

14. **Declaration Binding.** This Declaration and the covenants contained herein shall run with the real property comprising the Project and shall bind the Developer and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits shall inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

Drafted by:

Kennedy & Graven Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55406
IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: ____________________________________________
Name: Anne T. Behrendt
Its: President

STATE OF MINNESOTA )
) ss.
COUNTY OF ___________ )

The foregoing instrument was acknowledged before me this _____ day of ____________, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer.

______________________________________________
Notary Public
This Declaration is acknowledged and consented to by:

**ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA**

By ____________________________
Its President

By ____________________________
Its Executive Director

STATE OF MINNESOTA     )
                     ) SS.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this _____ day of ________________, 20___, by ____________________, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

_____________________________
Notary Public

STATE OF MINNESOTA     )
                     ) SS.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this _____ day of ________________, 20___, by ____________________, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

_____________________________
Notary Public
EXHIBIT A

 to Declaration of Restrictive Covenants

Legal Description

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
EXHIBIT B

to Declaration of Restrictive Covenants

Certification of Tenant Eligibility

Project: _______________ Minnetonka Boulevard

Developer: DC-OV Minnetonka, LLC

Unit Type: _____ Alcove Studio _____ 1 BR _____ 2 BR

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

<table>
<thead>
<tr>
<th>Name of Members of the Household</th>
<th>Relationship To Head of Household</th>
<th>Age</th>
<th>Place of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>_______________________________</td>
<td>_______________________________</td>
<td>___</td>
<td>__________________</td>
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<td>_______________________________</td>
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<tr>
<td>_______________________________</td>
<td>_______________________________</td>
<td>___</td>
<td>__________________</td>
</tr>
</tbody>
</table>

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

   (a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but

   (b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen’s compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and
equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: $____________.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:

   (a) the total value of all such assets owned by all such persons: $___________;

   (b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: $______________; and

   (c) the amount of such income which is included in income listed in item 2: $__________.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

   Yes ________________ No ________________

   (b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

   Yes ________________ No ________________
THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

____________________________________
Head of Household

____________________________________
Spouse
1. Calculation of Eligible Tenant Income:

   (a) Enter amount entered for entire household in 2 above: $__________

   (b) If the amount entered in 3(a) above is greater than $5,000, enter the greater of
   (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in
   3(a): $__________

   (c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): $__________

2. The amount entered in 1(c) is less than or equal to _______ 50% of median income for
the area in which the Project is located, as defined in the Declaration. 50% is necessary for status as a
“Qualifying Tenant” under Section 3(a) of the Declaration.

3. Number of apartment unit assigned: ___________.

4. This apartment unit was ____ was not ____ last occupied for a period of at least
31 consecutive days by persons whose aggregate anticipated annual income as certified in the above
manner upon their initial occupancy of the apartment unit was less than or equal to 50% of Median
Income in the area.

5. Check as applicable: _______ Applicant qualifies as a Qualifying Tenant (tenants of at
least __ units must meet), or ____ Applicant otherwise qualifies to rent a unit.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY
FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION
PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

DC-OV MINNETONKA, LLC,
a Minnesota limited liability company

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: ________________________________
Name: Anne T. Behrendt
Its: President
EXHIBIT C

to Declaration of Restrictive Covenants

Certificate of
Continuing Program Compliance

Date: ______________________, ______.

The following information with respect to the Project located at __________________, Minnetonka, Minnesota (the “Project”), is being provided by DC-OV Minnetonka, LLC (the “Developer”) to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), pursuant to that certain Declaration of Restrictive Covenants, dated _______, 20___ (the “Declaration”), with respect to the Project:

(A) The total number of residential units which are available for occupancy is __. The total number of such units occupied is ________________.

(B) The following residential units (identified by unit number) have been designated for occupancy by “Qualifying Tenants,” as such term is defined in the Declaration (for a total of ____ units):

Alcove Studio Units:

1 BR Units:

2 BR Units:

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since _______________, 20___, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Previous Designation of Unit (if any)</th>
<th>Replacing Unit Number</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Name of Tenant</th>
<th>Number of Persons Residing in the Unit</th>
<th>Number of Bedrooms</th>
<th>Total Adjusted Gross Income</th>
<th>Date of Initial Occupancy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
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<td>2</td>
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</table>

(E) The Developer has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Developer in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since ____________, _____, the date on which the
last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer.

(F) In renting the residential units in the Project, the Developer has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and the Developer has no actual knowledge that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Developer certifies that as of the date hereof at least ________ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.
IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Developer, on ____________________, 20__.

DC-OV MINNETONKA, LLC,
a Minnesota limited liability company

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By:____________________________________
Name: Anne T. Behrendt
Its: President
EXHIBIT E

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that DC-OV Minnetonka, LLC (the “Developer”), has fully complied with its obligations under Article IV of that document titled “Contract for Private Development,” dated _____________, 20___ (the “Agreement”), between the Economic Development Authority in and for the City of Minnetonka, Minnesota, the City of Minnetonka, Minnesota, and the Developer, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Article IV of the Agreement.

Dated: ________________, 20__.

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By _______________________________
Its President

By _______________________________
Its Executive Director

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of _____________, 20___, by __________________, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

____________________________________
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of _____________, 20___, by __________________, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

____________________________________
Notary Public
EXHIBIT F

RENTAL HOUSING UNITS BY UNIT TYPE

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Number of Units in Minimum Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcove Studios:</td>
<td>34 units</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>103 units</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>38 units</td>
</tr>
</tbody>
</table>
EXHIBIT G
FORM OF MINIMUM ASSESSMENT AGREEMENT

MINIMUM ASSESSMENT AGREEMENT

and

ASSESSOR’S CERTIFICATION

between

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF MINNETONKA, MINNESOTA,

DC-OV Minnetonka, LLC,

and

CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA

This Document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300
THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ___ day of ______, 20___ (the “Minimum Assessment Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and DC-OV MINNETONKA, LLC, a Minnesota limited liability company, its successors and assigns (the “Owner”).

WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Development, dated ______________, 20____ (the “Agreement”), concerning the property legally described on EXHIBIT A attached hereto (the “Development Property”); and

WHEREAS, pursuant to the Agreement, the Owner will construct on the Development Property an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking (the “Minimum Improvements”); and

WHEREAS, the Authority and the City Assessor for the City of Minnetonka, Minnesota have reviewed the plans for the Minimum Improvements which the Owner has agreed to construct on the Development Property pursuant to the Agreement; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made herein and in the Agreement by each to the other, do hereby agree as follows:

1. There shall be no minimum market value for the Development Property and the Minimum Improvements as of January 2, 2019.

2. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than $12,863,000 as of January 2, 2020, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until January 1, 2021.

3. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than $36,750,000 as of January 2, 2021, for taxes payable beginning in 2022, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until termination of this Minimum Assessment Agreement under Section 3 hereof.

4. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date (as defined in the Agreement). Following an event that terminates this Minimum Assessment Agreement, upon request by the Owner, the Authority shall execute a certificate in recordable form that terminates this Minimum Assessment Agreement and provide such certificate to the Owner for recording.

5. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The
Owner shall pay all costs of recording this Minimum Assessment Agreement.

6. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

7. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

8. Each of the parties has authority to enter into this Minimum Assessment Agreement and to take all actions required of it and has taken all actions necessary to authorize the execution and delivery of this Minimum Assessment Agreement.

9. In the event any provision of this Minimum Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Development Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

11. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

12. This Minimum Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

13. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
IN WITNESS WHEREOF, the Authority and the Owner have executed this Minimum Assessment Agreement as of the date and year first written above.

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its President

By ________________________________
Its Executive Director

STATE OF MINNESOTA    )   
COUNTY OF HENNEPIN    )  SS.

The foregoing instrument was acknowledged before me this _____ day of ________________, 20___, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public

STATE OF MINNESOTA    )   
COUNTY OF HENNEPIN    )  SS.

The foregoing instrument was acknowledged before me this _____ day of ________________, 20___, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public
DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: ________________________________
Name: Anne T. Behrendt
Its: President

STATE OF MINNESOTA )
COUNTY OF _________ ) SS.

The foregoing instrument was acknowledged before me this _____ day of ______________, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer.

__________________________________________
Notary Public

(Signature Page of Owner to Minimum Assessment Agreement)
CERTIFICATION BY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market values assigned to such land and improvements are reasonable.

____________________
City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA   )
COUNTY OF HENNEPIN  ) ss.

The foregoing instrument was acknowledged before me this _____ day of ________, 20___, by __________________________, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

____________________
Notary Public
EXHIBIT A

to Minimum Assessment Agreement

The Development Property is legally described as follows:

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
EXHIBIT B

to Minimum Assessment Agreement

Section 469.177, subd. 8. Assessment Agreements. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor’s review and certification is not required if the document terminates an agreement. A change to an agreement not fully
executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.
EXHIBIT H

SITE IMPROVEMENTS

The following improvements are the Site Improvements required under this Agreement:

- Surveying and staking;
- Surface improvements, including but not limited to streets, curbs, sidewalks and trails;
- Water main;
- Sanitary sewer;
- Storm sewer and stormwater management facilities;
- Lot and block monuments;
- Gas, electric, telephone and cable lines;
- Site grading;
- Landscaping;
- Street lighting; and
- Street signs
EXHIBIT I
DEVELOPER’S PRO FORMA

[Developer’s pro forma is on file with the Authority]
CONSTRUCTION ADDENDUM TO CONTRACT FOR PRIVATE DEVELOPMENT
(MARSH RUN HOUSING DEVELOPMENT)

This Construction Addendum, made as of the _____ day of ____________, 2019 (the
“Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY
OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of
Minnesota (the “Authority”), the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal
corporation, and political subdivision duly organized and existing under its Charter and the Constitution and
laws of the State of Minnesota (the “City”), and DC-OV MINNETONKA, LLC, a Minnesota limited
liability company (the “Developer”) and supplements Sections 4.8, 4.9, and 4.10 of the Contract for
Private Development, dated ____________, 2019 (the “Development Contract”), between the City, the
Authority, and the Developer.

Section 1. Improvements; Engineering Services

1.1. The Developer must provide the necessary engineering services for the completion of
the development project contemplated under the terms of the Development Contract (the “Project”),
including: construction supervision, construction staking and surveying, and on-site inspection of grading,
streets, and utilities, as applicable. The Developer’s engineer will be the official representative of the
Developer for all engineering and construction matters.

1.2. The City Engineer or a designated representative will make periodic inspection of work and may
require certain tests be made, which in the reasonable judgment of the City Engineer or the designated
representative are necessary to ensure compliance with City standards and the approved plans and
specifications. However, the City will not exercise any direct supervision or inspection of work during
construction operations. If any material or labor supplied is rejected by the City Engineer or designated
representative as defective or unsuitable, the Developer must remove such rejected material and replace it
with approved material to the reasonable satisfaction and approval of the City Engineer or designated
representative, at the sole cost and expense of the Developer.

Section 2. Performance, including timelines.

2.1. Erosion Control. Prior to commencement of any site work, including demolition or tree removal,
the erosion control plan (to be placed on file with the City’s Engineer) must be implemented, inspected,
and approved by the City. All aspects of the erosion control plan must be maintained throughout the
course of development and construction on the real property on which the Project will be constructed (the
“Subject Property”). In addition, the Developer is responsible for keeping streets adjoining the Subject
Property swept clean of dirt and debris resulting from construction on the Subject Property. No
construction will be allowed, and no building permits will be issued, unless the Subject Property is in full
compliance with erosion control plan and street sweeping requirements.

The parties to this Agreement recognize that time is critical in controlling erosion. If Developer does not
comply with the erosion control plan and schedule, or supplementary instructions received from the City,
the City may take such action as it deems appropriate to control erosion. The City will attempt to notify
the Developer in advance of any proposed action, but failure of the City to do so will not affect the
Developer’s or City’s rights or obligations hereunder. If the Developer does not reimburse the City for
any costs the City incurred for such work within thirty (30) days, the City may draw upon the Security (as
defined herein) as required under Section 5 of this Agreement.

2.2. Grading. A grading permit is required. All grading must be completed by the Developer at its
cost and as approved under the grading permit. Grading activity must be coordinated with installation of
utilities. If installation of utilities is occurring simultaneously with the grading, the utility contractor will have preference over grading activities. No substantial grading activities can be completed over installed utilities unless otherwise protected.

2.3. **Utilities.**

   a) All utilities must be installed by the Developer at its cost, constructed in accordance with city standards and specifications, and as approved under the grading permit.

   b) Private utilities must be entirely accommodated underground.

   c) When the street section consists only of bituminous base course and the Developer wishes to connect buildings to the utility systems, the following conditions must be met: (1) all manholes and catch basins must be accessible; (2) all water system valves must be accessible; (3) all manholes and valves must be set 0.25 inches below the existing bituminous base course level; and (4) Developer must post signs at project limits indicating load restrictions to maximum 4 ton per axle. Signs may be removed as such time as bituminous wear course is placed.

2.4. **Streets.** The City Engineer or designated representative will evaluate the conditions of the publicly maintained portion of Wayzata Boulevard prior to commencement of any site work to determine pre-development conditions. Following construction of the public street and utilities within the Project, the City Engineer or designated representative will re-evaluate the condition of the publicly maintained portion of Wayzata Boulevard. The Developer is responsible for any repairs necessary to bring the roadway back to, at a minimum, pre-development conditions, subject to ordinary wear and tear during the course of development.

2.5. **Landscaping.** All landscaping must be installed by the Developer at its cost, and in accordance with the requirements of City Code §300.27 Subdivision 15.

Section 3. **City Acceptance.**

3.1. **Acceptance.** After completion of required street and utility work, the City Engineer or designated representative, a City Public Works Department representative, a representative of the contractor, and a representative of the Developer’s engineer, will make a final inspection of the Project. The Developer’s engineer must submit a written statement attesting that all required work has been satisfactorily completed in accordance with the approved plans and specifications. When both the City Engineer, or designated representative, and Public Works Department representative are satisfied with the written statement, they will acknowledge acceptance of the work in writing in the form attached as Exhibit C. Acceptance of the work must be provided in writing.

3.2. **Ownership.** Upon completion, City acceptance of the work and construction required by this Agreement (collectively, the “Site Improvements”), and release of the Security, the Improvements lying within public rights-of-way and easements will become City property without further notice or action, except for private improvements as noted in the approved grading permit plans.

3.3. **Warranty.** The Developer warrants all work on Site Improvements against poor material and faulty workmanship for a period of two years after its completion and acceptance by the City or such longer period as is specified in the plans and specifications.
Section 4. Timelines

4.1. The Developer must obtain written approval and authorization to proceed from the City Engineer or designated representative prior to each of the following construction operations:

- Rough grading;
- Geotechnical testing for design and during construction;
- Construction of sanitary sewer mains, sewer services, water mains, water services, stormwater facilities, and all necessary appurtenances thereto;
- Construction of streets, curb and gutter, and driveway aprons; and
- Turf establishment and landscaping.

4.2. All underground utilities and stormwater facilities must be completed by December 31, 2019.

4.3. The Developer must install all required improvements enumerated in Section 2 hereof by December 31, 2021, subject to delay due to inclement weather, labor strikes, material shortages or other circumstance not within the Developer’s reasonable control. The Developer may, however, request an extension of time from the City. If an extension is granted, it will be conditions upon updating the Security posted by the Developer to reflect cost increases and the extended completion date.

Section 5. Securities, Costs, Fees, Charges, and Assessments.

5.1. Security to be Provided. To guarantee compliance with the terms of this Agreement and obligations hereunder, the Developer must furnish the City with a cash deposit or irrevocable letter of credit (“Security”) in the amount of $__________________ [AMOUNT TO BE INSERTED BY DEVELOPER]. This amount was calculated as follows:

[amounts to be inserted when Developer receives final bids]

<table>
<thead>
<tr>
<th>Item</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Erosion Control</td>
<td></td>
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<tr>
<td>Removal of Erosion Control</td>
<td></td>
</tr>
<tr>
<td>Grading</td>
<td></td>
</tr>
<tr>
<td>Landscaping</td>
<td></td>
</tr>
<tr>
<td>Surface Improvements (Parking Lot, Sidewalks, Trails)</td>
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</tr>
<tr>
<td>Water Main Improvements</td>
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</tr>
<tr>
<td>Sanitary Improvements</td>
<td>$26,250.00</td>
</tr>
<tr>
<td>Storm Sewer Improvements</td>
<td>$564,562.50</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$590,812.50</td>
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</tbody>
</table>

Refer to Exhibit B for an explanation of each item.

A letter of credit must be a standby, not commercial, letter of credit issued by a financial institution that is insured by the FDIC and must provide for disbursement of funds from an office in the Twin Cities.
seven-county metropolitan area. The letter of credit must be automatically renewable until the City release the Developer from responsibility under this Agreement. In the event of default under this Agreement by the Developer, the City will furnish the Developer with written notice by certified mail of Developer’s default(s) under the terms of this Agreement. If the Developer does not correct said default(s) within two (2) weeks of receiving notice, the City may draw upon the cash escrow or may draw on the letter of credit and take such steps as its deems reasonably necessary to remedy the default.

5.2. **Release of Security.** Requests for reduction or release of a cash deposit or letter of credit must be made in writing. Requests for reduction and release will only be accepted during the construction season, generally March to November, and only as follows:

<table>
<thead>
<tr>
<th>Reduction/Release</th>
<th>Reduction</th>
<th>Release*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Erosion Control</td>
<td>n/a</td>
<td>Project Completion</td>
</tr>
<tr>
<td>Removal of Erosion Control</td>
<td>n/a</td>
<td>Upon removal</td>
</tr>
<tr>
<td>Grading</td>
<td>n/a</td>
<td>Project Completion</td>
</tr>
<tr>
<td>Landscaping</td>
<td>50% reduction at full installation</td>
<td>One full growing season following installation</td>
</tr>
<tr>
<td>Surface Improvements (Parking Lot, Sidewalks, Trails)</td>
<td>First lift of bituminous laid and all curbing installed and backfilled.</td>
<td>Upon acceptance</td>
</tr>
<tr>
<td>Water Main Improvements</td>
<td>n/a</td>
<td>Upon testing, inspection, and acceptance</td>
</tr>
<tr>
<td>Sanitary Improvements</td>
<td>n/a</td>
<td>Upon testing, inspection, and acceptance</td>
</tr>
<tr>
<td>Storm Sewer Improvements</td>
<td>n/a</td>
<td>Upon inspection and acceptance</td>
</tr>
<tr>
<td>Stormwater Management Facilities</td>
<td>n/a</td>
<td>Upon full functionality</td>
</tr>
</tbody>
</table>

* In the case of grading, surface improvement, watermain, sanitary and storm sewers, and stormwater management, submission of as-built surveys or record drawings is also required prior to release.

5.3. **Responsibility for Costs.**

a) Except as otherwise specified herein, the Developer must pay all costs incurred by it or the City in conjunction with development of the Subject Property and all costs incurred by the City in monitoring and inspecting development of the Subject Property.

b) The Developer agrees to hold the City and its officers and employees harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from development of the Subject Property, except for any costs or expenses arising from the negligence or other wrongful acts or omission of the City, its agents, employees or contractors. The Developer agrees to indemnify the City and its officers and employees for all costs, damages, or expenses the City may incur in consequence of such claims, including attorney’s fees.

c) The Developer will pay in full all bills submitted to the City of obligations incurred under this Agreement within thirty (30) days after receipt. If the bills are not paid on time, the City may halt work and construction including, but not limited to, the issuance of building permits for lots
that the Developer may or may not have sold, until the bills are paid in full. Bills not paid within thirty (30) days will accrue interest at a rate of ten percent (10%) per year.

5.4. Fees and Charges.

a) The Developer agrees to pay fees, charges, and assessments set forth in this section as follows prior to release of the final plat for recording:

<table>
<thead>
<tr>
<th>Fee/Charge</th>
<th>Amount*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Park Dedication Fee</td>
<td>$875,000</td>
</tr>
<tr>
<td>Outstanding Assessments</td>
<td></td>
</tr>
<tr>
<td>Outstanding Utility Bills</td>
<td></td>
</tr>
</tbody>
</table>
* Depending on the date of release of the plat, amounts may differ. Refer to Exhibit B.

b) The Developer agrees to pay fees and charges set forth in this section as follows prior to release of the grading permit:

<table>
<thead>
<tr>
<th>Fee/Charge</th>
<th>Amount*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering Inspection Fee</td>
<td></td>
</tr>
<tr>
<td>Street Sign Fee</td>
<td></td>
</tr>
</tbody>
</table>
* Depending on the date of release of the permit, amounts may differ. Refer to Exhibit B.

c) The Developer understands that builders will be required to pay for Subject Property fees and charges in effect at the time of issuance of building permits. The rates for these items will be set according to the current rate structure at the time the building permit application is received. The fees and charges in effect as of the date of this Agreement are:

<table>
<thead>
<tr>
<th>Fee/Charge</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sanitary Sewer Availability Charge (SAC)</td>
<td>$2,485 per SAC unit</td>
</tr>
<tr>
<td>Residential Equivalency Charge (REC)</td>
<td>$2,943.09 per SAC unit</td>
</tr>
</tbody>
</table>

Section 6. Default.

6.1. In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option perform the work and the Developer must promptly reimburse the City for any expense incurred by the City, provided the Developer is first given notice of the default, not less than 48 hours in advance. This Agreement is a license for the City to act, and it is not necessary for the City to seek a court order for permission to enter onto the Subject Property. When the City does any such work, the City may, in addition to its other remedies, draw on the Security, or levy the cost in whole or in part as a special assessment against the Subject Property. Developer waives its right to notice of hearings and hearing on such assessment and its right to appeal such assessments pursuant to Minnesota State Statutes, Section 429.081, up to an assessment amount of the remaining securities as described in Section 5.1.
Section 7. Miscellaneous.

7.1. Third parties have no recourse against the City under this Agreement.

7.2. Any breach by Developer of terms of this Agreement is grounds for denial of building permits, including permits on lots sold to third parties.

7.3. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision does not affect the validity of the remaining portions of this Agreement.

7.4. If building permits are issued prior to completion and acceptance of Improvements, the Developer assumes all liability and costs resulting from delays in completion of Improvements and damage to Improvements caused by the City, the Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties.

7.5. The action or inaction of the City does not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers must be in writing and signed by the parties. The City’s failure to take legal action to enforce this Agreement is not waiver or release.

7.6. This Agreement will run with the Subject Property and may be recorded against its title. The Developer must take such steps, including execution of amendments to this Agreement, as necessary to effect the recording thereof. After the Developer has completed the work required of it under this Agreement, at the Developer’s request, the City will execute and deliver to the Developer a release.

7.7. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

Section 8. Notices.

8.1. Required notices to the Developer must be in writing, and be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by registered or certified mail at the following address:

DC-OV Minnetonka, LLC
7803 Glenroy Road
Suite 200
Bloomington
Minnesota 55439
Attention: Legal Department

with a copy to:
Brian S. McCool
Fredrikson & Byron P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402
8.2. Notices to the City must be in writing and be either hand delivered to the City Planner, or mailed to the City by registered or certified mail in care of the City Planner at the following address:

City Planner  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55369
IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first written above.

Authority Signature Page

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By ________________________________
Brad Wiersum
Its President

By ________________________________
Geralyn Barone
Its Executive Director

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____________, 2019, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

_____________________________________
Notary Public

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____________, 2019, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

_____________________________________
Notary Public
CITY OF MINNETONKA, MINNESOTA

By Brad Wiersum
Its Mayor

By Geralyn Barone
Its City Manager

The foregoing instrument was acknowledged before me this ___ day of __________, 2019, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

________________________
Notary Public

The foregoing instrument was acknowledged before me this ___ day of __________, 2019, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

________________________
Notary Public
STATE OF MINNESOTA   )  
COUNTY OF __________ ) SS.

The foregoing instrument was acknowledged before me this _____ day of ______________, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer.

Notary Public
EXHIBIT A

Legal Description

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
EXHIBIT B

The following clarifies the items guaranteed by required cash deposit or letter of credit for Developer Improvements as outlined in this Agreement.

**Erosion Control:** An amount equal to 125% of a bid, or 150% of an estimate, of the cost of materials and labor to install a rock driveway and silt fence or equivalent sediment control measures as per the approved grading permit.

**Erosion Control Removal:** An amount equal to 125% of a bid, or 150% of an estimate, estimated cost to remove erosion control measures.

**Grading:** An amount equal to 125% of a bid, or 150% of an estimate, of the cost to restore and stabilize the Subject Property.

**Landscaping:** An amount equal to 125% of the cost to complete minimum required landscaping.

**Surface Improvements:** An amount equal to 125% of a bid, or 150% of an estimate, of the cost of materials and labor to install parking lots, sidewalks, and trails.

**Water Main Improvements:** An amount equal to 125% of the cost of materials and labor to install water main.

**Sanitary Sewer Improvements:** An amount equal to 125% of the cost of materials and labor to install sanitary sewer.

**Storm Sewer Improvements:** An amount equal to 125% of the cost of materials and labor to install storm sewer.
### Developer Improvements [amounts to be inserted when Developer receives final bids]

<table>
<thead>
<tr>
<th>No.</th>
<th>Item</th>
<th>Cost</th>
<th>% required</th>
<th>Guarantee Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Erosion Control</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Removal of Erosion Control</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Grading</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Landscaping</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Surface Improvements</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Water Main Improvements</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Sanitary Sewer Improvements</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Storm Sewer Improvements</td>
<td></td>
<td>125-150</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

### City Fees (due with signed agreement)

<table>
<thead>
<tr>
<th>No.</th>
<th>Item</th>
<th>Infrastructure Value</th>
<th>Fee Calculation</th>
<th>Total Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Engineering Inspection Fee</td>
<td>$1–$150,000</td>
<td>$4,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>$150,001–$300,000</td>
<td>$4,000 for first $150,000 plus 1.5% of each additional $1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Over $300,000</td>
<td>$6,250 for first $300,000 plus 0.5% of each additional dollar</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Street Signs</td>
<td>street name signs</td>
<td>$130</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>all other signs</td>
<td>$120</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Development Fees (due at release of plat)

<table>
<thead>
<tr>
<th>No.</th>
<th>Item</th>
<th>Cost</th>
<th>Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Park Dedication Fee</td>
<td></td>
<td>at release of plat</td>
</tr>
<tr>
<td>2</td>
<td>Outstanding Assessments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Outstanding Utility Bills</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td>$</td>
<td>-</td>
</tr>
</tbody>
</table>

### General Construction Fees (due at release of building permit)

<table>
<thead>
<tr>
<th>No.</th>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sanitary Sewer Availability Charge</td>
<td>$2,485 per SAC unit as determined by Met Council</td>
</tr>
<tr>
<td>2</td>
<td>Residential Equivalency Charge</td>
<td>$2,943.09 per SAC unit as determined by Met Council</td>
</tr>
</tbody>
</table>

552399v3 JAE MNI40-201
DATE:

SUBJECT:

This memorandum serves as acknowledgment that:

1. Street and utility work required under the Construction Addendum dated ___, 2019, between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, Minnesota and DC-OV Minnetonka, LLC. has been satisfactorily completed in accordance with approved plans and specifications; and

2. Said streets and utilities are accepted by the City of Minnetonka.

____________________________________________   _________________
City of Minnetonka Engineering Department      Date

____________________________________________   _________________
City of Minnetonka Public Works Department      Date
COLLATERAL ASSIGNMENT
OF CONTRACT FOR PRIVATE DEVELOPMENT

THIS COLLATERAL ASSIGNMENT OF CONTRACT FOR PRIVATE DEVELOPMENT (this “Assignment”) is made and entered into as of the ____ day of March, 2019, by and among the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), the CITY OF MINNETONKA, MINNESOTA, a municipal corporation organized and existing under the laws of the State of Minnesota (the “City”), DC-OV MINNETONKA, LLC, a Minnesota limited liability company (the “Developer”), and BREMER BANK, NATIONAL ASSOCIATION, a national banking association (the “Lender”).

Recitals

WHEREAS, the City, the Authority and the Developer have entered into that certain Contract for Private Development dated as of _________________, 2019 (the “Development Agreement”), pertaining to, among other things, the construction of an apartment complex with approximately 175 units, including underground and structured first floor parking (the “Project”), all located on property legally described on Exhibit A attached hereto and hereby made a part hereof (the “Property”); and

WHEREAS, the Development Agreement has been filed of record in the Office of the _________________, Hennepin County, Minnesota on ________________, as Document No. _________________; and

WHEREAS, pursuant to the Development Agreement, the City shall issue a Tax Increment Revenue Note in the amount of up to $4,800,000 (the “TIF Note”) to the Developer if the Developer satisfies certain terms and conditions set forth therein; and

WHEREAS, the Developer and the Lender have entered into that certain Construction Loan Agreement of even date herewith (the “Loan Agreement”), pursuant to which the Lender has agreed to make a construction loan to the Developer in the principal amount of up to $32,500,000 (the “Loan”), and the Developer’s obligation to repay such Loan is evidenced by that certain Real Estate Note dated March __, 2019 (the “Lender Note”), executed in favor of the Lender in the original principal amount of $32,500,000; and
WHEREAS, the Lender Note is secured by that certain Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents of even date herewith (the “Mortgage”), executed by the Developer in favor of the Lender and encumbering the Property; and

WHEREAS, the Mortgage has been filed of record in the Office of the _______________, Hennepin County, Minnesota on ______________, as Document No. ______________; and

WHEREAS, the Lender has required, as an express condition to entering into the Loan Agreement, that the Developer assign its rights under the Development Agreement to the Lender to secure the obligations of the Developer under the Lender Note, the Loan Agreement and the Mortgage.

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer hereby agrees as follows:

1. Capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

2. The Developer hereby collaterally assigns to the Lender all of its right, title and interest in and to the Development Agreement, together with all documents and agreements attached as exhibits thereto, and all amendments, addenda and modifications thereof, whether made now or hereafter, to secure the obligations of the Developer under the Lender Note, the Loan Agreement and the Mortgage.

3. The Developer hereby represents and warrants that there have been no prior assignments of its rights under the Development Agreement (other than to Lender), that the Development Agreement is a valid and enforceable agreement, that neither the City, the Authority nor the Developer is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. The Developer agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Agreement as long as this Assignment is in effect. The Developer irrevocably appointed the Lender as its attorney-in-fact to demand, receive and enforce the Developer’s rights under the Development Agreement for and on behalf of and in the name of the Developer or, at the option of the Lender, in the name of the Lender, with the same force effect as the Developer could do if this Assignment had not been made, but only to be exercised by the Lender following the occurrence and during the continuance of an Event of Default.

4. This Assignment shall constitute a perfected, absolute and present assignment, provided that the Lender shall have no right under this Assignment to enforce the provisions of the Development Agreement or the TIF Note or exercise any rights or remedies under this Assignment until an Event of Default (as defined in the Loan Agreement) shall occur and be continuing.
5. Upon the occurrence and during the continuance of an Event of Default, without affecting any of the Lender’s rights or remedies against the Developer under any other instrument or agreement, the Developer shall be deemed to have irrevocably appointed the Lender as the Developer’s attorney-in-fact to exercise any or all of the Developer’s rights in, to and under this Assignment and to give appropriate receipts, releases and satisfactions on behalf of the Developer in connection with the performance by any party to the Development Agreement and to do any or all other acts in the Developer’s name or in the Lender’s own name that the Developer could do under the Development Agreement with the same force and effect as if this Assignment had not been made. In addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after and during the continuance of a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to the Developer of any intended disposition of collateral or of any intended action as required by law in any particular instance, such notice shall be deemed commercially reasonable if given in writing at least ten (10) days prior to the intended disposition or other action. The Developer hereby authorizes the Lender to deliver a copy of this Assignment to any other party to the Development Agreement to verify the rights granted to the Lender hereunder. The City and the Authority are authorized and directed by the Developer to tender performance of its obligations under the Development Agreement to the Lender upon presentation of a copy of this Assignment.

6. The City and the Authority hereby consent and agree to the terms and conditions of this Assignment. The City and the Authority further represent and warrant to the Lender that the Development Agreement is a valid agreement enforceable in accordance with its terms, that neither the City nor the Authority is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof. To the best knowledge of the City and the Authority, the Developer is not in default under the Development Agreement and all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof.

7. Promptly upon the issuance thereof, the Authority shall deliver the original TIF Note to the Lender to be held as collateral security for this Assignment.

8. The City and the Authority agree to provide the Lender with copies of any notice of default given under the Development Agreement, and agree that the Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Development Agreement.

9. The parties agree that no change or amendment that would materially and adversely affect the amount or timing of receipt of Available Tax Increment, as defined in the Development Agreement, shall be made to the terms of the Development Agreement without the prior written consent of the Lender.

10. The City and the Authority hereby acknowledge and agree that, pursuant to Article IV of the Development Agreement, the City and the Authority have approved the Construction Plans (as that term is defined in the Development Agreement) in connection with the construction of the Project.
11. The City and the Authority acknowledge that the rights of the City and the Authority with respect to receipt and application of any proceeds of insurance as set forth in Article V of the Development Agreement shall, in all respects, be subject and subordinate to the rights of the Lender under the Mortgage.

12. Notwithstanding the provisions of Article VI of the Development Agreement, the City and the Authority acknowledge that the agreement by the Developer to pay real estate taxes as set forth in Section 6.1 of the Development Agreement is not the personal obligation of, nor shall any such provision of Article VI impose any personal obligation upon, the Lender, except to the extent the Lender assumes the Developer’s obligations under the Development Agreement and seeks to enforce the Developer’s rights thereunder after an Event of Default as described in Section 5 hereof.

13. Pursuant to Section 7.1 of the Development Agreement, the City and the Authority hereby agree that the foregoing commitments provided by Developer are approved.

14. Pursuant to Section 7.3 of the Development Agreement, the City and the Authority hereby agree that all of their respective rights under the Development Agreement shall be subject and subordinate to the Mortgage. Notwithstanding the foregoing, the City and the Authority shall continue to have the right to exercise all of their rights and remedies under Article IX of the Development Agreement, the Declaration (as defined in the Development Agreement), and the Minimum Assessment Agreement (as defined in the Development Agreement).

15. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Lender. A waiver by the Lender shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender’s rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and shall be exercised singularly or concurrently, at the Lender’s option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

16. No provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the City or the Authority against the Developer as set forth and contained in the Development Agreement.

17. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the City:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345
Attention: City Manager
18. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Developer has caused this Assignment to be duly executed as of March __, 2019.
AUTHORITY:

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By: ____________________________
Name: __________________________
Its: President

By: ____________________________
Name: __________________________
Its: Executive Director

STATE OF MINNESOTA

) SS.
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by ______________________, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public

STATE OF MINNESOTA

) SS.
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by ______________________, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public
CITY:

CITY OF MINNETONKA, MINNESOTA

By: ________________________________
Name: ______________________________
Its: ________________________________

By: ________________________________
Name: ______________________________
Its: ________________________________

STATE OF MINNESOTA  )
   ) ss
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this ____ day of ___________, 2019, by __________________________, the _________________________ of the City of Minnetonka, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota, for and on behalf of said municipal corporation.

____________________________________
Notary Public

STATE OF MINNESOTA  )
   ) ss
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this ____ day of ___________, 2019, by __________________________, the _________________________ of the City of Minnetonka, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota, for and on behalf of said municipal corporation.

____________________________________
Notary Public
[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF CONTRACT FOR DEVELOPMENT]

DEVELOPER:

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: __________________________
Name: Anne T. Behrendt
Its: President

STATE OF MINNESOTA )
) ss
COUNTY OF ___________ )

The foregoing instrument was acknowledged before me this ____ day of March, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, for and on behalf of said limited liability company.

________________________________
Notary Public
BREMER BANK, NATIONAL ASSOCIATION

By: Bradley L. Steiner
Name: Bradley L. Steiner
Its: Vice President

STATE OF MINNESOTA )
) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ________, 2019, by Bradley L. Steiner, a Vice President of Bremer Bank, National Association, a national banking association, for and on behalf of said national banking association.

______________________________
Notary Public
EXHIBIT A

(Legal Description)
Tax Increment Financing Plan

for the establishment of

the Marsh Run Tax Increment Financing District (a housing district)

within

Development District No. 1

Economic Development Authority in and for the City of Minnetonka
City of Minnetonka
Hennepin County
State of Minnesota

Public Hearing Opened: February 11, 2019
Public Hearing Continued: February 25, 2019
Adopted:
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*(for reference purposes only)*

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Section 1 - Tax Increment Financing Plan for the Marsh Run Tax Increment Financing District

Subsection 2-1. Foreword

The Economic Development Authority in and form the City of Minnetonka (the "EDA"), the City of Minnetonka (the "City"), staff and consultants have prepared the following information to expedite the establishment of the Marsh Run Tax Increment Financing District (the "District"), a housing tax increment financing district, located in Development District No. 1.

Subsection 2-2. Statutory Authority

Within the City, there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the EDA and City have certain statutory powers pursuant to Minnesota Statutes ("M.S.") Sections 469.090 to 469.1082, inclusive, as amended, and M.S., Sections 469.174 to 469.1794, inclusive, as amended (the "Tax Increment Financing Act" or "TIF Act"), to assist in financing public costs related to this project.

This section contains the Tax Increment Financing Plan (the "TIF Plan") for the District. Other relevant information is contained in the Modification to the Development Program for Development District No. 1.

Subsection 2-3. Statement of Objectives

The District currently consists of two parcels of land and adjacent and internal rights-of-way. The District is being created to facilitate the construction of a 175-unit apartment complex with 20% of the units being affordable in the City (the “Project”). Please see Appendix A for further Project information. The EDA anticipates entering into an agreement with Doran Companies as the developer, and construction is expected to commence in 2019. This TIF Plan is expected to achieve many of the objectives outlined in the Development Program for Development District No. 1.

The activities contemplated in the Modification to the Development Program and the TIF Plan do not preclude the undertaking of other qualified development or redevelopment activities. These activities are anticipated to occur over the life of Development District No. 1 and the District.

Subsection 1-4. Development Program Overview

1. Property to be Acquired - Selected property located within the District may be acquired by the EDA or City and is further described in this TIF Plan.

2. Relocation - Relocation services, to the extent required by law, are available pursuant to M.S., Chapter 117 and other relevant state and federal laws.

3. Upon approval of a developer's plan relating to the project and completion of the necessary legal requirements, the EDA or City may sell to a developer selected properties that it may acquire within the District or may lease land or facilities to a developer.

4. The EDA or City may perform or provide for some or all necessary acquisition, construction, relocation, demolition, and required utilities and public street work within the District.
Subsection 1-5. Description of Property in the District and Property To Be Acquired

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcels listed in Appendix C of this TIF Plan. Please also see the map in Appendix B for further information on the location of the District.

Subsection 1-6. Classification of the District

The EDA and City, in determining the need to create a tax increment financing district in accordance with M.S., Sections 469.174 to 469.1799, as amended, inclusive, find that the District, to be established, is a housing district pursuant to M.S., Section 469.174, Subd. 11 and M.S., Section 469.1761 as defined below:

M.S., Section 469.174, Subd.11:

"Housing district" means a type of tax increment financing district which consists of a project, or a portion of a project, intended for occupancy, in part, by persons or families of low and moderate income, as defined in chapter 462A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state, or municipal legislation, or the regulations promulgated under any of those acts, and that satisfies the requirements of M.S., Section 469.1761. Housing project means a project, or portion of a project, that meets all the qualifications of a housing district under this subdivision, whether or not actually established as a housing district.

M.S., Section 469.1761:

Subd. 1. Requirement imposed.

(a) In order for a tax increment financing district to qualify as a housing district:

(1) the income limitations provided in this section must be satisfied; and

(2) no more than 20 percent of the square footage of buildings that receive assistance from tax increments may consist of commercial, retail, or other nonresidential uses.

(b) The requirements imposed by this section apply to property receiving assistance financed with tax increments, including interest reduction, land transfers at less than the authority’s cost of acquisition, utility service or connections, roads, parking facilities, or other subsidies. The provisions of this section do not apply to districts located within a targeted area as defined in Section 462C.02 Subd 9, clause (e).

(c) For purposes of the requirements of paragraph (a), the authority may elect to treat an addition to an existing structure as a separate building if:

(1) construction of the addition begins more than three years after construction of the existing structure was completed; and

(2) for an addition that does not meet the requirements of paragraph (a), clause (2), if it is treated as a separate building, the addition was not contemplated by the tax increment financing plan which includes the existing structure.
Subd. 2. Owner occupied housing.
For owner occupied residential property, 95 percent of the housing units must be initially purchased and occupied by individuals whose family income is less than or equal to the income requirements for qualified mortgage bond projects under section 143(f) of the Internal Revenue Code.

Subd. 3. Rental property.
For residential rental property, the property must satisfy the income requirements for a qualified residential rental project as defined in section 142(d) of the Internal Revenue Code. The requirements of this subdivision apply for the duration of the tax increment financing district.

Subd. 4. Noncompliance; enforcement.
Failure to comply with the requirements of this section is subject to M.S., Section 469.1771.

In meeting the statutory criteria the EDA and City rely on the following facts and findings:

- The District consists of two parcels.
- The development will consist of 175- units of multi-family rental housing
- 20% of the units will be occupied by person with incomes less than 50% of median income

Pursuant to M.S., Section 469.176, Subd. 7, the District does not contain any parcel or part of a parcel that qualified under the provisions of M.S., Sections 273.111, 273.112, or 273.114 or Chapter 473H for taxes payable in any of the five calendar years before the filing of the request for certification of the District.

Subsection 1-7. Duration and First Year of Tax Increment of the District

Pursuant to M.S., Section 469.175, Subd. 1, and Section 469.176, Subd. 1, the duration and first year of tax increment of the District must be indicated within the TIF Plan. Pursuant to M.S., Section 469.176, Subd. 1b., the duration of the District will be 25 years after receipt of the first increment by the EDA or City (a total of 26 years of tax increment). The EDA or City elects to receive the first tax increment in 2021, which is no later than four years following the year of approval of the District. Thus, it is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after 2046, or when the TIF Plan is satisfied. The EDA or City reserves the right to decertify the District prior to the legally required date.

Subsection 1-8. Original Tax Capacity, Tax Rate and Estimated Captured Net Tax Capacity Value/Increment and Notification of Prior Planned Improvements

Pursuant to M.S., Section 469.174, Subd. 7 and M.S., Section 469.177, Subd. 1, the Original Net Tax Capacity (ONTC) as certified for the District will be based on the market values placed on the property by the assessor in 2018 for taxes payable 2019.

Pursuant to M.S., Section 469.177, Subds. 1 and 2, the County Auditor shall certify in each year (beginning in the payment year 2020) the amount by which the original value has increased or decreased as a result of:

1. Change in tax exempt status of property;
2. Reduction or enlargement of the geographic boundaries of the district;
3. Change due to adjustments, negotiated or court-ordered abatements;
4. Change in the use of the property and classification;
5. Change in state law governing class rates; or
6. Change in previously issued building permits.

In any year in which the current Net Tax Capacity (NTC) value of the District declines below the ONTC, no value will be captured and no tax increment will be payable to the EDA or City.

The original local tax rate for the District will be the local tax rate for taxes payable 2019, assuming the request for certification is made before June 30, 2019. The ONTC and the Original Local Tax Rate for the District appear in the table below.

Pursuant to M.S., Section 469.174 Subd. 4 and M.S., Section 469.177, Subd. 1, 2, and 4, the estimated Captured Net Tax Capacity (CTC) of the District, within Development District No. 1, upon completion of the projects within the District, will annually approximate tax increment revenues as shown in the table below. The EDA and City request 100 percent of the available increase in tax capacity for repayment of its obligations and current expenditures, beginning in the tax year payable 2021. The Project Tax Capacity (PTC) listed is an estimate of values when the projects within the District are completed.

<table>
<thead>
<tr>
<th>Project Estimated Tax Capacity upon Completion (PTC)</th>
<th>$1,481,530</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Estimated Net Tax Capacity (ONTC)</td>
<td>$22,063</td>
</tr>
<tr>
<td>Estimated Captured Tax Capacity (CTC)</td>
<td>$1,459,467</td>
</tr>
<tr>
<td>Original Local Tax Rate</td>
<td>1.14644 Preliminary Pay 2019</td>
</tr>
<tr>
<td>Estimated Annual Tax Increment (CTC x Local Tax Rate)</td>
<td>$1,673,191</td>
</tr>
<tr>
<td>Percent Retained by the EDA</td>
<td>100%</td>
</tr>
</tbody>
</table>

Tax capacity includes a 5% inflation factor for the duration of the District. The tax capacity included in this chart is the estimated tax capacity of the District in year 25. The tax capacity of the District in year one is estimated to be $160,781.

Pursuant to M.S., Section 469.177, Subd. 4, the EDA shall, after a due and diligent search, accompany its request for certification to the County Auditor or its notice of the District enlargement pursuant to M.S., Section 469.175, Subd. 4, with a listing of all properties within the District or area of enlargement for which building permits have been issued during the eighteen (18) months immediately preceding approval of the TIF Plan by the municipality pursuant to M.S., Section 469.175, Subd. 3. The County Auditor shall increase the original net tax capacity of the District by the net tax capacity of improvements for which a building permit was issued.

The City has reviewed the area to be included in the District and determined no building permits have been issued during the 18 months immediately preceding approval of the TIF Plan by the City.

**Subsection 1-9. Sources of Revenue/Bonds to be Issued**

The costs outlined in the Uses of Funds will be financed primarily through the annual collection of tax
increments. The EDA or City reserves the right to issue bonds or other indebtedness as a result of the TIF Plan. As presently proposed, the projects within the District will be financed by a pay-as-you-go note and interfund loan. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. This provision does not obligate the EDA or City to incur debt. The EDA or City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the City.

The total estimated tax increment revenues for the District are shown in the table below:

<table>
<thead>
<tr>
<th>SOURCES OF FUNDS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Increment</td>
<td>$24,573,196</td>
</tr>
<tr>
<td>Interest</td>
<td>$2,457,320</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$27,030,516</strong></td>
</tr>
</tbody>
</table>

The EDA or City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of $27,030,516. Such bonds may be in the form of pay-as-you-go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of approval.

**Subsection 1-10. Uses of Funds**

Currently under consideration for the District is a proposal to facilitate the construction of a 175-unit apartment complex with 20% of the units being affordable. The EDA and City have determined that it will be necessary to provide assistance to the project for certain District costs, as described. The EDA has studied the feasibility of the development or redevelopment of property in and around the District. To facilitate the establishment and development or redevelopment of the District, this TIF Plan authorizes the use of tax increment financing to pay for the cost of certain eligible expenses. The estimate of public costs and uses of funds associated with the District is outlined in the following table.

<table>
<thead>
<tr>
<th>USES OF TAX INCREMENT FUNDS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land/Building Acquisition</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Site Improvements/Preparation</td>
<td>$1,500,000</td>
</tr>
</tbody>
</table>

Minnetonka Economic Development Authority
TIF Plan for the Marsh Run TIF District5
Utilities $500,000  
Affordable Housing $5,000,000  
Other Qualifying Improvements $4,343,022  
Administrative Costs (up to 10%) $2,457,320  
\( \text{PROJECT COST TOTAL} \) $16,800,342  
Interest $10,230,174  
\( \text{PROJECT AND INTEREST COSTS TOTAL} \) $27,030,516

The total project cost, including financing costs (interest) listed in the table above does not exceed the total projected tax increments for the District as shown in Subsection 2-9.

Estimated costs associated with the District are subject to change among categories without a modification to this TIF Plan. The cost of all activities to be considered for tax increment financing will not exceed, without formal modification, the budget above pursuant to the applicable statutory requirements. The EDA may expend funds for qualified housing activities outside of the District boundaries.

**Subsection 1-11. Fiscal Disparities Election**

Pursuant to *M.S., Section 469.177, Subd. 3*, the City may elect one of two methods to calculate fiscal disparities. If the calculations pursuant to *M.S., Section 469.177, Subd. 3, clause a*, (outside the District) are followed, the following method of computation shall apply:

1. The original net tax capacity and the current net tax capacity shall be determined before the application of the fiscal disparity provisions of Chapter 276A or 473F. Where the original net tax capacity is equal to or greater than the current net tax capacity, there is no captured net tax capacity and no tax increment determination. Where the original net tax capacity is less than the current net tax capacity, the difference between the original net tax capacity and the current net tax capacity is the captured net tax capacity. This amount less any portion thereof which the authority has designated, in its tax increment financing plan, to share with the local taxing districts is the retained captured net tax capacity of the authority.

2. The county auditor shall exclude the retained captured net tax capacity of the authority from the net tax capacity of the local taxing districts in determining local taxing district tax rates. The local tax rates so determined are to be extended against the retained captured net tax capacity of the authority as well as the net tax capacity of the local taxing districts. The tax generated by the extension of the lesser of (A) the local taxing district tax rates or (B) the original local tax rate to the retained captured net tax capacity of the authority is the tax increment of the authority.

The City will choose to calculate fiscal disparities by clause b. It is not anticipated that the District will contain commercial/industrial property. As a result, there should be no impact due to the fiscal disparities provision on the District.

According to *M.S., Section 469.177, Subd. 3*:
(c) The method of computation of tax increment applied to a district pursuant to paragraph (a) or (b) shall remain the same for the duration of the district, except that the governing body may elect to change its election from the method of computation in paragraph (a) to the method in paragraph (b).

Subsection 1-12. Business Subsidies

Pursuant to M.S., Section 116J.993, Subd. 3, the following forms of financial assistance are not considered a business subsidy:

1. A business subsidy of less than $150,000;
2. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;
3. Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;
4. Redevelopment property polluted by contaminants as defined in M.S., Section 116J.552, Subd. 3;
5. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50% of the total cost;
6. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services;
7. Assistance for housing;
8. Assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance subdistrict as defined under M.S., Section 469.174, Subd. 23;
9. Assistance for energy conservation;
10. Tax reductions resulting from conformity with federal tax law;
11. Workers' compensation and unemployment compensation;
12. Benefits derived from regulation;
13. Indirect benefits derived from assistance to educational institutions;
14. Funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501 (c) (3) of the Internal Revenue Code of 1986, as amended through December 31, 1999;
15. Assistance for a collaboration between a Minnesota higher education institution and a business;
16. Assistance for a tax increment financing soils condition district as defined under M.S., Section 469.174, Subd. 19;
17. Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;
18. General changes in tax increment financing law and other general tax law changes of a principally technical nature;
19. Federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency;
20. Funds from dock and wharf bonds issued by a seaway port authority;
21. Business loans and loan guarantees of $150,000 or less;
22. Federal loan funds provided through the United States Department of Commerce, Economic Development Administration; and
23. Property tax abatements granted under M.S., Section 469.1813 to property that is subject to valuation under Minnesota Rules, chapter 8100.
The EDA will comply with M.S., Sections 116J.993 to 116J.995 to the extent the tax increment assistance under this TIF Plan does not fall under any of the above exemptions.

Subsection 1-13. County Road Costs

Pursuant to M.S., Section 469.175, Subd. 1a, the county board may require the EDA or City to pay for all or part of the cost of county road improvements if the proposed development to be assisted by tax increment will, in the judgment of the county, substantially increase the use of county roads requiring construction of road improvements or other road costs and if the road improvements are not scheduled within the next five years under a capital improvement plan or within five years under another county plan.

If the county elects to use increments to improve county roads, it must notify the EDA or City within forty-five days of receipt of this TIF Plan. In the opinion of the EDA and City and consultants, the proposed development outlined in this TIF Plan will have little or no impact upon county roads, therefore the TIF Plan was not forwarded to the county 45 days prior to the public hearing. The EDA and City are aware that the county could claim that tax increment should be used for county roads, even after the public hearing.

Subsection 1-14. Estimated Impact on Other Taxing Jurisdictions

The estimated impact on other taxing jurisdictions assumes that the redevelopment contemplated by the TIF Plan would occur without the creation of the District. However, the EDA or City has determined that such development or redevelopment would not occur "but for" tax increment financing and that, therefore, the fiscal impact on other taxing jurisdictions is $0. The estimated fiscal impact of the District would be as follows if the "but for" test was not met:

<table>
<thead>
<tr>
<th>IMPACT ON TAX BASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary 2018/Pay 2019 Total Net Tax Capacity</td>
</tr>
<tr>
<td>Estimated Captured Tax Capacity (CTC) Upon Completion</td>
</tr>
<tr>
<td>Percent of CTC to Entity Total</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Hennepin County</td>
</tr>
<tr>
<td>City of Minnetonka</td>
</tr>
<tr>
<td>Hopkins ISD No. 270</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IMPACT ON TAX RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Pay 2019 Extension Rates</td>
</tr>
<tr>
<td>Percent of Total</td>
</tr>
<tr>
<td>CTC</td>
</tr>
<tr>
<td>Potential Taxes</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Hennepin County</td>
</tr>
<tr>
<td>City of Minnetonka</td>
</tr>
<tr>
<td>Hopkins ISD No. 270</td>
</tr>
</tbody>
</table>
The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the estimated Pay 2019 rate. The total net capacity for the entities listed above are based on estimated Pay 2019 figures. The District will be certified under the actual Pay 2019 rates, which were unavailable at the time this TIF Plan was prepared.

Pursuant to *M.S. Section 469.175 Subd. 2(b)*:

1. **Estimate of total tax increment.** It is estimated that the total amount of tax increment that will be generated over the life of the District is $24,573,196;

2. **Probable impact of the District on city provided services and ability to issue debt.** An impact of the District on police protection is not expected. The City police department does track all calls for service including property-type calls and crimes. With any addition of new residents or businesses, police calls for service will be increased. New developments add an increase in traffic, and additional overall demands to the call load. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment.

   The probable impact of the District on fire protection is not expected to be significant. Typically new buildings generate few calls, if any, and are of superior construction.

   The impact of the District on public infrastructure is expected to be minimal. The development is not expected to significantly impact any traffic movements in the area. The current infrastructure for sanitary sewer, storm sewer and water will be able to handle the additional volume generated from the proposed development. Based on the development plans, there are no additional costs associated with street maintenance, sweeping, plowing, lighting and sidewalks. The development in the District is expected to contribute to sanitary sewer (SAC) and water (WAC) connection fees.

   The probable impact of any District general obligation tax increment bonds on the ability to issue debt for general fund purposes is expected to be minimal. It is not anticipated that there will be any general obligation debt issued in relation to this Project, therefore there will be no impact on the City's ability to issue future debt or on the City's debt limit.

3. **Estimated amount of tax increment attributable to school district levies.** It is estimated that the amount of tax increments over the life of the District that would be attributable to school district levies, assuming the school district's share of the total local tax rate for all taxing jurisdictions remained the same, is $5,801,732;

4. **Estimated amount of tax increment attributable to county levies.** It is estimated that the amount of tax increments over the life of the District that would be attributable to county levies, assuming the county's share of the total local tax rate for all taxing jurisdictions remained the same, is $8,929,899;

5. **Additional information requested by the county or school district.** The City is not aware of any standard questions in a county or school district written policy regarding tax increment districts and impact on county or school district services. The county or school district must request additional information pursuant to *M.S. Section 469.175 Subd. 2(b)* within 15 days after receipt of the tax increment financing plan.
No requests for additional information from the county or school district regarding the proposed development for the District have been received.

Subsection 1-15. Supporting Documentation

Pursuant to *M.S. Section 469.175, Subd. 1 (a), clause 7* the TIF Plan must contain identification and description of studies and analyses used to make the determination set forth in *M.S. Section 469.175, Subd. 3, clause (b)(2)* and the findings are required in the resolution approving the District. Following is a list of reports and studies on file at the City that support the EDA and City's findings:

- 2030 Comprehensive Plan Guide
- SWLRT Housing Gaps analysis (2014)

Subsection 1-16. Definition of Tax Increment Revenues

Pursuant to *M.S., Section 469.174, Subd. 25*, tax increment revenues derived from a tax increment financing district include all of the following potential revenue sources:

1. Taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under *M.S., Section 469.177*;
2. The proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the authority with tax increments;
3. Principal and interest received on loans or other advances made by the authority with tax increments;
4. Interest or other investment earnings on or from tax increments;
5. Repayments or return of tax increments made to the Authority under agreements for districts for which the request for certification was made after August 1, 1993; and
6. The market value homestead credit paid to the Authority under *M.S., Section 273.1384*.

Subsection 1-17. Modifications to the District

In accordance with *M.S., Section 469.175, Subd. 4*, any:

1. Reduction or enlargement of the geographic area of the District, if the reduction does not meet the requirements of *M.S., Section 469.175, Subd. 4(e)*;
2. Increase in amount of bonded indebtedness to be incurred;
3. A determination to capitalize interest on debt if that determination was not a part of the original TIF Plan;
4. Increase in the portion of the captured net tax capacity to be retained by the EDA or City;
5. Increase in the estimate of the cost of the District, including administrative expenses, that will be paid or financed with tax increment from the District; or
6. Designation of additional property to be acquired by the EDA or City,

shall be approved upon the notice and after the discussion, public hearing and findings required for approval of the original TIF Plan.

Pursuant to *M.S. Section 469.175 Subd. 4(f)*, the geographic area of the District may be reduced, but shall not be enlarged after five years following the date of certification of the original net tax capacity by the county auditor. If a housing district is enlarged, the reasons and supporting facts for the determination that the addition to the district meets the criteria of *M.S., Section 469.174, Subd. 11* must be documented. The requirements of this paragraph do not apply if (1) the only modification is elimination of parcel(s) from the
District and (2) (A) the current net tax capacity of the parcel(s) eliminated from the District equals or exceeds the net tax capacity of those parcel(s) in the District's original net tax capacity or (B) the EDA agrees that, notwithstanding M.S., Section 469.177, Subd. 1, the original net tax capacity will be reduced by no more than the current net tax capacity of the parcel(s) eliminated from the District.

The EDA or City must notify the County Auditor of any modification to the District. Modifications to the District in the form of a budget modification or an expansion of the boundaries will be recorded in the TIF Plan.

**Subsection 1-18. Administrative Expenses**

In accordance with M.S., Section 469.174, Subd. 14, administrative expenses means all expenditures of the EDA or City, other than:

1. Amounts paid for the purchase of land;
2. Amounts paid to contractors or others providing materials and services, including architectural and engineering services, directly connected with the physical development of the real property in the District;
3. Relocation benefits paid to or services provided for persons residing or businesses located in the District;
4. Amounts used to pay principal or interest on, fund a reserve for, or sell at a discount bonds issued pursuant to M.S., Section 469.178; or
5. Amounts used to pay other financial obligations to the extent those obligations were used to finance costs described in clauses (1) to (3).

For districts for which certification was requested after July 31, 2001, no tax increment may be used to pay any administrative expenses for District costs which exceed ten percent of total estimated tax increment expenditures authorized by the TIF Plan or the total tax increments, as defined in M.S., Section 469.174, Subd. 25, clause (1), from the District, whichever is less.

Pursuant to M.S., Section 469.176, Subd. 4h, tax increments may be used to pay for the County's actual administrative expenses incurred in connection with the District and are not subject to the percentage limits of M.S., Section 469.176, Subd. 3. The county may require payment of those expenses by February 15 of the year following the year the expenses were incurred.

Pursuant to M.S., Section 469.177, Subd. 11, the County Treasurer shall deduct an amount (currently .36 percent) of any increment distributed to the EDA or City and the County Treasurer shall pay the amount deducted to the State Commissioner of Management and Budget for deposit in an account in the special revenue fund to be appropriated to the State Auditor for the cost of financial reporting of tax increment financing information and the cost of examining and auditing authorities' use of tax increment financing. This amount may be adjusted annually by the Commissioner of Revenue.

**Subsection 1-19. Limitation of Increment**

The tax increment pledged to the payment of bonds and interest thereon may be discharged and the District may be terminated if sufficient funds have been irrevocably deposited in the debt service fund or other escrow account held in trust for all outstanding bonds to provide for the payment of the bonds at maturity or redemption date.

Pursuant to M.S., Section 469.176, Subd. 6:
if, after four years from the date of certification of the original net tax capacity of the tax increment financing district pursuant to M.S., Section 469.177, no demolition, rehabilitation or renovation of property or other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer or water systems, has been commenced on a parcel located within a tax increment financing district by the authority or by the owner of the parcel in accordance with the tax increment financing plan, no additional tax increment may be taken from that parcel, and the original net tax capacity of that parcel shall be excluded from the original net tax capacity of the tax increment financing district. If the authority or the owner of the parcel subsequently commences demolition, rehabilitation or renovation or other site preparation on that parcel including qualified improvement of a street adjacent to that parcel, in accordance with the tax increment financing plan, the authority shall certify to the county auditor that the activity has commenced and the county auditor shall certify the net tax capacity thereof as most recently certified by the commissioner of revenue and add it to the original net tax capacity of the tax increment financing district. The county auditor must enforce the provisions of this subdivision. The authority must submit to the county auditor evidence that the required activity has taken place for each parcel in the district. The evidence for a parcel must be submitted by February 1 of the fifth year following the year in which the parcel was certified as included in the district. For purposes of this subdivision, qualified improvements of a street are limited to (1) construction or opening of a new street, (2) relocation of a street, and (3) substantial reconstruction or rebuilding of an existing street.

The EDA or City or a property owner must improve parcels within the District by approximately February 2023 and report such actions to the County Auditor.

Subsection 1-20. Use of Tax Increment

The EDA or City hereby determines that it will use 100 percent of the captured net tax capacity of taxable property located in the District for the following purposes:

1. To pay the principal of and interest on bonds issued to finance a project;
2. To finance, or otherwise pay the cost of redevelopment of the Development District No. 1 pursuant to M.S., Sections 469.090 to 469.1082;
3. To pay for project costs as identified in the budget set forth in the TIF Plan;
4. To finance, or otherwise pay for other purposes as provided in M.S., Section 469.176, Subd. 4;
5. To pay principal and interest on any loans, advances or other payments made to or on behalf of the EDA or City or for the benefit of Development District No. 1 by a developer;
6. To finance or otherwise pay premiums and other costs for insurance or other security guaranteeing the payment when due of principal of and interest on bonds pursuant to the TIF Plan or pursuant to M.S., Chapter 462C, M.S., Sections 469.152 through 469.165, and/or M.S., Sections 469.178; and
7. To accumulate or maintain a reserve securing the payment when due of the principal and interest on the tax increment bonds or bonds issued pursuant to M.S., Chapter 462C, M.S., Sections 469.152 through 469.165, and/or M.S., Sections 469.178.

Revenues derived from tax increment from a housing district must be used solely to finance the cost of housing projects as defined in M.S., Sections 469.174, Subd. 11 and 469.1761. The cost of public improvements directly related to the housing projects and the allocated administrative expenses of the EDA or City may be included in the cost of a housing project.

These revenues shall not be used to circumvent any levy limitations applicable to the City nor for other
purposes prohibited by *M.S., Section 469.176, Subd. 4*.

Tax increments generated in the District will be paid by Hennepin County to the EDA for the Tax Increment Fund of said District. The EDA or City will pay to the developer(s) annually an amount not to exceed an amount as specified in a developer's agreement to reimburse the costs of land acquisition, public improvements, structured parking, demolition and remediation, site preparation, and administration. Remaining increment funds will be used for EDA or City administration expenses (up to 10 percent) and for the costs of public improvement activities outside the District.

**Subsection 1-21. Excess Increments**

Excess increments, as defined in *M.S., Section 469.176, Subd. 2*, shall be used only to do one or more of the following:

1. Prepay any outstanding bonds;
2. Discharge the pledge of tax increment for any outstanding bonds;
3. Pay into an escrow account dedicated to the payment of any outstanding bonds; or
4. Return the excess to the County Auditor for redistribution to the respective taxing jurisdictions in proportion to their local tax rates.

The EDA or City must spend or return the excess increments under paragraph (c) within nine months after the end of the year in which the District must be decertified. In addition, the EDA or City may, subject to the limitations set forth herein, choose to modify the TIF Plan in order to finance additional public costs in Development District No. 1 or the District.

**Subsection 1-22. Requirements for Agreements with the Developer**

The EDA or City will review any proposal for private development to determine its conformance with the Development Program and with applicable municipal ordinances and codes. To facilitate this effort, the following documents may be requested for review and approval: site plan, construction, mechanical, and electrical system drawings, landscaping plan, grading and storm drainage plan, signage system plan, and any other drawings or narrative deemed necessary by the EDA or City to demonstrate the conformance of the development with City plans and ordinances. The EDA or City may also use the Agreements to address other issues related to the development.

Pursuant to *M.S., Section 469.176, Subd. 5*, no more than 10 percent, by acreage, of the property to be acquired in the project area as set forth in the TIF Plan shall at any time be owned by the EDA or City as a result of acquisition with the proceeds of bonds issued pursuant to *M.S., Section 469.178* to which tax increments from property acquired is pledged, unless prior to acquisition in excess of 10 percent of the acreage, the EDA or City concluded an agreement for the development of the property acquired and which provides recourse for the EDA or City should the development not be completed.

**Subsection 1-23. Assessment Agreements**

Pursuant to *M.S., Section 469.177, Subd. 8*, the EDA or City may enter into a written assessment agreement in recordable form with the developer of property within the District which establishes a minimum market value of the land and completed improvements for the duration of the District. The assessment agreement shall be presented to the County Assessor who shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears,
in the judgment of the assessor, to be a reasonable estimate, the County Assessor shall also certify the minimum market value agreement.

**Subsection 1-24. Administration of the District**

Administration of the District will be handled by the Community Development Director.

**Subsection 1-25. Annual Disclosure Requirements**

Pursuant to *M.S., Section 469.175, Subds. 5, 6, and 6b* the EDA or City must undertake financial reporting for all tax increment financing districts to the Office of the State Auditor, County Board and County Auditor on or before August 1 of each year. *M.S., Section 469.175, Subd. 5* also provides that an annual statement shall be published in a newspaper of general circulation in the City on or before August 15.

If the City fails to make a disclosure or submit a report containing the information required by *M.S., Section 469.175 Subd. 5 and Subd. 6*, the Office of the State Auditor will direct the County Auditor to withhold the distribution of tax increment from the District.

**Subsection 1-26. Reasonable Expectations**

As required by the TIF Act, in establishing the District, the determination has been made that the anticipated development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District permitted by the TIF Plan. In making said determination, reliance has been placed upon written representation made by the developer to such effects and upon EDA and City staff awareness of the feasibility of developing the project site(s) within the District. A comparative analysis of estimated market values both with and without establishment of the District and the use of tax increments has been performed as described above. Such analysis is included with the cashflow in Appendix D, and indicates that the increase in estimated market value of the proposed development (less the indicated subtractions) exceeds the estimated market value of the site absent the establishment of the District and the use of tax increments.

**Subsection 1-27. Other Limitations on the Use of Tax Increment**

1. **General Limitations.** All revenue derived from tax increment shall be used in accordance with the TIF Plan. The revenues shall be used to finance, or otherwise pay the cost of redevelopment of the Development District No. 1 pursuant to *M.S., Sections 469.090 to 469.1082*.

   Tax increments may not be used to circumvent existing levy limit law. No tax increment may be used for the acquisition, construction, renovation, operation, or maintenance of a building to be used primarily and regularly for conducting the business of a municipality, county, school district, or any other local unit of government or the state or federal government. This provision does not prohibit the use of revenues derived from tax increments for the construction or renovation of a parking structure.

2. **Housing District Exceptions to Restriction on Pooling; Five Year Limit.** Pursuant to *M.S., Section 469.1763*. At least 80% of revenues derived from tax increments paid by properties in the District must be expended on Public Costs incurred within said district, and up to 20% of said tax increments may be spent on public costs incurred outside of the District but within Development District No. 1; provided
that in the case of a housing district, a housing project, as defined in M.S., Section 469.174, Subd. 11, is deemed to be an activity in the District, even if the expenditure occurred after five years.

Subsection 1-28. Summary

The Minnetonka Economic Development Authority is establishing the District to provide an impetus for residential development and provide safe and decent life cycle housing in the City. The TIF Plan for the District was prepared by Ehlers & Associates, Inc., 3060 Centre Pointe Drive, Roseville, Minnesota 55113-1105, telephone (651) 697-8500.
Appendix A

Project Description

Doran Companies is acquiring the three (3) Marsh Run office buildings located on two (2) parcels at 11650 and 11706 Wayzata Boulevard for redevelopment. They intend to demolish the existing structures and construct a 175-unit apartment complex in which 20% of the units will be affordable to persons at or below 50% of the area median income. They anticipate commencing with construction in 2019 and the EDA will provide them a pay-as-you-go TIF note.

Parcels are being removed from the Boulevard Gardens TIF District (County # 1460) for establishment of the Marsh Run TIF District.
Appendix B

Map of Development District No. 1 and the District
Appendix C
Description of Property to be Included in the District

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcels listed below.

<table>
<thead>
<tr>
<th>Parcel Numbers*</th>
<th>Address</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>02.117.22.13.0062</td>
<td>11706 Wayzata Blvd.</td>
<td>Carpenter Land Company</td>
</tr>
<tr>
<td>02.117.22.13.0050</td>
<td>11650 Wayzata Blvd.</td>
<td>KMP LLC</td>
</tr>
</tbody>
</table>

*All of the parcels are currently in the Boulevard Gardens Tax Increment Financing District and will be removed for inclusion in the District.
Appendix D

Estimated Cash Flow for the District
### Marsh Run (Doran)  
City of Minnetonka  
175 Apartments

#### ASSUMPTIONS AND RATES

<table>
<thead>
<tr>
<th>District Type:</th>
<th>Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Name/Number:</td>
<td></td>
</tr>
<tr>
<td>County District #:</td>
<td></td>
</tr>
<tr>
<td>First Year Construction or Inflation on Value</td>
<td>2019</td>
</tr>
<tr>
<td>Existing District - Specify No. Years Remaining</td>
<td></td>
</tr>
<tr>
<td>Inflation Rate - Every Year:</td>
<td>5.00%</td>
</tr>
<tr>
<td>Interest Rate:</td>
<td>4.00%</td>
</tr>
<tr>
<td>Present Value Date:</td>
<td>1-Aug-20</td>
</tr>
<tr>
<td>First Period Ending:</td>
<td>1-Feb-21</td>
</tr>
<tr>
<td>Tax Year District was Certified:</td>
<td>Pay 2019</td>
</tr>
<tr>
<td>Cashflow Assumes First Tax Increment For Development:</td>
<td>2021</td>
</tr>
<tr>
<td>Years of Tax Increment</td>
<td>26</td>
</tr>
<tr>
<td>Assumes Last Year of Tax Increment</td>
<td>2046</td>
</tr>
<tr>
<td>Fiscal Disparities Election [Outside (A), Inside (B), or NA]</td>
<td>Inside(B)</td>
</tr>
<tr>
<td>Incremental or Total Fiscal Disparities</td>
<td>Incremental</td>
</tr>
<tr>
<td>Fiscal Disparities Contribution Ratio</td>
<td>36.8960% Pay 2019 Prelim</td>
</tr>
<tr>
<td>Fiscal Disparities Metro-Wide Tax Rate</td>
<td>143.9920% Pay 2019 Prelim</td>
</tr>
<tr>
<td>Maximum/Frozen Local Tax Rate:</td>
<td>114.644% Pay 2019 Prelim</td>
</tr>
<tr>
<td>Current Local Tax Rate: (Use lesser of Current or Max.)</td>
<td>114.644% Pay 2019 Prelim</td>
</tr>
<tr>
<td>State-wide Tax Rate (Comm./Ind. only used for total taxes)</td>
<td>41.0000% Pay 2019 Prelim</td>
</tr>
<tr>
<td>Market Value Tax Rate (Used for total taxes)</td>
<td>0.16104% Pay 2019 Prelim</td>
</tr>
</tbody>
</table>

#### Tax Rates

<table>
<thead>
<tr>
<th>Class</th>
<th>Description</th>
<th>Rate</th>
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</thead>
<tbody>
<tr>
<td>Exempt Class Rate (Exempt)</td>
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</tr>
<tr>
<td>Commercial Industrial Preferred Class Rate (C/I Pref.)</td>
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</tr>
<tr>
<td>First</td>
<td>$150,000</td>
<td>1.50%</td>
</tr>
<tr>
<td>Over</td>
<td>$150,000</td>
<td>2.00%</td>
</tr>
<tr>
<td>Commercial Industrial Class Rate (C/I)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>$139,000</td>
<td>0.75%</td>
</tr>
<tr>
<td>Over</td>
<td>$139,000</td>
<td>2.25%</td>
</tr>
<tr>
<td>Affordable Rental Housing Class Rate (Aff. Rental)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>$500,000</td>
<td>1.25%</td>
</tr>
<tr>
<td>Over</td>
<td>$500,000</td>
<td>2.50%</td>
</tr>
<tr>
<td>Non-Homestead Residential (Non-H Res. 1 Unit)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>$500,000</td>
<td>1.00%</td>
</tr>
<tr>
<td>Homestead Residential Class Rate (Hmstd. Res.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>$500,000</td>
<td>1.00%</td>
</tr>
<tr>
<td>Over</td>
<td>$500,000</td>
<td>1.25%</td>
</tr>
<tr>
<td>Agricultural Non-Homestead</td>
<td>1.00%</td>
<td></td>
</tr>
</tbody>
</table>

#### BASE VALUE INFORMATION

<table>
<thead>
<tr>
<th>Map ID</th>
<th>PID</th>
<th>Owner</th>
<th>Address</th>
<th>Land Market Value</th>
<th>Building Market Value</th>
<th>Total Market Value</th>
<th>Percentage Of Value Used for District</th>
<th>Original Market Value</th>
<th>Tax Year Market Value</th>
<th>Property Tax Class</th>
<th>Class After Conversion</th>
<th>After Conversion Orig. Tax Cap.</th>
<th>Area/ Phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>02117221300062</td>
<td>Carpenter Land Co</td>
<td>11706 Wayzata Blvd</td>
<td>890,000</td>
<td>7,000</td>
<td>897,000</td>
<td>100%</td>
<td>897,000</td>
<td>Pay 2019</td>
<td>C/I</td>
<td>17,940</td>
<td>Rental</td>
<td>11,213</td>
</tr>
<tr>
<td>2</td>
<td>02117221300050</td>
<td>KMP LLC</td>
<td>11650 Wayzata Blvd</td>
<td>617,000</td>
<td>251,000</td>
<td>868,000</td>
<td>100%</td>
<td>868,000</td>
<td>Pay 2019</td>
<td>C/I Pref.</td>
<td>16,610</td>
<td>Rental</td>
<td>10,850</td>
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</table>

**Note:**
1. Base values are for Pay 2019 per Hennepin County website on 5-10-18.  
2. Located in SD #270 and WS #7
## PROJECT INFORMATION (Project Tax Capacity)

<table>
<thead>
<tr>
<th>Area/Phase</th>
<th>New Use</th>
<th>Estimated Market Value Per Sq. Ft./Unit</th>
<th>Taxable Market Value Per Sq. Ft./Unit</th>
<th>Total Sq. Ft./Units</th>
<th>Total Taxable Market Value</th>
<th>Property Tax Class</th>
<th>Project Tax Capacity</th>
<th>Project Tax Capacity/Unit</th>
<th>Percentage Completed 2019</th>
<th>Percentage Completed 2020</th>
<th>Percentage Completed 2021</th>
<th>Percentage Completed 2022</th>
<th>Percentage Completed Full Taxes Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apartments</td>
<td>1</td>
<td>210,000</td>
<td>210,000</td>
<td>175</td>
<td>36,750,000</td>
<td>Rental</td>
<td>459,375</td>
<td>2,625</td>
<td>35%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
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<tr>
<td>TOTAL</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note:**
1. Market value estimate provided by assessor on 5-11-18.

## TAX CALCULATIONS

<table>
<thead>
<tr>
<th>New Use</th>
<th>Total Tax Capacity</th>
<th>Fiscal Disparities Tax Capacity</th>
<th>Local Property Taxes</th>
<th>Local Fiscal Disparities Taxes</th>
<th>State-wide Property Taxes</th>
<th>State-wide Fiscal Disparities Taxes</th>
<th>Market Value Taxes</th>
<th>Total Taxes</th>
<th>Taxes Per Sq. Ft./Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apartments</td>
<td>459,375</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>59,182</td>
<td>585,828</td>
<td>3,347.59</td>
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<tr>
<td>TOTAL</td>
<td>459,375</td>
<td>0</td>
<td>526,646</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>59,182</td>
<td>585,828</td>
<td>3,347.59</td>
</tr>
</tbody>
</table>

**Note:**
1. Taxes and tax increment will vary significantly from year to year depending upon values, rates, state law, fiscal disparities and other factors which cannot be predicted.

## WHAT IS EXCLUDED FROM TIF?

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Total Property Taxes</td>
<td>585,828</td>
</tr>
<tr>
<td>less State-wide Taxes</td>
<td>0</td>
</tr>
<tr>
<td>less Fiscal Disp. Adj.</td>
<td>0</td>
</tr>
<tr>
<td>less Market Value Taxes</td>
<td>(59,182)</td>
</tr>
<tr>
<td>less Base Value Taxes</td>
<td>(25,293)</td>
</tr>
<tr>
<td>Annual Gross TIF</td>
<td>561,333</td>
</tr>
</tbody>
</table>
1/3/2019

Tax Increment Cashflow - Page 3

Marsh Run (Doran)
City of Minnetonka
175 Apartments
TAX INCREMENT CASH FLOW
% of
OTC
100%
100%
100%
100%
100%
100%
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100%
100%
100%

Project
Tax
Capacity

Original
Tax
Capacity

Fiscal
Disparities
Incremental

160,781
(22,063)
160,781
(22,063)
459,375
(22,063)
459,375
(22,063)
482,344
(22,063)
482,344
(22,063)
506,461
(22,063)
506,461
(22,063)
531,784
(22,063)
531,784
(22,063)
558,373
(22,063)
558,373
(22,063)
586,292
(22,063)
586,292
(22,063)
615,606
(22,063)
615,606
(22,063)
646,387
(22,063)
646,387
(22,063)
678,706
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(22,063)
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(22,063)
1,279,802
(22,063)
1,343,792
(22,063)
1,343,792
(22,063)
1,410,981
(22,063)
1,410,981
(22,063)
1,481,530
(22,063)
1,481,530
(22,063)
Total
Present Value From 08/01/2020

Prepared by Ehlers & Associates, Inc. - Estimates Only

Captured
Tax
Capacity
138,719
138,719
437,313
437,313
460,281
460,281
484,398
484,398
509,721
509,721
536,311
536,311
564,229
564,229
593,544
593,544
624,324
624,324
656,644
656,644
690,579
690,579
726,211
726,211
763,625
763,625
802,909
802,909
844,158
844,158
887,469
887,469
932,945
932,945
980,696
980,696
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1,138,755
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1,196,796
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1,257,739
1,321,729
1,321,729
1,388,919
1,388,919
1,459,468
1,459,468
Present Value Rate

Local
Tax
Rate
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114.644%
4.00%

Annual
Gross Tax
Increment
159,033
159,033
501,353
501,353
527,685
527,685
555,334
555,334
584,365
584,365
614,848
614,848
646,855
646,855
680,463
680,463
715,750
715,750
752,802
752,802
791,707
791,707
832,557
832,557
875,450
875,450
920,487
920,487
967,776
967,776
1,017,429
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1,124,309
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1,181,789
1,181,789
1,242,143
1,242,143
1,305,515
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1,372,055
1,372,055
1,441,922
1,441,922
1,515,283
1,515,283
1,592,312
1,592,312
1,673,192
1,673,192

Semi-Annual
Gross Tax
Increment
79,516
79,516
250,676
250,676
263,842
263,842
277,667
277,667
292,183
292,183
307,424
307,424
323,428
323,428
340,231
340,231
357,875
357,875
376,401
376,401
395,854
395,854
416,279
416,279
437,725
437,725
460,243
460,243
483,888
483,888
508,715
508,715
534,783
534,783
562,154
562,154
590,894
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621,071
621,071
652,757
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686,027
720,961
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757,642
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796,156
796,156
836,596
836,596
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Semi-Annual
Net Tax
Increment
71,307
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224,796
236,603
236,603
249,001
249,001
262,018
262,018
275,686
275,686
290,037
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305,106
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320,928
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337,542
337,542
354,986
354,986
373,302
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392,534
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412,728
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504,117
504,117
529,890
529,890
556,952
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585,367
585,367
615,202
615,202
646,529
646,529
679,423
679,423
713,961
713,961
750,226
750,226
22,115,876
11,885,702

Semi-Annual
Present
Value
68,538
135,732
343,410
547,015
757,112
963,089
1,175,609
1,383,961
1,598,907
1,809,638
2,027,014
2,240,128
2,459,940
2,675,441
2,897,694
3,115,590
3,340,290
3,560,585
3,787,741
4,010,443
4,240,062
4,465,178
4,697,268
4,924,807
5,159,377
5,389,348
5,626,408
5,858,821
6,098,382
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7,544,168
7,786,452
8,036,130
8,280,911
8,533,150
8,780,442
9,035,255
9,285,071
9,542,472
9,794,826
10,054,830
10,309,736
10,572,358
10,829,831
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08/01/46
02/01/47

N:\Minnsota\Minnetonka\Housing - Economic - Redevelopment\TIF\TIF Districts\Marsh Run (2019)\TIF Plan Documents\TIF Run FINAL


Appendix E

Housing Qualifications for the District

<table>
<thead>
<tr>
<th>No. of Persons</th>
<th>50% of Median Income</th>
<th>60% of Median Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-person</td>
<td>$33,050,</td>
<td>$39,660</td>
</tr>
<tr>
<td>2-person</td>
<td>$37,750</td>
<td>$45,300</td>
</tr>
<tr>
<td>3-person</td>
<td>$42,450</td>
<td>$50,940</td>
</tr>
<tr>
<td>4-person</td>
<td>$47,150</td>
<td>$56,580</td>
</tr>
</tbody>
</table>

Source: Department of Housing and Urban Development and Minnesota Housing Finance Agency

The two options for income limits on a standard housing district are 20% of the units at 50% of median income or 40% of the units at 60% of median income. There are no rent restrictions for a housing district.

***PLEASE NOTE: THESE NUMBERS ARE ADJUSTED ANNUALLY. ALL INCOME FIGURES REPORTED ON THIS PAGE ARE FOR 2018. UPDATED NUMBERS FOR THE YEAR 2019 WILL BE AVAILABLE IN MARCH.
Appendix F

Findings for the District

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan for Marsh Run Tax Increment Financing District, as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that the Marsh Run Tax Increment Financing District is a housing district as defined in M.S., Section 469.174, Subd. 11.*

Marsh Run Tax Increment Financing District consists of two parcels. The development will consist of 175-units of rental housing. At least 20 percent of the units receiving assistance will have incomes at or below 50 percent of statewide median income. Appendix E of the TIF Plan contains background for the above finding.

2. *Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.*

The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future: This finding is supported by the fact that the development proposed in this plan is a housing district that meets the City’s objectives for development and redevelopment. The cost of land acquisition, site and public improvements and utilities makes this housing development infeasible without City assistance. Due to decreased rental income from affordable units, there is insufficient cash flow to provide a sufficient rate of return, pay operating expenses, and service the debt. This leaves a gap in the funding for the project and makes this housing development feasible only through assistance, in part, from tax increment financing. The developer was asked for and provided a letter and a pro forma as justification that the developer would not have gone forward without tax increment assistance.

The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the TIF District permitted by the TIF Plan: This finding is justified on the grounds that the cost of land acquisition, site and public improvements, utilities and construction of affordable housing add to the total development cost. Historically, the costs of site and public improvements as well as reduced rents required for affordable workforce housing in the City have made development infeasible without tax increment assistance. The City reasonably determines that no other development of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

3. *Finding that the TIF Plan for Marsh Run Tax Increment Financing District conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The Planning Commission reviewed the TIF Plan on February 7, 2019 and found that the TIF Plan conforms to the general development plan of the City.
4. *Finding that the TIF Plan for Marsh Run Tax Increment Financing District will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Development District No. 1 by private enterprise.*

Through the implementation of the TIF Plan, the EDA or City will provide an impetus for residential development, which is desirable or necessary for increased population and an increased need for life-cycle housing within the City.
Policy Number 2.18
Tax Increment Financing and Tax Abatement

Purpose of Policy: This policy establishes criteria which guide the economic development authority and the city council when considering the use of tax increment financing and tax abatement tools in conjunction with proposed development.

Introduction

Under the Minnesota Statutes Sections 469.152 to 469.1799, the city of Minnetonka has the authority to establish tax increment financing districts (TIF districts). Tax increment financing is a funding technique that takes advantage of the increases in tax capacity and property taxes from development or redevelopment to pay public development or redevelopment costs. The difference in the tax capacity and the tax revenues the property generates after new construction has occurred, compared with the tax capacity and tax revenues it generated before the construction, is the captured value, or increments. The increments then go to the economic development authority and are used to repay public indebtedness or current costs the development incurred in acquiring the property, removing existing structures or installing public services. The fundamental principle that makes tax increment financing viable is that it is designed to encourage development that would not otherwise occur.

Under Minnesota Statutes, Sections 469.1812 to 469.1815, the city of Minnetonka has the right to abate property taxes. A city may grant an abatement of some or all of the taxes or the increase in taxes it imposes on a parcel of property if the city expects the benefits of the proposed abatement agreement to at least equal the costs of the proposed agreement. Abatement would be considered a reallocation or rededication of taxes for specific improvements or costs associated with development rather than a “refund” of taxes.

It is the judgment of the city council that TIF and abatement are appropriate tools that may be used when specific criteria are met. The applicant is responsible for demonstrating the benefit of the assistance, particularly addressing the criteria below. The applicant should understand that although approval may have been granted previously by the city for a similar project or a similar mechanism, the council is not bound by that earlier approval. Each application will be judged on the merits of the project as it relates to the public purpose.

TAX INCREMENT FINANCING

The Economic Development Authority (EDA), as authorized by the city, will be responsible to determine that (1) a project would not occur “but for” the assistance provided through tax increment financing; and (2) no other development would occur on the relevant site without tax increment assistance that could create a larger market value increase than the increase expected from the proposed development (after adjusting for
Projects eligible for consideration of tax increment financing include but are not limited to the following:

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city.

- Priority will be given to those projects which:
  - are within the “village areas” identified in the city’s most recently adopted Comprehensive Guide Plan;
  - are mixed use or residential in nature, and include affordable housing units which meet the city’s affordable housing standards;
  - contain amenities or improvements which benefit a larger area than the identified development;
  - improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or
  - maximize and leverage the use of other financial resources.

**Costs Eligible for Tax Increment Financing Assistance**

The EDA will consider the use of tax increment financing to cover project costs as allowed for under Minnesota Statutes. The types of project costs that are eligible for tax increment financing are as follows:

<table>
<thead>
<tr>
<th>Utilities design</th>
<th>Site related permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architectural and engineering fees directly attributable to site work</td>
<td>Soils correction</td>
</tr>
<tr>
<td>Earthwork/excavation</td>
<td>Utilities (sanitary sewer, storm sewer, and water)</td>
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<tr>
<td>Landscaping</td>
<td>Street/parking lot paving</td>
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<tr>
<td>Streets and roads</td>
<td>Curb and gutter</td>
</tr>
<tr>
<td>Street/parking lot lighting</td>
<td>Land acquisition</td>
</tr>
<tr>
<td>Sidewalks and trails</td>
<td>Legal (acquisition, financing, and closing fees)</td>
</tr>
<tr>
<td>Special assessments</td>
<td>Surveys</td>
</tr>
<tr>
<td>Soils test and environmental studies</td>
<td>Sewer Access Charges (SAC) and Water Access Charges (WAC)</td>
</tr>
</tbody>
</table>
Forms of Assistance

Tax increment financing will generally be provided on a “pay-as-you-go” basis wherein the EDA compensates the applicant for a predetermined amount for a stated number of years. The EDA will have the option to issue a TIF Note with or without interest, where the principal amount of the TIF Note is equal to the amount of eligible project costs incurred and proven by the developer. In all cases, semi-annual TIF payments will be based on available increment generated from the project. TIF payments will be made after collection of property taxes.

Fiscal Disparities

TIF Districts will generally be exempt from the contribution to fiscal disparities. Tax revenues for fiscal disparities, generated by the TIF project, will be the responsibility of properties inside the district. The exception to this policy is when MN Statutes require that fiscal disparities be paid from within a TIF District, as is the case with Economic Development Districts.

TAX ABATEMENT

The tax abatement tool provides the ability to capture and use all or a portion of the property tax revenues within a defined geographic area for a specific purpose. Unlike TIF, tax abatement must be approved by each major authority under which the area is taxed, and therefore, usually only city property taxes will be abated. In practice, it is a tax “reallocation” rather than an exemption from paying property taxes. Tax abatement is an important economic development tool that, when used appropriately, can be useful to accomplish the city’s development and redevelopment goals and objectives. Requests for tax abatement must serve to accomplish the city’s targeted goals for development and redevelopment, particularly in the designated village center areas. At the time of any application for a Comprehensive Guide Plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that tax abatements will be requested.

Projects Eligible for Tax Abatement Assistance

Projects eligible for consideration of property tax abatement include but are not limited to the following:

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city; and

- Priority will be given to those projects which:
  - increase or preserve the tax base
  - provide employment opportunities in the City of Minnetonka;
o provide, help acquire or construct public facilities;

o finance or provide public infrastructure;

o improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or

o produce long-term affordable housing opportunities.

Fiscal Disparities

Tax revenues for fiscal disparities, generated by the abatement project, will be the responsibility of properties inside the district.

REVIEW PROCESS

All applications for TIF and tax abatement will be reviewed by city’s community development director. After review by the city’s financial consultant, the community development director may refer the request to the EDA. The EDA will hold appropriate public hearings and receive public input about the use of the financial tools. The EDA will provide a recommendation regarding the assistance to the city council.

The city council must consider, along with other development decisions, the request for assistance and will make the final decision as to the amount, length, and terms of the agreement.

Adopted by Resolution No. 2014-074
Council Meeting of July 21, 2014
RESOLUTION 2004-002

RESOLUTION APPROVING THE ECONOMIC DEVELOPMENT AUTHORITY’S RECOMMENDATION ON THE INCLUSION OF 10% TO 20% OF THE TOTAL UNITS IN MULTI-FAMILY DEVELOPMENTS AS AFFORDABLE HOUSING

BE IT RESOLVED by the Economic Development Authority of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. The City of Minnetonka and Metropolitan Council have worked together to create affordable housing goals for the development of new affordable housing units within the city.

1.02. The Economic Development Authority has been working to accomplish these goals and include affordable housing in new housing developments by recommending that 10% to 20% of the total units in a housing development be made affordable.

Section 2. Economic Development Authority Action.

2.01. The Economic Development Authority of the City of Minnetonka hereby affirms their recommendation that 10% to 20% of the total units in new multi-family housing developments be sold at an affordable price as set forth by the Metropolitan Council.

Adopted by the Economic Development Authority of the City of Minnetonka, Minnesota on February 3, 2004.

[Signature]

Peter St. Peter, President

ATTEST:

[Signature]

Ronald Rankin, Secretary
ACTION ON THIS RESOLUTION:

Motion for adoption: Duffy
Seconded by: Larson
Voted in favor of: Duffy, Larson, Robinson, St. Peter, Thomas, Wagner, Walker
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Economic Development Authority of the City of Minnetonka, Minnesota, at a duly authorized meeting held on February 3, 2004, as shown by the minutes of the said meeting in my possession.

Ronald Rankin, Secretary
<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Number of Affordable Units</th>
<th>Number of Market Rate Units</th>
<th>Total Assistance (for affordable units)</th>
<th>Years of Affordability</th>
<th>Assistance per Unit, per Year</th>
<th>Affordability Level</th>
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</thead>
<tbody>
<tr>
<td>Newport Partners (Mariner)</td>
<td>55</td>
<td>194</td>
<td>$556,179 (est)</td>
<td>30</td>
<td>$337</td>
<td>60% AMI</td>
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<tr>
<td>Dominium</td>
<td>482</td>
<td>0</td>
<td>$7,809,000</td>
<td>30</td>
<td>$540</td>
<td>60% AMI</td>
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<tr>
<td>Homes Within Reach (2004-2012 grant years)</td>
<td>35</td>
<td>0</td>
<td>$1,740,000</td>
<td>99</td>
<td>$502</td>
<td>80% AMI</td>
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<td>The Ridge</td>
<td>52</td>
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<td>$1,050,000</td>
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<td>$673</td>
<td>60% AMI</td>
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<td>Shady Oak Redevelopment</td>
<td>49</td>
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<td>$1,209,000 (est)</td>
<td>30</td>
<td>$822</td>
<td>60% AMI</td>
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<td>West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)</td>
<td>185</td>
<td>0</td>
<td>$8,514,000</td>
<td>30</td>
<td>$1,534</td>
<td>Crown Ridge—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI</td>
</tr>
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<td>Beacon Hill (apartments)</td>
<td>62</td>
<td>48</td>
<td>$2,484,000</td>
<td>25</td>
<td>$1,602</td>
<td>50% AMI</td>
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<td>Ridgebury</td>
<td>56</td>
<td>163</td>
<td>$3,243,000</td>
<td>30</td>
<td>$1,930</td>
<td>Initially—80% AMI, Now no income limit</td>
</tr>
<tr>
<td>Glen Lake (St. Therese, Exchange)</td>
<td>43</td>
<td>119</td>
<td>$4,800,000</td>
<td>30</td>
<td>$3,721</td>
<td>60% AMI</td>
</tr>
<tr>
<td>Cedar Point Townhomes</td>
<td>9</td>
<td>143</td>
<td>$512,000</td>
<td>15</td>
<td>$3,792</td>
<td>50% AMI</td>
</tr>
<tr>
<td>Tonka on the Creek</td>
<td>20</td>
<td>80</td>
<td>$2,283,000</td>
<td>30</td>
<td>$3,805</td>
<td>50% AMI</td>
</tr>
<tr>
<td>At Home (Rowland)</td>
<td>21</td>
<td>106</td>
<td>$2,500,000</td>
<td>30</td>
<td>$3,968</td>
<td>50% AMI</td>
</tr>
<tr>
<td>Applewood Pointe</td>
<td>9</td>
<td>80</td>
<td>$1,290,000</td>
<td>Initial Sale/Ongoing maximum %</td>
<td>$4,777</td>
<td>80% AMI</td>
</tr>
<tr>
<td>Doran (Marsh) - TIF Housing</td>
<td>35 (20% of units)</td>
<td>175</td>
<td>$4,800,000</td>
<td>30</td>
<td>$4,571</td>
<td>50% AMI</td>
</tr>
</tbody>
</table>

updated 12/6/2018
Introduction

In 1995, the Minnesota Legislature created the Livable Communities Act (LCA) to address the affordable and life-cycle housing needs in the Twin Cities metropolitan area. When the LCA was established, Minnetonka was one of the communities to sign up to participate in the program, negotiating a series of affordable and lifecycle housing goals with the Metropolitan Council for 1996-2010.

In August 2010, the Minnetonka City Council passed a resolution electing to continue participating in the LCA for the years 2011-2020. As part of that resolution, the city agreed to the following affordable and lifecycle housing goals:

| New Affordable Units (rental and ownership) | 246 to 378 |
| New Lifecycle Units                         | 375 to 800 |

The purpose of this Housing Action Plan is to outline the steps and tools that the city may use between the years 2011-2020 to help meet its LCA goals.

Overview of Minnetonka Housing Trends

Development Conditions

Minnetonka is a desirable community in which to live. Its natural environment, good schools, and homes on large lots contribute to the attraction of Minnetonka as a great place to live, work and play. As such, the demand for these community attributes has led to increased home values that have risen to the point that most single-family homes, despite their age, are not affordable to low and moderate income families. Land values, in particular, have increased substantially, making it difficult for developers to build affordable and mid-priced single-family homes.

Additionally, Minnetonka is a fully developed city with little vacant or underdeveloped land available for new housing development. With the combination of increasing land values and little developable land, most of the affordable homes in the community are rental units and for-sale condominiums and townhomes.

Aging of the Population

One of the biggest demographic shifts affecting this nation is the aging of the “baby boomer” generation (the large generation of people born between 1946 and 1964). This trend is already apparent in Minnetonka, where the median age in 2007 was 52 years old and 44% of the households were age 55 and older. As the population continues to
age, housing location, types, and proximity to public transit or transit alternatives will become increasingly important.

Preservation and Rehabilitation of the Existing Housing Stock

Much of Minnetonka’s single-family housing stock was built between 1950 and 1970 while most multi-family housing was built in the 1970s and 1980s. As the housing stock continues to age, additional maintenance and repairs will be needed in order to keep homes in adequate condition and to preserve neighborhood character. Older homes may need to be updated in order to attract younger families to the community. Also, as both Minnetonka’s population and housing age, older residents may require increased support through funding and in-kind service programs that will help them to maintain and make necessary repairs to ensure that their homes are safe, accessible, energy efficient, and habitable.

While not all older homes are affordable, older homes tend to be the more affordable housing stock in Minnetonka. The preservation of these homes is critical to providing homeownership opportunities for those who could normally not afford to live in the community.

Current Housing Conditions

In 2007, there were approximately 22,500 housing units in Minnetonka, of which 76.6% are owner-occupied. The housing stock includes a mix of the following types:

- 57% single-family
- 20% condominium/townhome
- 18% general-occupancy rental
- 5% senior (including independent and assisted living facilities)

Land values in Minnetonka continue to greatly influence the cost of housing. In Minnetonka, land accounts for about one-third of a home’s total value, thus making up a large proportion of the home value. For a single-family home, the median value is $326,850, with only about 1% of the single-family homes valued under $200,000. The median value of Minnetonka’s multi-family for-sale homes (i.e. condominiums and townhomes) in 2007 was $200,000. Multi-family homes contribute to the bulk of the city’s affordable for-sale housing stock because they are generally more affordable than Minnetonka’s single-family detached homes.

The average monthly rents at Minnetonka’s market-rate multi-family apartments are much higher than other market-rate apartments in the metropolitan area. In the 1st Quarter 2007, Minnetonka’s average apartment rents were $1,106 compared to the metropolitan area’s average apartment rental rate of $876. Additionally, only about 20% of Minnetonka rental units are considered affordable under the Metropolitan Council’s definition.
**Housing Goals**

In addition to the city’s agreement to add new affordable and lifecycle housing units as set out in the 2011-2020 affordable and lifecycle housing goals with the Metropolitan Council, the city's 2008 Comprehensive Plan update also provides a series of housing goals that the city will be working towards achieving. These goals include:

1. Preserve existing owner-occupied housing stock.
2. Add new development through infill and redevelopment opportunities.
3. Encourage rehabilitation and affordability of existing rental housing and encourage new rental housing with affordability where possible.
4. Work to increase and diversify senior housing options.
5. Continue working towards adding affordable housing and maintaining its affordability.
6. Link housing with jobs, transit and support services.

More details on these goals as well as action steps are provided in the 2008 City of Minnetonka Comprehensive Plan Update.

**Tools and Implementation Efforts to Provide Affordable and Lifecycle Housing**

**Housing Assistance Programs**

The purpose of housing assistance programs is to provide renters or homeowners help in obtaining a housing unit. These programs can be federal, state, or local programs. For the years 2011-2020, Minnetonka anticipates the following programs will be available to Minnetonka residents.

**Section 8 Voucher Program**
The Section 8 Voucher Program is funded by the U.S. Department of Housing and Urban Development (HUD), and administered by the Metro HRA on behalf of the city. The program provides vouchers to low income households wishing to rent existing housing units. The number of people anticipated to be served depends on the number of voucher holders wishing to locate in Minnetonka as well as the number of landlords wishing to accept the vouchers.

**Shelter Plus Care**
The Shelter Plus Care program is another federal program administered by the Metropolitan Council and sometimes the City of St. Louis Park. This program provides rental assistance and support services to those who are homeless with disabilities. There are a small number of these units (less than 10) in the city currently, and it is unlikely there will be any more added.

**Minnesota Housing Finance Agency Programs**
The Minnesota Housing Finance Agency (MHFA) offers the Minnesota Mortgage Program and the Homeownership Assistance Fund for people wishing to purchase a
home in Minnetonka. The Minnesota Mortgage Program offers a below market rate home mortgage option, while the Homeownership Assistance Fund provides downpayment and closing cost assistance. It is unknown how many people are likely to use these services as it seems to depend on what the market conditions are.

**Homes Within Reach**
Homes Within Reach, the local non-profit community land trust, acquires both new construction and existing properties for their program to provide affordable housing in the city. Using a ground lease, it allows the land to be owned by Homes Within Reach and ensures long-term affordability. Additionally, if rehabilitation is needed on a home, Homes Within Reach will rehabilitate the home before selling the property to a qualified buyer (at or less than 80% area median income). It is anticipated that approximately three to five homes per year will be acquired in Minnetonka as part of this program.

**City of Minnetonka First Time Homebuyer Assistance Program**
In 2010, the city levied for funds to begin a first time homebuyer assistance program. The program is anticipated to begin in 2011. General program details include funds for downpayment and closing costs of up to $10,000, which would be structured as a 30 year loan and available to those at incomes up to 115% of area median income or those that can afford up to a $300,000 loan. The number of households to be assisted depends on the amount of funding available for the program. Currently, this program is anticipated to be funded with HRA levy funds.

**Employer Assisted Housing**
Through employer assisted housing initiatives, Minnetonka employers can help provide their employees with affordable rental or home ownership opportunities. There are several options that employers can use to both increase the supply of affordable housing, as well as to provide their employees with direct assistance by:

- Providing direct down payment and closing cost assistance
- Providing secondary gap financing
- Providing rent subsidies

No employer assisted housing programs have been set up to date; however, it is a tool that the city has identified in the past as an opportunity for those who work in Minnetonka to live in Minnetonka.

**Housing Development Programs**

Housing development programs provide tools in the construction of new affordable housing units—both for owner-occupied units as well as rental units.

**Public Housing**
There are currently 10 public housing units, located in two rental communities, which offer affordable housing options for renters at incomes less than 30% of area median income. The Metropolitan Council and Minneapolis Public Housing Authority administer
the public housing program on behalf of the city. It is not anticipated that more public housing units will be added to the city.

HOME Program
HOME funds are provided through Hennepin County through a competitive application process. The city regularly supports applications by private and non-profit developers that wish to apply for such funds. Homes Within Reach has been successful in the past in obtaining HOME funds for work in Minnetonka and suburban Hennepin County.

Other Federal Programs
The city does not submit applications for other federal funding programs such as Section 202 for the elderly or Section 811 for the handicapped. However, the city will provide a letter of support for applications to these programs.

Minnesota Housing Finance Agency Programs
The Minnesota Housing Finance Agency (MHFA) offers a variety of financing programs, mainly for the development of affordable rental housing. Similar to federal programs, the city does not usually submit applications directly to MHFA; however, it will provide letters of support for applications to the programs.

Metropolitan Council Programs
The Metropolitan Council, through participation in the LCA, offers the Local Housing Incentives Account and Livable Communities Demonstration Account programs to add to the city’s affordable housing stock. Over the past 15 years, the city has received nearly $2 million in funds from these programs, and will continue to seek funding for projects that fit into the criterion of the programs.

Twin Cities Habitat for Humanity
The Twin Cities Habitat for Humanity chapter has had a presence in Minnetonka in the past, completing four affordable housing units. At this time there are no projects planned for Minnetonka, as land prices make it significantly challenging unless the land is donated. The city is willing to consider projects with Habitat for Humanity in the future to assist those with incomes at or below 50% of area median income.

Tax Increment Financing
Minnetonka has used tax increment financing (TIF) to offset costs to developers of providing affordable housing in their development projects. The city will continue to use TIF financing, as permitted by law, to encourage affordable housing opportunities. Unless the state statutes provide for a stricter income and rental limit, the city uses the Metropolitan Council’s definition of affordable for housing units.

Housing Revenue Bonds
The City has used housing revenue bonds for eight rental projects since 1985. Housing revenue bonds provide tax exempt financing for multi-family rental housing. The bond program requires that 20 percent of the units have affordable rents to low and moderate income persons. The city will continue to use housing revenue bonds for projects that
meet housing goals and provide affordable units meeting the Metropolitan Council’s guidelines.

**Housing and Redevelopment Authority (HRA) Levy**
By law, the city’s Economic Development Authority (EDA) has both the powers of an economic development authority and a housing and redevelopment authority (HRA). It can use these powers to levy taxes to provide funding for HRA activities, including housing and redevelopment. The city first passed an HRA levy in 2009 to support Homes Within Reach, and now uses the funds to support its own housing rehabilitation and homeownership activities for those at 100-115% of area median income.

**Community Development Block Grant (CDBG) funds**
CDBG funds are allocated to the city by HUD each year. Based upon the needs, priorities, and benefits to the community, CDBG activities are developed and the division of funding is determined at a local level. CDBG funds are available to help fund affordable housing.

**Livable Communities Fund**
In 1997, special legislation was approved allowing the City to use funds remaining from Housing TIF District No. 1 for affordable housing and Livable Communities Act purposes. The city can use these funds to help achieve its affordable housing goals.

**Housing Maintenance and Rehabilitation**
As the city’s housing stock continues to age, a number of programs are already in place to help keep up the properties.

**Minnesota Housing Finance Agency Programs--Rental**
The Minnesota Housing Finance Agency (MHFA) offers a variety of financing programs, for the rehabilitation of affordable rental housing. The city does not submit applications for these programs as the city does not own any rental housing; however, it will provide letters of support for those wishing to apply.

**Minnesota Fix-up Fund**
The Minnesota Housing Fix-Up Fund allows homeowners to make energy efficiency, and accessibility improvements through a low-interest loan. Funded by MHFA, and administered by the Center for Energy and Environment, the program is available to those at about 100% of area median income.

**Community Fix-up Fund**
The Community Fix-Up Fund, offered through Minnesota Housing, is similar to the Fix-Up Fund, but eligibility is targeted with certain criteria. In the city, Community Fix-Up Fund loans are available to Homes Within Reach homeowners, since community land trust properties cannot access the Fix-Up Fund due to the ground lease associated with their property.
Home Energy Loan
The Center for Energy and Environment offer a home energy loan for any resident, regardless of income, wishing to make energy efficiency improvements on their home.

Emergency Repair Loan
Established in 2005, the City's Emergency Repair Loan program provides a deferred loan without interest or monthly payments for qualifying households to make emergency repairs to their home. The amount of the loan is repaid only if the homeowner sells their home, transfers or conveys title, or moves from the property within 10 years of receiving the loan. After 10 years, the loan is completely forgiven. This loan is funded through the City's federal Community Development Block Grant (CDBG) funds in order to preserve the more affordable single-family housing stock by providing needed maintenance and energy efficiency improvements. The program is available to households with incomes at or below 80% of area median income. On average, 10 to 15 loans are completed each year.

City of Minnetonka Home Renovation Program
In 2010, the city levied for funds to begin a home renovation program. The program is anticipated to begin in 2011. This program would be similar to the existing federal community development block program (CDBG) rehabilitation program. The challenge with CDBG funding involves the maximum qualifying household income of 80% of AMI, Use of HRA funds, would allow the City of Minnetonka Home Renovation Program more flexibility to include households up to 115% AMI, which equates to 82% of all Minnetonka households. The program would be geared toward maintenance, green related investments and mechanical improvements. Low interest loans would be offered up to $7,500 with a five year term.

H.O.M.E. program
The H.O.M.E. program is a homemaker and maintenance program that is designed to assist the elderly. The H.O.M.E. program assists those who are age 60 and older, or those with disabilities with such services as: house cleaning, food preparation, grocery shopping, window washing, lawn care, and other maintenance and homemaker services. Anyone meeting the age limits can participate; however, fees are based on a sliding fee scale. Nearly 100 residents per year are served by this program.

Home Remodeling Fair
For the past 17 years, the city has been a participant in a home remodeling fair with other local communities. All residents are invited to attend this one day event to talk to over 100 contractors about their remodeling or rehabilitation needs. Additionally, each city has a booth to discuss various programs that are available for residents. Approximately 1,200 to 1,500 residents attend each year.
Local Official Controls and Approvals

The city recognizes that there are many land use and zoning tools that can be utilized to increase the supply of affordable housing and decrease development costs. However, with less than two percent of the land currently vacant in the city, most new projects will be in the form of redevelopment or development of under-utilized land. New infill development and redevelopment is typically categorized as a planned unit development (PUD), which is given great flexibility under the current zoning ordinance.

Density Bonus
Residential projects have the opportunity to be developed at the higher end of the density range within a given land use designation. For example, a developer proposing a market rate townhouse development for six units/acre on a site guided for mid-density (4.1-12 units/acre) could work with city staff to see if higher density housing, such as eight units/acre, would work just as well on the site as six units/acre. This is done on a case by case basis rather than as a mandatory requirement, based on individual site constraints.

Planned Unit Developments
The use of cluster-design site planning and zero-lot-line approaches, within a planned unit development, may enable more affordable townhome or single-family cluster developments to be built. Setback requirements, street width design, and parking requirements that allow for more dense development, without sacrificing the quality of the development or adversely impacting surrounding uses, can be considered when the development review process is underway.

Mixed Use
Mixed-use developments that include two or more different uses such as residential, commercial, office, and manufacturing or with residential uses of different densities provide potential for the inclusion of affordable housing opportunities.

Transit Oriented Development (TOD)
TOD can be used to build more compact development (residential and commercial) within easy walking distance (typically a half mile) of public transit stations and stops. TODs generally contain a mix of uses such as housing, retail, office, restaurants, and entertainment. TODs provides households of all ages and incomes with more affordable transportation and housing choices (such as townhomes, apartments, live-work spaces, and lofts) as well as convenience to goods and services.

Authority for Providing Housing Programs

The City of Minnetonka has the legal authority to implement housing-related programs, as set out by state law, through its Economic Development Authority (EDA). The EDA was formed in 1988; however, prior to that time, the city had a Housing and Redevelopment Authority (HRA).
1. **Call to Order**

Chair Yunker called the meeting to order at 5 p.m.

2. **Roll Call**

EDAC commissioners present: Jay Hromatka, Lee Jacobsohn, Melissa Johnston, Jerry Knickerbocker, and Charlie Yunker were present. Jacob Johnson was absent.

Staff present: Community Development Director Julie Wischnack, Economic Development Housing Manager Alisha Gray, and Economic Development Coordinator Rob Hanson.

Councilmember present: Deb Calvert.


3. **Approval of Aug. 9, 2018 Minutes**

Knickerbocker moved, Hromatka seconded a motion to recommend that the EDAC approve the minutes from the Aug. 9, 2018 meeting as included in the agenda. Hromatka, Jacobsohn, Johnston, Knickerbocker, and Yunker voted yes. Johnson was absent. **Motion passed.**

4. **Doran Apartments**

Gray reported.

Ryan Johnson, Doran Companies Chief Financial Officer, stated that:

- **Staff encouraged the applicant to include affordable units.** The first proposal of 235 units included 20 percent of the units being affordable with 50 percent AMI. Through that analysis, the applicant established that $3.95 million would be the TIF request. That would have been about $2,800 per unit, per year. After receiving feedback from the city council, planning commission, and neighbors, the proposal was scaled down to 190 units with 10 percent of those being affordable units. The calculation for those 10 percent was tax abatement versus TIF. That proposal would equal $2.4 million and $4,000 per unit.
- **The current proposal is at $1.760 million which would be just over $6,500 per unit.**
- **The projects around Ridgedale, including The Island and Redstone, do not have affordability requirements.** This would be the first Class A within that submarket that would contribute to the affordability requirements set by the city in 2004.
• Tonka on the Creek and At Home Apartments were projects mentioned in the staff report. One was approved four years ago and the other two and a half years ago. The world has changed since then. Construction costs are up over 15 percent and interest rates have increased. Those are not proper comparisons to what is happening today on the economic side.

• He provided a report showing return parameters. He agreed with Kvivang’s analysis on the cash on cost return included in the staff report of roughly six percent for market-rate units. Another metric is cash on cash return which is cash flow divided by the initial equity investment. Significant drivers are interest rates, debt leverage, and reduced equity. Less equity equals a higher cash-on-cash return. Higher costs and interest rates equal less equity and cash-on-cash return.

• He provided a couple different options with different interest rates that moved the leverage point (Increase debt, lower equity) to stabilize cash flow. As the interest rate is reduced, there is a big difference and impact to the project. Mezzanine financing and leveraging higher (more debt) could be considered, but that is not the applicant’s intent.

• He explained how lost income relates to affordable units and lower value. He calculated that there would be $87,000 in lost income at five percent which would equal $1.752 million in lost value. The proposal request is for $1.760 million in assistance.

• He provided a report on cap rates and a report from a local appraiser who confirms that as affordability is added, then cap rates go up, values go down.

• He estimates that the lost value of the building with 20 percent of the units affordable would be $9.8 million.

• He then goes on to mention that the $4.8 million in proposed TIF assistance would not come close to making up the difference of having 20 percent of affordable housing because the value reduction would be so significant. The illustration is based on a 5.25 cap rate with 20 percent affordable units.

• The proposal should be looked at on its own rather than compared to past projects.

• He was available for questions.

Knickerbocker asked if the applicant considered going from 50 percent AMI to 60 percent AMI, or going from 10 percent affordable units rather than 20. Mr. Johnson answered in the affirmative. He explained that 5 percent units affordable at 60 percent AMI were requested because if the applicant would go to 10 percent units affordable and 50 percent AMI, then the gap would grow. Tax abatement over 20 years would not fill that gap. The loss in valuation would not be recovered. As density has shrunk, everything has been compressed.

Knickerbocker understood the argument of looking at the project on its own rather than comparing it to past projects. The two projects referenced in the staff report were constructed on undeveloped land. Asked where does this all get resolved and how can this satisfy the developer’s needs. Mr. Johnson said that the applicant felt good about the 168-unit project. There are a 100 different reasons why the current proposal’s cost basis is different from previous projects, but, at the same time, he did not know if the assistance per unit should be tied directly to the city’s previous project approvals. Perhaps projects in the future would be higher because of the construction-cost market and interest rate hikes.
Jacobsohn asked if the project would be built with no affordable housing component and no assistance. Mr. Johnson answered that numbers would work to move forward with a project that doesn’t include affordable housing or city assistance.

Hromatka asked Kvilvang if five percent is a reasonable cap rate to use for a project like this. Kvilvang said that there is currently a cap rate range of five percent to six percent for similar projects.

Kvilvang reminded commissioners that the city is not required to give tax abatement or tax increment financing to a developer. Public assistance may be provided in return for something to help the city reach a goal such as redevelopment of a blighted property or affordable housing. She gave a presentation that reviewed the affordability requirements for similar projects. Overall, the projects she reviewed were done with even higher development costs and lower rent structures, but were able to be done with a smaller amount of assistance from the city. The projects shown had 20 percent affordable units and 50-60 percent AMI. That is staff’s recommendation for this project. She provided the background information for the comparison projects. Her example of Marsh Run showed the project at 20 percent affordable at 50% AMI and included 16 years of tax increment, which would be $4.4 million. After the 17th year when TIF is finished. The cash on cash return works out to be 11.7%, well within the parameters of typically what investors like to see (10 percent cash on cash). Doran likes to see an 11 percent return. Kvilvang saw a viable project with 20 percent affordable units with 4.8 million in assistance through TIF.

Chair Yunker invited anyone in the audience to provide comments.

Pam Lewis, 980 Fairfield Court, stated that she is concerned with the wildlife, traffic, safety, and livability of the neighborhood.

No one else present chose to speak.

Hromatka stated that he, Jacobsohn, and Luke were on a subcommittee that reviewed the proposal in depth. Five percent of the units being affordable would be low. The proposal is requesting to receive 50 percent more than the high-water mark of assistance per unit.

Jacobsohn agreed that 5 percent of the units, 9 units, would not have enough of a significant impact for the city and creates a high cost per unit. The cost per unit at 20 percent of units, 34 units, would be at the high end. It would be acceptable for approval. It could also be considered if the property is one that the city would like to change from the existing office buildings. The proposal could be built without assistance and no affordable housing. He did not think that 5 percent of the units would be enough.

Johnston asked if the comprehensive guide plan includes any specifics for the area regarding affordable housing. Wischnack explained that there is an entire section of the comprehensive guide plan dedicated to the housing goals of the city. It is available on eminnetonka.com.

Calvert stated that a majority of councilmembers want to make an effort to reach the city’s affordable housing goals and make sure that the affordable housing units would not be segregated to a specific area of the city. This proposal would provide an opportunity to provide
more affordable housing. There are quite a few affordable housing units located in the first ward. The proposed site would be located close to the transit station, retail, and other amenities. She was worried that if the city offered TIF for a small number of units that a bad precedent would be set for future developments. The other luxury apartment complexes mention by Mr. Johnson were ones that the city was not able to offer assistance. This is the wave of the future. Affordable housing units have more consistent residency than market rate units. Affordable units are a guaranteed income stream much more so than a market rate unit. She did not want to lose the opportunity to have affordable units, but she did want to impress upon the applicant that she thought 20 percent would be the goal. It is written into the goals for the city and she would be supporting that amount.

Knickerbocker moved, there was no second, to recommend that the city council approve a proposal with 5 percent of the units meeting affordability guidelines. Motion failed.

Knickerbocker moved, Jacobsohn seconded a motion to recommend that the city council approve a proposal with 20 percent of the units meeting affordability guidelines and offering assistance of up to $4.8 million. Hromatka, Jacobsohn, Johnston, Knickerbocker, and Yunker voted yes. Johnson was absent. Motion passed.

5. Fair Housing Policy

Gray reported.

In response to Hromatka’s question, Gray explained that the policy would have been adopted eventually. It is included in the 2040 comprehensive guide plan as a recommendation. Given that the grant funding is tied to it, the city is taking action now rather than next year.

Hromatka asked if it made sense to include a specific number of years in which to review the policy. Gray answered that the specific time period was left out because there is fair housing work that is currently being amended. Wischnack said that a reminder could be added as a project page in the EIP so that it would be reviewed every year.

Johnston asked if the classifications change at the federal level, then could the city still maintain the protected classes as a municipality. Gray responded that the protected classes could be listed in the policy. Johnston supports that being done. Wischnack will add language to the policy before the city council’s review.

Knickerbocker liked seeing all of the language changes over time. Gray clarified that the policy mainly relates to projects that receive city financing. The policy is a guide to referral services. Hanson explained that the city would refer someone with a fair housing complaint to the Department of Housing and Urban Development or the Minnesota Department of Human Rights. Wischnack clarified that the requirements are not new.

Jacobsohn noted that the rules already apply to a homeowner selling his or her house. The policy says that the city serves as a clearing house for those complaints. The rules that apply to a single-family homeowner would not change, there would be an additional communication vehicle now available. Gray agreed.

Wischnack explained that if a seller of a house based his or her decision to not sell to a buyer because the buyer was a member of one of the protected classes that would be a violation of
law the same as it has been since the Fair Housing Policy was enacted in 1968. The city attorney did review the proposed policy.

Hromatka understood that the city is adopting the federal Fair Housing Policy similar to other cities that have already done the same thing.

Chair Yunker saw it as restating the Fair Housing Policy.

Hromatka moved, Jacobsohn seconded a motion to recommend that the city council approve the Fair Housing Policy. Hromatka, Jacobsohn, Johnston, Knickerbocker, and Yunker voted yes. Johnson was absent. Motion passed.

This item is scheduled to be reviewed by the city council on Dec. 3, 2018.

6. Staff Report

Gray and Wischnack gave the staff report:

- Megan Luke left the EDAC to serve on the planning commission.
- There is one remaining bidder for the SWLRT. There is an extension until Nov. 15, 2018 to accept additional bids. Construction could begin this year with a completion date of 2023.
- Staff continues to meet with Metro Transit on a quarterly basis. Routes 614 and 671 are being looked at to be cut unless there would be an increase in ridership.
- An application for The French Academie on Whitewater Drive is being reviewed.
- A concept plan is being reviewed for Highcroft Meadows on Orchard Road.
- The sign ordinance update has been adopted.
- The Mariner project is under review this month.
- An application for Williston Heights, a four-lot subdivision, is being reviewed.
- The public safety facility application will be reviewed this month.
- Villas of Glen Lake is under review.
- The Renneke property application for market-rate apartments is being reviewed.
- The building permit for Dominium is being reviewed.
- A grading permit is being reviewed for Ridgedale Executive Apartments.
- Grading and building permits are being reviewed for Ridgedale Active Adult Apartments.
- The grading is being done for Solbekken Villas.
- Minnetonka Hills Apartments are under construction.
- Havenwood of Minnetonka is under construction.
- Crest Ridge Senior Housing is nearing completion.
- The RiZe at Opus is under construction.
- LISC is working on creating a visioning process for a site on Shady Oak Road. That work will begin in Feb.
- There are five loans in process. Two Home Enhancement loans have closed. The two-bid process was slowing things up because contractors were not showing up to bid a project, so the requirement was changed to one bid.
- CDBG has approved one loan since Aug. and five others are going through the approval process.

7. Other Business
The SLUC lunch entitled “Harstad versus City of Woodbury: What’s Next” is scheduled for Nov. 28, 2018 at 11:30 a.m. in Golden Valley.

The ULI MN 10th Annual Housing Summit is scheduled to be held from 8 a.m. to 11 a.m. on Dec. 14, 2018 at Dorsey and Whitney in Minneapolis.

The next EDAC meeting is scheduled for Jan. 24, 2018 at 6 p.m.
8. Adjournment

Knickerbocker moved, Yunker seconded a motion to adjourn the meeting at 7:40 p.m. Motion passed unanimously.
Resolution No. 2019-_______

Resolution adopting a modification to the development program for Development District No. 1 and establishing Marsh Run Tax Increment Financing District therein and adopting a tax increment financing plan therefor

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

Section 1. Recitals.

1.01. The Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority") has heretofore established Development District No. 1 and adopted a Development Program therefor. It has been proposed by the Authority and the City that the City adopt a Modification to the Development Program for Development District No. 1 (the "Development Program Modification") and establish Marsh Run Tax Increment Financing District (the "District") therein and adopt a Tax Increment Financing Plan (the "TIF Plan") therefor (the Development Program Modification and the TIF Plan are referred to collectively herein as the "Program and Plan"); all pursuant to and in conformity with applicable law, including Minnesota Statutes, Sections 469.090 to 469.1082 and Sections 469.174 to 469.1794, all inclusive, as amended, (the "Act") all as reflected in the Program and Plan, and presented for the Council's consideration.

1.02. The Authority and City have investigated the facts relating to the Program and Plan and have caused the Program and Plan to be prepared.

1.03. The Authority and City have performed all actions required by law to be performed prior to the establishment of the District and the adoption and approval of the proposed Program and Plan, including, but not limited to, notification of Hennepin County and Independent School District No. 270 having taxing jurisdiction over the property to be included in the District, a review of and written comment on the Program and Plan by the City Planning Commission, and the holding of a public hearing upon published notice as required by law.

1.04. Certain written reports (the "Reports") relating to the Program and Plan and to the activities contemplated therein have heretofore been prepared by staff and consultants and submitted to the Council and/or made a part of the City files and proceedings on the Program and Plan. The Reports include data, information and/or substantiation constituting or relating to the basis for the other findings and determinations made in this resolution. The Council hereby confirms, ratifies and adopts the Reports, which are hereby incorporated into and made as fully a part of this resolution to the same extent as if set forth in full herein.

1.05. The City is modifying the boundaries of Development District No. to make them coterminous with the City corporate boundaries.
Section 2. Findings for the Adoption and Approval of the Development Program Modification.

2.01. The Council approves the Development Program Modification, and specifically finds that: (a) the land within the Project Area as expanded would not be available for redevelopment without the financial aid to be sought under the Development Program; (b) the Development Program, as modified, will afford maximum opportunity, consistent with the needs of the City as a whole, for the development of the Project by private enterprise; and (c) that the Development Program, as modified, conforms to the general plan for the development of the City as a whole.

Section 3. Findings for the Establishment of Marsh Run Tax Increment Financing District.

3.01. The Council hereby finds that Marsh Run Tax Increment Financing District is in the public interest and is a "housing district" under Minnesota Statutes, Section 469.174, Subd. 11 of the Act.

3.02. The Council further finds that the proposed development would not occur solely through private investment within the reasonably foreseeable future, that the Program and Plan conform to the general plan for the development or redevelopment of the City as a whole; and that the Program and Plan will afford maximum opportunity consistent with the sound needs of the City as a whole, for the development or redevelopment of the District by private enterprise.

3.03. The Council further finds, declares and determines that the City made the above findings stated in this Section and has set forth the reasons and supporting facts for each determination in writing, attached hereto as Exhibit A.

Section 4. Public Purpose.

4.01. The adoption of the Program and Plan conforms in all respects to the requirements of the Act and will help fulfill a need to develop areas of the City which are already built up, to provide housing opportunities, to improve the tax base and to improve the general economy of the State and thereby serves a public purpose. For the reasons described in Exhibit A, the City believes these benefits directly derive from the tax increment assistance provided under the TIF Plan. A private developer will receive only the assistance needed to make this development financially feasible. As such, any private benefits received by a developer are incidental and do not outweigh the primary public benefits.

Section 5. Approval and Adoption of the Program and Plan.

5.01. The Program and Plan, as presented to the Council on this date, including without limitation the findings and statements of objectives contained therein, are hereby approved, ratified, established, and adopted and shall be placed on file in the office of the Community Development Director.

5.02. The staff of the City, the City's advisors and legal counsel are authorized and directed to proceed with the implementation of the Program and Plan and to
negotiate, draft, prepare and present to this Council for its consideration all further plans, resolutions, documents and contracts necessary for this purpose.

5.03 The Auditor of Hennepin County is requested to certify the original net tax capacity of the District, as described in the Program and Plan, and to certify in each year thereafter the amount by which the original net tax capacity has increased or decreased; and the Authority is authorized and directed to forthwith transmit this request to the County Auditor in such form and content as the Auditor may specify, together with a list of all properties within the District, for which building permits have been issued during the 18 months immediately preceding the adoption of this resolution.

5.04 The Community Development Director is further authorized and directed to file a copy of the Program and Plan with the Commissioner of the Minnesota Department of Revenue and the Office of the State Auditor pursuant to 469.175, Subd. 4a of the Act.

Adopted by the City Council of the City of Minnetonka, Minnesota this 18th day of March, 2019.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, Acting 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 March 18, 2019.

__________________________
Becky Koosman, Acting City Clerk
EXHIBIT A
RESOLUTION NO. ____________

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan for Marsh Run Tax Increment Financing District, as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. Finding that the Marsh Run Tax Increment Financing District is a housing district as defined in M.S., Section 469.174, Subd. 11.

Marsh Run Tax Increment Financing District consists of two parcels. The development will consist of 175-units of rental housing At least 20 percent of the units receiving assistance will have incomes at or below 50 percent of statewide median income. Appendix E of the TIF Plan contains background for the above finding.

2. Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.

The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future: This finding is supported by the fact that the development proposed in this plan is a housing district that meets the City's objectives for development and redevelopment. The cost of land acquisition, site and public improvements and utilities makes this housing development infeasible without City assistance. Due to decreased rental income from affordable units, there is insufficient cash flow to provide a sufficient rate of return, pay operating expenses, and service the debt. This leaves a gap in the funding for the project and makes this housing development feasible only through assistance, in part, from tax increment financing. The developer was asked for and provided a letter and a proforma as justification that the developer would not have gone forward without tax increment assistance.

The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the TIF District permitted by the TIF Plan: This finding is justified on the grounds that the cost of land acquisition, site and public improvements, utilities and construction of affordable housing add to the total development cost. Historically, the costs of site and public improvements as well as reduced rents required for affordable workforce housing in the City have made development infeasible without tax increment assistance. The City reasonably determines that no other development of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

3. Finding that the TIF Plan for Marsh Run Tax Increment Financing District conforms to the general plan for the development or redevelopment of the municipality as a whole.

The Planning Commission reviewed the TIF Plan on February 7, 2019 and found that the TIF Plan conforms to the general development plan of the City.
4. *Finding that the TIF Plan for Marsh Run Tax Increment Financing District will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Development District No. 1 by private enterprise.*

Through the implementation of the TIF Plan, the Authority or City will provide an impetus for residential development, which is desirable or necessary for increased population and an increased need for life-cycle housing within the City.
Resolution No. 2019-_______

Resolution approving contract for private development and a construction addendum with the Economic Development Authority in and for the City of Minnetonka, Minnesota and DC-OV Minnetonka, LLC

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

Section 1. Background.

1.01. The City and the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.

1.02. In order to facilitate the development of affordable housing within the City, the City and the Authority intend to establish a housing tax increment financing district (the “TIF District”) within the City pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

1.03. DC-OV Minnetonka, LLC, a Minnesota limited liability company (the “Developer”), proposes to acquire certain property (the “Development Property”) within the TIF District and construct an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking (the “Minimum Improvements”). The Authority, the City, and the Developer propose to enter into a Contract for Private Development (the “Development Agreement”) to set forth the terms of the development of the Minimum Improvements.

1.04. In order to make the Minimum Improvements economically feasible for the Developer to construct, the Authority proposes to reimburse the Developer for a portion of the land acquisition costs and certain site improvements costs related to the Minimum Improvements with tax increment revenue generated from the Development Property. The Authority intends to issue to the Developer a Tax Increment Revenue Note (the “TIF Note”) in the maximum principal amount of $4,800,000 to reimburse the Developer for qualified costs of the Minimum Improvements.

1.05. Bremer Bank, National Association, a national banking association (the “Lender”), has agreed to make a loan to the Developer in the amount of approximately $32,500,000 (the “Lender Loan”) to finance a portion of the costs of the Minimum Improvements, pursuant to a Construction Loan Agreement between the Developer and the Lender. To secure the repayment of the Lender Loan, the Developer will execute and deliver to the Lender a Real Estate Note in the amount of $32,500,000 and a Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents.
1.06. As a condition for providing the Lender Loan, the Lender requires that the Developer assign to the Lender all of its right, title, and interest in and to the Development Agreement (including any documents and agreements attached to the Development Agreement). The Lender also requires that the Authority deliver the TIF Note, upon issuance, to the Lender to be held as collateral security for the Lender Loan.

1.07. In addition to the Development Agreement, there has been presented before this Council a Construction Addendum (the “Construction Addendum”) proposed to be entered into between the Authority, the City, and the Developer containing (i) timeframes for the construction of certain site improvements described in the Development Agreement (the “Site Improvements”); (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.

1.08. There has also been presented before this Council a Collateral Assignment of Contract for Private Development (the “Collateral Assignment”) proposed to be entered into between the Authority, the City, the Developer, and the Lender, pursuant to which the Developer will assign to the Lender all of the Developer’s right, title, and interest in and the Development Agreement (including any documents and agreements attached to the Development Agreement) and the Authority will deliver the TIF Note to the Lender as collateral security for the Lender Loan. The Collateral Assignment also subordinates the City’s and the Authority’s interests in the Development Agreement to the Lender’s mortgage. The City and the Authority maintain their ability to exercise their rights and remedies under the Development Agreement.

Section 2. Approvals.

2.01. The City Council approves the Development Agreement, the Construction Addendum, and the Collateral Assignment in substantially the forms on file in City Hall. The Mayor and City Manager are hereby authorized and directed to execute and deliver the Development Agreement, the Construction Addendum, and the Collateral Assignment. All of the provisions of the Development Agreement, the Construction Addendum, and the Collateral Assignment, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Development Agreement, the Construction Addendum, and the Collateral Assignment shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determination.

2.02. The Mayor and the City Manager are hereby authorized to execute and deliver to
the Developer any and all documents deemed necessary to carry out the intentions of this resolution, the Development Agreement, the Construction Addendum, and the Collateral Assignment.

Section 3. Effective Date.

3.01. This resolution shall be effective upon the establishment of the TIF District and the execution in full of the Development Agreement, the Construction Addendum, and the Collateral Assignment.

Adopted by the City Council of the City of Minnetonka, Minnesota this 18th day of March, 2019.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting City Clerk
City Council Agenda Item #14A
Meeting of March 18, 2019

Brief Description
Conditional use permit for a religious institution at 11021 Hillside Lane West; 2327, 2333 and 2339 Hopkins Crossroad; and 11170 Mill Run

Recommendation
Adopt the resolution approving the conditional use permit

Background
In 2018, the Chabad Center for Jewish Life requested a conditional use permit (CUP) to operate a religious institution on Hopkins Crossroad. The city council denied the CUP, generally finding:

- Vehicle access from Hopkins Crossroad could present a traffic safety issue; and
- The intensity of use was not appropriate, given the size of the site.

Proposal
The Chabad Center for Jewish Life has presented a new proposal. As submitted, the site would be comprised of five properties adjacent to Hopkins Crossroad and Hillside Lane; (the previous application was for three properties). From this, four lots would be combined into one lot for the religious institution and existing home. The existing lot on Hillside Lane West would remain for site access and a future residential home. The table below outlines the general difference between the 2018 and 2019 proposals.

<table>
<thead>
<tr>
<th></th>
<th>2018 Proposal</th>
<th>2019 Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Area</td>
<td>1.95 acres</td>
<td>2.86 acres – Religious Institution Lot</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.62 acres – Future Single-Family Home Lot</td>
</tr>
<tr>
<td>Floor Area*</td>
<td>15,000 sq.ft. – institution</td>
<td>16,400 sq. ft. – institution</td>
</tr>
<tr>
<td></td>
<td>4,050 sq.ft. – existing Mill Run home</td>
<td>4,050 sq.ft. – existing Mill Run home</td>
</tr>
<tr>
<td>Site Access</td>
<td>Hopkins Crossroad</td>
<td>Hillside Lane West</td>
</tr>
</tbody>
</table>

* as defined by city code

Planning Commission Hearing
The planning commission considered the formal conditional use permit request on Feb. 7, 2019. The commission report and associated plans are attached. Staff recommended approval of the CUP, finding:

- The proposed religious use of the site is generally appropriate. By city code, religious institutions are conditionally-permitted uses in residential areas.
• The proposed religious institution would meet the conditional use permit standards.
• The traffic and parking demand generated by the use could be accommodated by the existing roadways and proposed parking lot.
• The proposal responds to feedback received during the 2018 review.

At that meeting, a public hearing was opened. Twelve people addressed the commission. Those opposed to the proposal commented that – though the proposal was a considerable improvement to the 2018 proposal – potential traffic and overflow parking remain of significant concern. Those who spoke in favor of the proposal suggested that the proposed use would be a good addition to the neighborhood.

Following the public hearing, the commission discussed the proposal and noted that they appreciated the traffic concerns raised during the hearing. Commissioners concurred with staff’s opinion that the proposal met the conditional use permit standards.

**Planning Commission Recommendation**

On a 6-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes are attached.

**Since Planning Commission Hearing**

Since the planning commission meeting, the applicant has submitted a revised narrative – correcting a few typographical errors – and revised landscape plan. This new landscape plan is referenced in the provided resolution. Additional public comments have also been received, which are attached.

**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; and (3) similar uses exist in residential areas throughout the community.

**Staff Recommendation**

Staff recommends the city council adopt the resolution approving a conditional use permit for a religious institution at 11021 Hillside Lane West; 2327, 2333 and 2339 Hopkins Crossroad; and 11170 Mill Run.

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

Originator:  
Susan Thomas, AICP, Assistant City Planner
MINNETONKA PLANNING COMMISSION
Feb. 7, 2019

Brief Description
Conditional use permit for a religious institution at 11021 Hillside Lane West; 2327, 2333 and 2339 Hopkins Crossroad; and 11170 Mill Run

Recommendation
Recommend the city council adopt the resolution approving the conditional use permit

Background
In 2018, the Chabad Center for Jewish Life requested a conditional use permit (CUP) to operate a religious institution on Hopkins Crossroad. The city council denied the CUP, generally finding:

- Vehicle access from Hopkins Crossroad could present a traffic safety issue; and
- The intensity of use was not appropriate, given the size of the site.

Proposal
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<td>15,000 sq.ft. – institution</td>
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<td></td>
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<tr>
<td>Site Access</td>
<td>Hopkins Crossroad</td>
<td>Hillside Lane West</td>
</tr>
</tbody>
</table>

* as defined by city code

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 conditional use permit request.

- Is the proposed religious institution 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 religious institution 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 proposal would meet the objective CUP standards:

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Access</strong></td>
<td><strong>Collector or Arterial Street</strong></td>
</tr>
<tr>
<td><strong>Building Setback</strong></td>
<td><strong>Collector Street</strong></td>
</tr>
<tr>
<td><strong>Minimum 50 ft.</strong></td>
<td><strong>(Hillside Lane West)</strong></td>
</tr>
<tr>
<td><strong>Parking Setback</strong></td>
<td><strong>Minimum 20 ft.</strong></td>
</tr>
<tr>
<td><strong>Parking Spaces</strong></td>
<td><strong>39 spaces</strong></td>
</tr>
<tr>
<td><strong>Impervious Surface</strong></td>
<td><strong>Maximum 70%</strong></td>
</tr>
</tbody>
</table>

* see parking section for further discussion

**Subjective Standards.** The subjective standards of the ordinance focus on creating design compatibility and protection of neighboring properties. Compliance with these subjective standards must be evaluated with the understanding that the ordinance contemplates construction of religious institutions on residentially zoned-property.

- **Design Compatibility.** Generally, the city has not interpreted design compatibility to mean “designed to look like” surrounding structures. This is evident in review of the 21 religious buildings that are currently located on properties zoned R-1, low-density residential. None of these existing institutions “look like” or are “sized like” a single-family home. Rather, the city has held that design compatibility means some level of complementary design features.

Staff finds that the proposed Chabad Center has been attractively designed. The plan incorporates natural building materials and neutral color palate, which are residential in character. Additionally, proposed building height would be consistent with residential homes. City code allows homes to be constructed to a height of 35 feet, as measured to the midpoint of a pitched roof. The proposed building would have an average height of 17 feet, measuring 23 feet at its highest point. The following diagram notes then general architectural differences between the 2018 and 2019 proposal.
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.

- Can anticipated traffic 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) existing traffic volume and operations; (2) the impact of the proposal on existing traffic volume and operations; and (3) if a proposal’s impact would be negative, how that impact could be mitigated.

The traffic study focused the Hopkins Crossroad/Hillside Lane intersection and included evaluation of the Tanglen Elementary School /Hillside Lake intersection. The study 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:

- Under current conditions, vehicles accessing Hopkins Crossroad experience some delay. However, overall the Hopkins Crossroad/Hillside Lane West intersection operates at an acceptable level of service (LOS A) during the peak hours reviewed. (For more information on LOS, see the attached traffic study.)

- No significant operation impacts are expected as a result of the proposed Chabad center. Delays may increase – 3 to 10 seconds depending on time of day – for vehicles accessing Hopkins Crossroad from Hillside Lane W. However, the intersection would continue to operate an LOS A.
Can anticipated parking demand be accommodated?

Yes. By city code, one parking space is required “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 centers or other uses operated on the grounds.” The city has not historically required additional parking for office and classrooms uses at religious institutions. Generally, when the main sanctuary space of such institution is fully occupied, these other spaces are not and vice versa.

City code requires 39 parking spaces be provided for the Chabad Center. As proposed, a total of 60 stalls would be constructed on site. Staff has identified space for at least 16 additional proof-of-parking spaces, for a total of 76 available spaces. Proof-of-parking spaces are spaces that could be constructed in the future if the city finds that there is a regularly demonstrated need for these spaces. Until the spaces are needed, proof-of-parking areas remains green space.

<table>
<thead>
<tr>
<th>Available Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Striped Stalls</td>
</tr>
<tr>
<td>Geogrid Stalls</td>
</tr>
<tr>
<td>Proof-of-Parking</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

During the 2018 review, the required parking for the proposed facility was discussed at some length. It was suggested that the main sanctuary space and the proposed social hall should be taken into consideration when calculating parking. As proposed, the Chabad Center site could accommodate parking for the sanctuary and social hall.

<table>
<thead>
<tr>
<th>Code Requirement</th>
<th>Seating</th>
<th>Required Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Sanctuary</td>
<td>98</td>
<td>39 spaces</td>
</tr>
<tr>
<td>TOTAL</td>
<td>98</td>
<td>39 spaces</td>
</tr>
<tr>
<td>Suggested Calculation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Main Sanctuary</td>
<td>98</td>
<td>39 spaces</td>
</tr>
<tr>
<td>Social Hall</td>
<td>72</td>
<td>29 spaces</td>
</tr>
<tr>
<td>TOTAL</td>
<td>170</td>
<td>68 spaces</td>
</tr>
</tbody>
</table>

Summary Comments

Staff acknowledges that the proposed Chabad Center for Jewish Life would visually alter the immediate area. 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 met CUP requirements; and (3) similar uses exist in residential areas throughout the community. Further, the proposal responds to the council’s 2018 concerns related to vehicle access from Hopkins Crossroad and the overall size of the site.

Staff Recommendation

Recommend the city council adopt the resolution approving a conditional use permit for a religious institution at 11021 Hillside Lane West; 2327, 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 Guide Plan designation:  low-density residential
Existing Zoning:  R-1

Single-Family Lot The submitted plans illustrate that an additional lot could be created for a future single-family home on Hillside Lane West.  As presented, the lot would exceed all minimum standards as outlined in the subdivision ordinance.

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Buildable</th>
<th>Right-of-Way</th>
<th>Setback</th>
<th>Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>22,000 sq. ft.</td>
<td>3,500 sq. ft.</td>
<td>80 ft.</td>
<td>110 ft.</td>
<td>125 ft.</td>
</tr>
<tr>
<td>Proposed</td>
<td>27,170 sq. ft.</td>
<td>13,760 sq. ft.</td>
<td>110 ft.</td>
<td>110 ft.</td>
<td>245 ft.</td>
</tr>
</tbody>
</table>

* numbers rounded down to closest 5 ft. or 5 sq. ft.

Proposed Site Conditions To accommodate the proposed religious facility the following site changes would occur:

Grading

Most of the site would be graded to “level” the central portion of the site. However, the amount of cut and fill would be minimal; up to four feet of excavation would be necessary to appropriately construct the driveway and up to two feet of fill would be placed in areas of the parking lot. As a condition of approval, a final grading plan would need to be submitted for review and approval of the city engineer prior to issuance of a grading permit.

Tree removal

The tree ordinance establishes a maximum 35 percent removal of high-priority trees for subdivision projects. This Chabad proposal is for redevelopment of existing, developed lots. As such, the removal threshold for does not apply. Nevertheless, staff notes that the proposal would result in removal of 17.5 percent of the site’s high-priority trees.

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Removed</th>
<th>% Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Priority</td>
<td>40</td>
<td>7</td>
<td>17.5%</td>
</tr>
<tr>
<td>Significant</td>
<td>85</td>
<td>62</td>
<td>73%</td>
</tr>
</tbody>
</table>
The ordinance requires 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.

**Landscaping**

The applicant proposes to plant 88 trees throughout the site, with particularly attention given to providing a visual buffer to the adjacent single-family homes north and east of the property. As a condition of approval, a final landscaping plan must be submitted, substituting some of the proposed plants with other species to avoid planting a monoculture and to ensure appropriate plantings within the parking lot.

**Driveway Access Point**

The location of the driveway access point on Hillside Lane West has been evaluated by the city engineer and found to be adequate from a site distance perspective. The location would be evaluated again as part of any grading permit review.

**Floor Area Ratio**

During the 2018 review, the floor area ratio (FAR) of the proposed facility was discussed at some length. Though the zoning ordinance does not establish a maximum FAR for religious facilities, the concept was used as a measurable substitute for “intensity of use.”

There are 21 existing religious facilities in Minnetonka that are located in residential areas. The FAR of these facilities ranges from 0.05 to 0.19. The FAR of the proposed Chabad Center would be within this range. This also true if the existing home on Mill Run were included in the FAR calculation.
<table>
<thead>
<tr>
<th></th>
<th>Religious Institution</th>
<th>Religious Institution and existing home</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Lot Area</td>
<td>2.86 acres</td>
<td>2.86 acres</td>
</tr>
<tr>
<td>Total Floor Area</td>
<td>16,408 sq. ft.</td>
<td>20,460 sq. ft.</td>
</tr>
<tr>
<td>(FAR)</td>
<td>0.13</td>
<td>0.16</td>
</tr>
</tbody>
</table>

The proposed Chabad Center would also fall within the FAR range of the 134 homes within the proposal’s notice area, which is 0.01 to 0.27. (See attached map.)

**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 immediate 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 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 Hillside Lane West, which is defined as a neighborhood collector 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 98 people, requiring 39 parking spaces. 60 parking spaces would be available on site; this included striped and geogrid spaces. 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:** The institution site would be 46 percent impervious.

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, include 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, 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 new building and parking lot would be appropriately located at the center of the site, maintaining 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 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 location of buildings relative to open space and paved areas is appropriate. The proposed Chabad Center has been attractively designed. The plan incorporates natural building materials and neutral color palate, which are residential in
character. Additionally, proposed building height would be consistent with residential homes. City code allows homes to be constructed to a height of 35 feet, as measured to the midpoint of a pitched roof. The proposed building would have an average height of 17 feet, measuring 23 feet at its highest point.

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 result in 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.

### 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.)

### Pyramid of Discretion

![Pyramid of Discretion Diagram](image)

This proposal: Conditional Use Permit

### Motion Options

The planning con
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 134 property owners. At the time of publication of this report, the city has received no written comments.

Deadline for Action April 15, 2019
March 12, 2019

Mayor Brad Wiersum
Members of the Minnetonka City Council
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Chabad Center For Jewish Life
   Conditional Use Permit Application
   11021 Hillside Lane West, 2327,2333 and 2339 Hopkins Crossroad, 11170 Mill Run

Dear Mayor and City Council Members:

I represent the Chabad Center For Jewish Life and wish to make a few comments concerning why the council should approve the conditional use application to construct a religious facility at the above location.

The Council is, of course, well aware that the applicant’s 2018 application for a conditional use permit on a portion of this site was denied. Although respectfully disagreeing with the Council’s 2018 decision, Chabad did not appeal that action. Rather, Chabad took to heart the comments and concerns of the Council and neighbors and created a new design on a larger site. At the outset, I want to emphasize something that is readily apparent from the renderings, drawings and other documents submitted by the applicant’s architect, Petersen/Keller. The Chabad Center will be a stunning and elegant structure which will fit naturally within the existing neighborhood. The design and scale of the building, the use of stone and glass, and the landscape plan which buffers the project from the surrounding neighbors and adjacent streets are the result of careful planning by all concerned, including input from neighbors and this City Council. Significantly, the mass (FAR) and height of the building are well below the maximum allowed by code.

The basic facts in this matter can be condensed into the following summary:

1. The subject property is zoned R-1. Religious institutions are conditionally permitted uses in residential zones. Twenty-one (21) similar uses to the one proposed on the subject property exist in residential zones throughout the City of Minnetonka.

2. City staff and the Minnetonka Planning Commission have already determined, and the record amply supports the fact, that the proposed use would meet all objective and subjective conditional use standards.
3. The January 31, 2019 SRF Consulting Group, Inc. traffic study concluded:

- The Hopkins Crossroad (CR 73) and Hillside Lane intersection currently operates at an acceptable overall LOS A during the peak hours reviewed with the existing geometric layout and traffic control.

- Results of the year 2021 build operations analysis indicate that all study intersections are expected to continue to operate at an overall LOS A during the reviewed peak hours.

- No significant operational impacts are expected as a result of the proposed development.

Each of the above conclusions is amply supported by data and analysis contained in the January 31, 2019 SRF Memorandum submitted to the Assistant City Planner.

In denying the Applicant’s 2018 application, the City Council acknowledged that the application met all objective conditional use standards. As set forth in the Staff Report, the 2019 application meets these standards as well. The Council denied the 2018 application due to its subjective belief that the proposed use was too intense for the small size of the property, the entrance from Hopkins Crossroad presented safety issues, and the improvements for Hopkins Crossroad which would alleviate these issues would not exist for several years. Clearly, each of these concerns has been addressed and completely negated. As noted in the Staff Report, the site size in 2018 was 1.95 acres compared to 2.86 in 2019 with the floor area in 2019 being only slightly larger. In 2018 the floor area ratio (FAR) was used by the Council in discussing intensity of use even though the ordinance does not establish a maximum FAR for religious facilities. As noted in the Staff Report, there are 21 existing religious facilities in Minnetonka located in residential areas. The FAR of these facilities ranges from 0.05 to 0.19. The FAR of the proposed Chabad Center would be well within this range. This is also true if the existing home on Mill Run is included in the FAR calculation. Without question, the intensity of use is no longer a legitimate issue. The Hopkins Crossroad access issue which concerned this Council in 2018 is also no longer an issue. The entrance and exit to the Chabad building will be from Hillside Lane and, as set forth in the SRF Memorandum, no significant operational impacts are expected as a result of the proposed development.

The City Attorney’s Memorandum correctly summarizes Minnesota law in stating “If an applicant meets the requirements set forth in the zoning code for the issuance of a conditional use permit (CUP), the applicant is legally entitled to have the CUP approved.” One additional caveat is instructive here. The courts in Minnesota have also long held that denial of a conditional use permit must be based on something more concrete than neighborhood opposition and expressions of concern for public safety and welfare. Chanhassen Estates Residents Ass’n v. City of Chanhassen, 342 N.W.2d 335 (Minn. 1984); Inland Construction Co. v. City of Bloomington,
195 N.W. 2d 558 (1972). In short, the record must support substantive and identifiable reasons for a denial. The record in this matter does not support any rationale for a denial.

Finally, as the Council is well aware, because this application involves a religious institution, the dictates of the federal Religious Land Uses and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc (“RLUIPA”), must be adhered to. The City Attorney’s Memorandum summarizes the scope of RLUIPA and sets forth the basic prohibition against any land use regulation that imposes a “substantial burden” on the exercise of a person or institution except where justified by a “compelling governmental interest” that the government pursues in the least restrictive means possible. There can be no real question that Chabad’s application now before the Council meets all objective and subjective criteria set forth for conditional use permits. Accordingly, a denial of this application would not only be arbitrary under Minnesota law regarding conditional use permit applications but would also be contrary to the plain language and intent of RLUIPA.

The City of Minnetonka and its citizens will be proud of the Chabad Center for Jewish Life. It will contribute significantly to the diversity and culture of the city. The applicant respectfully requests that the City Council approve the Resolution for a conditional use permit for this religious institution.

Sincerely,

BERNICK LIFSON, P.A.

Marvin A. Liszt
Attorney at Law

MAL:crb
cc: Chabad Center For Jewish Life
December 18, 2018

*Conditional Use Permit*

**Chabad Center for Jewish Life**

2327/2333/2339 Hopkins Crossroad / 11170 Mill Run Road / 11021 Hillside Lane West
Minnetonka, Minnesota 55305

**PROJECT SUMMARY**

The Chabad Center for Jewish Life project proposes to build a new religious institution on the newly combined lots of 2327, 2333, 2339 Hopkins Crossroad, 11170 Mill Run Road, and the 55' westerly portion of the 11021 Hillside Lane West lot. The currently proposed project includes the two additional lots of 2327 and 11021, which were acquired in response to community and City Council concerns about the relative scale of the prior project in relation to the parcel size. The current project now includes a total parcel size of 124,582 square feet (2.86 acres).

The Chabad Center for Jewish Life is a place where Jews, no matter of their affiliation or lack of it - individuals and families - can come together to experience and learn about their Judaism in a warm and welcoming way. A home where everyone is comfortable to visit.

The project proposes a one-story, residential scaled and proportioned building of approximately 16,000 finished square feet. The building will include a library, sanctuary space, social hall, offices and religious instruction space, as well as other religious and ceremonial spaces. The center will share the property with a renovated existing residential structure on 11170 Mill Run Road, which will be used as a home for the rabbi and his family.

As the lots are zoned R-1, the project requires a permit for the allowable conditional use as a religious institution. The project will be conforming to all applicable zoning and building codes, and will require no variances or additional conditional use permits.

In response to community and City Council concerns, extensive care and studies have been completed to design and locate the building appropriately and sensitively on the site and in relation to the surrounding neighborhood. The proposed design is residentially scaled and designed, with horizontal roof planes and beautiful stone walls broken by open expenses of glass. The mass (FAR) and height are significantly below of the maximum allowable by code. The landscape design will buffer the project from both the surrounding neighbors as well as the adjacent streets through a layering of trees, grading and plantings. The thoughtful proportions and heritage quality materials of the Center will be a welcome addition to the busy thoroughfare of Hopkins Crossroad, and will enrich the culture and diversity of the community.

**Key Project Data:**

- **Building Size:** 16,408 square feet
- **Building Height:** 17' (35' maximum allowable) *(prior proposals were 29'-41')*
- **Building Floor Area Ratio (FAR):** .13 *(prior proposals were .21-.25)*
- **Building Materials:** Masonry, metal panel, glass, EPDM roof
- **Setbacks:**
  - North Setback: 140'-244' (50' required)
  - East Setback: 50'-58' (50' required)
  - South Setback: 93'-132' (50' required)
  - West Setback: 59'-91' (50' required)
- **Impervious Surfaces:** 46% (70% maximum allowable)
- **Parking Spaces:** 60 (12 additional possible), (40 required by code)
Site Access:
In response to prior input from the community and City Council, the current design proposal is for site access to the building to be limited to Hillside Lane. This will eliminate driveway access off of Hopkins Crossroad.

The existing driveway access off of Mill Run to the private residence to be utilized for the rabbi’s home will continue, with no through access provided (eliminating and crossover access).

Site Organization/Design:
The Chabad Center building has been sensitively sited near the center of the property, and at low grade of approximately +958. [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.] This location allows the building to be buffered from the surrounding properties by space, layers of trees and plantings, as well as select site fencing. The siting is paired with a low, residential scaled building, minimizing adverse impacts on the surrounding homes. Submitted diagrams demonstrate these relationships and minimal impact that is achieved.

In response to community and City Council concerns, the outdoor space for religious activities has been enclosed within a courtyard within the building. This design creates a protected space for Chabad Center, and protects the surrounding community from any ambient noise concerns.

Lighting:
Maintaining dark skies for current community members and for future generations is in keeping with the Chabad Center's planned low impact development. While lights are important for function and safety during the night hours, the lighting plan will set parameters that limit the total amount of light and the amount of time that lights are illuminated to prevent unnecessary light pollution. The Chabad Center will employ a moderate lighting scheme where lighting is used for safety and convenience, but not to light continuous areas with uniform coverage.

Site and exterior lighting design is guided by the following criteria:

1) To provide for safety, security and visibility for visitors to the Chabad Center.
2) To limit light spill and glare off-site - both to the surrounding neighborhood as well as the night sky. All exterior lighting will meet Dark Sky standards, and exceed City Zoning requirements (300.28):
   - Reflected glare or spill light shall not exceed five-tenths footcandles as measured on the property line when abutting any residential parcel.
   - Fixtures and locations have been selected to eliminate any direct, off-site, views of the light source.
   - Overhead/pole site lighting will be limited to the hours of building use.
   - Final fixture selections and photometric studies will be provided to the City during building permit review to verify final conformance with these standards.
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. Interior lighting will be limited and minimal during hours when the building is not in use.

Site and exterior lighting will be implemented with the following types of fixtures:

- Short Bollards: Select areas of the parking and drive areas will be illuminated with a residential style bollard fixture type similar or equal to the Bega LED System Bollard. These fixtures have shielded light sources that do not allow for direct view of the light source onsite.
- Tall Bollards: Select areas of the parking area will be illuminated with 6-10’ tall residential style bollard light fixture type similar or equal to the Hess Novara LED
fixture or Bega LED Pole-Top Luminaires. These fixtures have direct cut light sources that do not allow for direct view of the light source onsite.

- **Sconces:** Select locations on the building will feature wall sconce type fixtures similar or equal to Bega LED Wall Luminaires with Single Sided Light Output. These fixtures have shielded light sources that do not allow for direct view of the light source onsite, and direct light downward only.

- **Recessed Lighting:** The building entrance canopy will feature recessed type fixtures similar or equal to 4" Halo Recessed Downlights. These fixtures have shielded light sources that do not allow for direct view of the light source off-site, and direct light downward only.

**Parking:**
The property will have 60 parking spaces including three handicap accessible spaces. This quantity of parking spaces exceeds the required parking per City Zoning Code of 49. In response to community and City Council concerns, this parking count would meet the anticipated occupancy on “surge” events as well (150 people).

Note, this count does not count any existing parking for the rabbi’s home, which features an additional capacity for five (5) vehicles in the residential driveway (3) and 2-car garage accessible off Mill Run. These spaces would be used the rabbi and his family, or visitors to his residence.

In the event that additional parking is ever required, Chabad Center has an agreement in place with Ackerberg Group (see attached letter) to use their parking lot at Cedar 73 Business area for overflow parking.

**Landscaping and Grading:**
The approach to the landscape design of the Chabad Center combines careful plant species selection with strategic intervention to create a low-impact, beautiful, functional, and ecologically balanced landscape. The landscape design will reflect the Chabad Center's desire to be a good neighbor, creating a positive impact on the social and natural environment.

A primary goal is to preserve and protect as many of the existing high-quality, mature trees as possible. Areas with standing groves of trees will be cleared of understory invasive species such as buckthorn, alleviating pressure from competing and undesirable species while allowing the existing trees to flourish. This understory grubbing will create a permeable screen of trees, creating moments of curated views into the site and to the center. The location of new plantings will follow the same guiding principle of providing both screening along sensitive boundaries requiring privacy, as well as visual access into the site at moments that present a welcoming face to the community. Maintaining areas of existing privacy between neighboring properties will continue to be a primary concern. Importantly, the impact of proposed tree plantings will be analyzed with sun studies so as to preserve access to natural light.

New hardscaping will be softened and balanced with planting areas that will increase the landscape’s ability to receive and mitigate stormwater runoff. Areas of turf will be minimized in favor of plant species with more extensive root systems, which allows the landscape to withstand erosive conditions. The final selection of plant species will reflect the wooded character of the site, giving the center a strong sense of place and blending into the surrounding landscape at large.

**Trees:**
All Trees in the area of the addition (and parking area):
Existing trees to be preserved: 71
Existing trees to be removed: 75
New trees - deciduous: 28
New trees - coniferous: 60
As the design progresses, additional trees may be added to the site plan as needed to maintain visual character and provide roadway screening.

*Stormwater Management:*

The proposed development will require stormwater management measures meeting the standards of the city, the Minnehaha Creek Watershed District, and the MPCA. The existing drainage patterns at the property remain generally unchanged in the proposed condition, with the majority of runoff draining to the road right of ways. Standards of runoff rate control, volume control and treatment have been met with the proposed design, which incorporates an underground chamber system for retention and detention of runoff. Additional detail is provided in the project Storm Water Management Plan (SWMP).
## Anticipated Occupancy Use

<table>
<thead>
<tr>
<th>Day / Event</th>
<th>Time of Day</th>
<th>Attendance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Monday - Friday</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Morning Services</td>
<td>6:30am - 7:30am</td>
<td>10-15</td>
</tr>
<tr>
<td>Classes</td>
<td>Throughout day</td>
<td>5-15</td>
</tr>
<tr>
<td>Evening classes and lectures</td>
<td>7:00pm - 9:00pm</td>
<td>5-15</td>
</tr>
<tr>
<td>Ongoing classes</td>
<td>7:30pm - 9:00pm</td>
<td>30-50</td>
</tr>
<tr>
<td>Standard Lectures (25/Year)</td>
<td>7:00pm - 9:00pm</td>
<td>50-100</td>
</tr>
<tr>
<td><strong>Office</strong></td>
<td>8:30 am - 5:00pm</td>
<td>5-10</td>
</tr>
<tr>
<td><strong>Total Average Daily Use:</strong></td>
<td></td>
<td>20-30</td>
</tr>
<tr>
<td><strong>Friday Night</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weekly Services</td>
<td>Sunset</td>
<td>10-15</td>
</tr>
<tr>
<td>Monthly Shabbat meal</td>
<td>After 6:00pm</td>
<td>75-125</td>
</tr>
<tr>
<td><strong>Saturday (Services)</strong></td>
<td>10:00am - 2:00pm</td>
<td>50-100</td>
</tr>
<tr>
<td><strong>Sunday</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services &amp; Class</td>
<td>8:00am - 9:15am</td>
<td>10-15</td>
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<tr>
<td>Classes</td>
<td>9:45am - 12:00pm</td>
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<tr>
<td><strong>Holiday Services</strong></td>
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<tr>
<td>Evening (13/year)</td>
<td>After Sunset</td>
<td>10-15</td>
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<tr>
<td>Morning (10/year)</td>
<td>10:00am - 12:30pm</td>
<td>25-100</td>
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<tr>
<td><strong>Larger Holiday Services</strong></td>
<td></td>
<td></td>
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<tr>
<td>HH - Rosh Hashanah Day 1</td>
<td>9:00am - 2:00pm</td>
<td>75-150</td>
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<tr>
<td>Rosh Hashanah Day 2</td>
<td>9:00am - 2:00pm</td>
<td>75-150</td>
</tr>
<tr>
<td>Yom Kippur Eve</td>
<td>Sunset, about 7:00pm</td>
<td>75-150</td>
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<td>Yom Kippur Day</td>
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<td>Simchat Torah Eve</td>
<td>7:30pm-9:30pm</td>
<td>100-150</td>
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<tr>
<td><strong>Larger Holiday Events</strong></td>
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<td></td>
</tr>
<tr>
<td>Rosh Hashanah meal night 1</td>
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<tr>
<td>Purim Celebration</td>
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<td>Pesach Seder night 1</td>
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<td><strong>Lifecycle events not on Saturday</strong></td>
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<tr>
<td>2018 - 5 events</td>
<td>AM, PM</td>
<td>10 - 75</td>
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<tr>
<td>2017 - 6 events</td>
<td>AM, PM</td>
<td>10 - 75</td>
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<tr>
<td><strong>Lifecycle events larger than typical Saturday morning service.</strong></td>
<td></td>
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</tr>
<tr>
<td>2018 - 4 events</td>
<td>10:00am - 2:00pm</td>
<td>100 - 160</td>
</tr>
<tr>
<td>2017 - 5 events</td>
<td>10:00am - 2:00pm</td>
<td>100 - 150</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Women's Mikva</td>
<td>After dark</td>
<td>Approximately four people per week by appointment only</td>
</tr>
<tr>
<td>Men's Mikva</td>
<td>6:30am</td>
<td>5 - 10</td>
</tr>
</tbody>
</table>
December 18, 2018

Conditional Use Permit
Chabad Center for Jewish Life
2327/2333/2339 Hopkins Crossroad / 11170 Mill Run Road / 11021 Hillside Lane West
Minnetonka, Minnesota 55305

ATTACHED DOCUMENTS

CONDITIONAL USE PERMIT: Request for a conditional use permit for a religious institution within an R-1 zoning area, as permitted under 300.10/4 of the City Zoning Code.

Response to review criteria 300.16/2 General Standards:

The proposed project meets all of following required standards consistent with how the City has interpreted and applied these standards for other similar religious institutions within Minnetonka. The supportive documentation is as outlined below and supported by our other submitted application materials:

a) The use is consistent with the intent of this ordinance:
The proposed project is consistent with intent of the Conditional Use Permit Standards for Residential Districts, as outlined in the 300.16/1:

“It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and procedures of this ordinance and the comprehensive plan.”:

- Religious Institutions are explicitly listed as conditionally permitted uses in R-1 districts.
- Location:
  o The location of the site within the R-1 zoning area is well positioned according to the priorities of the City Zoning Code and 2030 Comprehensive Plan:
    ▪ The site is situated adjacent to both an arterial roadway (Hopkins Crossroad) and a major collector roadway (Hillside Lane). This allows for site access that is “provided without conducting significant traffic on local residential streets.”
    ▪ The site is located at the edge the R-1 neighborhood as it is bisected by the arterial roadway of Hopkins Crossroad, an area appropriate for the increased use of a religious institution.
- Size:
  o The size of the proposed project is appropriate and consistent with the purposes and intent of the ordinance and the Comprehensive Plan. This appropriateness can be demonstrated in a variety of methodologies:
    ▪ Floor Area Ratio (FAR):
      • There is no maximum FAR requirement for religious institutions within R-1 districts. However, the project is within the range of other religious institutions that have been allowed by the City in R-1 districts (a range of .05-.19).
      • The FAR of the proposed project is significantly less than what would be allowable without any variances or conditional use permits if single-family residences were built on each individual lot. This establishes that the mass of the proposed project is well within what is envisioned for
development with R-1 zoning, as residential development is allowed to be significantly larger than our proposed project without City review or approval. Each individual lot could accommodate a home of 15,000 square feet.

- **Building Square Footage:**
  - There is not maximum square footage requirement for religious or residences on R-1 lots. However, the project is significantly smaller than the majority of religious institutions on R-1 zoning lots (which range from 6,662-72,000 square feet).
  - The square footage of the proposed project is significantly less than what would be allowable without any variances or conditional use permits if single-family residences were built on each individual lot. This establishes that the expanse and building lot coverage of the proposed project is well within what is envisioned for development with R-1 zoning, as residential development is allowed to be significantly larger than our proposed project without City review or approval. Each individual lot could accommodate a home of 15,000 square feet, or a total square footage of 60,000 over the four lots.

- **Parcel Size:**
  - The project parcel significantly exceeds the minimum lot size as required by City zoning code.
  - The parcel size of 2.86 acres is within the range of other religious institutions with R-1 zoning districts (a range of 1.96-25.70 acres).

- **Height:**
  - The project is 17’ in height, significantly under the maximum building height of 35’ established for both single family residences and religious institutions within the R-1 zoning district.
  - The project is a single story in height, below the maximum allowable number of stories for single-family homes, and also below the typical new single-family home built in the area.

- **Setbacks:**
  - The proposed building meets or exceeds the required 50’ yard setbacks as required for a religious institution within the R-1 zoning district:
    - The setback along the east side is between 50’ and 58’.
    - The setback along the south side is between 93’ and 132’ (excluding the existing single-family home).
    - The setback along the west side is between 59’ and 91’.
    - The setback along the north side is between 140’ and 244’.
    - The setback of 50’ is beyond the required rear yard setback of 40’ for a single-family home (20% of lot depth = 46’). This indicates that the proposed building will have significantly less impact on the
surrounding neighbors than an allowable single-family home might have without any required variances or conditional use permits.

- **Impervious Surface Coverage:**
  - The project’s impervious surface coverage of 46% is significantly under the maximum allowable impervious surface coverage of 70% established for religious institutions within R-1 zoning districts.
  - The square footage of the proposed project is significantly less than what would be allowable without any variances or conditional use permits if single-family residences were built on each individual lot. In fact, single-family homes do not have any limitations for impervious surface coverage. This establishes the proposed amount of impervious surface coverage of the proposed project is well within what is envisioned for development with R-1 zoning.

- **Design:**
  - The design of the proposed project is appropriate and consistent with the purposes and intent of the ordinance and the Comprehensive Plan:
    - The design is residential in architectural style, inspired by a modern “prairie style” architecture of horizontal roof planes and beautiful masonry walls broken by open expenses of glass.
    - The design deconstructs the mass of the building into component elements, which reduces its perceived size and creates a human scaled design.
    - The building is sited to bring the height of the floor level as low to the site as is feasible. This limits the perceived scale of the building from the surrounding properties.
    - The height of the building is residential in scale, below the height of two-story adjacent homes, and well below the maximum allowable height of 35’.
    - The siting of the building, and proposed landscape plan, maintains as many significant trees to the extent possible, and proposes the addition of new trees and plantings. These trees will maintain and eventually enhance a rich tree canopy, as well as screen the project from the surrounding neighborhood.
    - The building is designed on all four sides, presenting a richly detailed façade to all viewpoints.
    - The siting and site access of the project, in response to community and City Council concerns raised during the prior design process, creates site access off of Hillside Lane instead of Hopkins Crossroad.

**b) The use is consistent with the goals, policies and objectives of the comprehensive plan:**
The proposed project is consistent with the goals, policies and objectives of the comprehensive plan:
  - Per prior Staff findings, “The goals, policies and objectives of the comprehensive plan are generally the City’s effort to create a vibrant and resilient community. Religious Institutions area component of such communities.”

  - **Prior development precedents:**
    - The proposed project is similar in design and location within R-1 zoning to past religious institutional projects that the City has approved. This indicates that developments of this nature and intensity within the R-1
zoning area has already been demonstrated to meet the goals and objectives of the comprehensive plan.

- **Natural Environment:**
  - The project has been designed to maximize any available benefits to the natural environment, while limiting environmental disruption to the extent possible:
    - All stormwater runoff will be managed onsite through a comprehensive stormwater management plan that will meet or exceed City requirements. This will be a net decrease from the current stormwater runoff that exists on the sites.
    - The project has been sited to minimize significant tree removal and site grading to the extent possible.
    - The project will plant a minimum of 88 new trees, enhancing the City tree canopy into the future.
    - As a religious institution, the construction and material quality of the building and site work will be of heritage quality. This enhances and revitalizes the surrounding built environment and neighborhood.
    - The project site has already been developed and disrupted, which minimizes the impact that would otherwise be had for a greenfield site.
    - The agreement with Ackerberg to provide overflow parking for significant holiday events decreases traffic on these days, and limits the parking lot size onsite.

- **Public Safety/Transportation:**
  - The location of the site within the R-1 zoning area is well positioned according to the priorities of the City Zoning Code and 2030 Comprehensive Plan, as stated in the 2030 Strategic Vision and Goals:
    - The site is situated adjacent to both an arterial roadway (Hopkins Crossroad) and a major collector roadway Hillside Lane. This allows for site access that is “provided without conducting significant traffic on local residential streets.”
    - The site is located at the edge the R-1 neighborhood as it is bisected by the arterial roadway of Hopkins Crossroad, an area appropriate for the increased use of a religious institution.
  - The siting and site access of the project, in response to community and City Council concerns raised during the prior design process, creates site access off of Hillside Lane only for guests in order to enhance public safety.
  - The entrance off of Hillside Lane coordinates with the City’s stated plan to provide sidewalk infrastructure along Hillside Lake in the future.
  - The provision of the City code required parking onsite to accommodate typical daily and weekly activities ensures street parking is not needed. This enhances public safety.
  - The agreement with Ackerberg to provide overflow parking for significant holiday events decreases traffic on these days, and limits the parking lot size onsite.
  - The traffic study completed by the City expert “concluded that there would be minimal overall change in area traffic operations resulting from the proposed Chabad Center.”

- **Development:**
  - **Prior development precedents:**
    The proposed project is similar in design and location to past religious institutional projects that the City has approved in the past. This indicates
that developments of this nature and intensity within the R-1 zoning area has already been demonstrated to meet the goals and objectives of the comprehensive plan.

- The proposed project will enhance the neighborhood compared to the existing structures onsite, ensuring continued community vitality and redevelopment. Given the site's proximity to such a significant arterial road, it is questionable if the properties would otherwise attract new residential single-family home development.

- The proposed project carefully balances individual property rights with the public interest as:
  - The project meets all the required zoning requirements without the need for variances.
  - The project is significantly under the required building height.
  - The project is significantly under the maximum required impervious surface.
  - The project meets or exceeds the setback requirements.
  - The current project design and siting is specifically responsive to the concerns raised by the City Council and some neighbors while still providing for the needs of the building occupants.

- **Building Community:**
  - As a religious institution, the proposed Chabad Center for Jewish Life promotes activities that encourage understanding and involvement. The congregation is open and welcoming, encouraging those of all faiths to join them in an exploration of Judaism. This includes community-oriented events.
  - As a minority religious development, the project will bring greater diversity to the community, and will foster increased inclusiveness and understanding.
  - As a religious institution, the project supports a specific comprehensive plan policy to “Support and collaborate with schools, agencies, non-profits and others that support diverse lifecycle and cultural services and programs for residents.”

- **The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements:**
  The proposed project does not have an adverse impact on governmental facilities, utilities, services or existing or proposed improvements:
  - The site access is coordinated with City plans for a future sidewalk along Hillside Lane.
  - All required utility easements are being maintained.
  - The project does not impact any future improvements of Hopkins Crossroad by the City or County.

- **The use does not have an undue adverse impact on the public health, safety or welfare.**
  The proposed project does not have an undue adverse impact on the public health, safety or welfare:
  - **Traffic/Site Access:**
    - The initial traffic study completed by the City expert “concluded that there would be minimal overall change in area traffic operations resulting from the proposed Chabad Center.”
    - The project’s impact on daily traffic along Hopkins Crossroad and Hillside Lane will be negligible. Hopkins Crossroad has a current average daily auto
volume of 14,500. The City expert’s initial traffic study indicated the project would increase volume by approximately .7%.

- The siting and site access of the project, in response to community and City Council concerns raised during the prior design process, creates site access off of Hillside Lane only in order to enhance public safety. This eliminates concerns that were raised about access directly off of Hopkins Crossroad.
- The project provides for all required parking for the project without relying on street parking.
- The site is situated adjacent to both an arterial roadway (Hopkins Crossroad) and a major collector roadway Hillside Lane. This allows for site access that is “provided without conducting significant traffic on local residential streets.”

- Fire/Public Safety:
  - The proposed project and the site plan allows for fire access as required by the City Fire Chief, and reflects his input and advisement.

**Response to review criteria 300.16/3/b Specific Standards for Religious Institutions:**
The proposed project meets all of following required standards consistent with how the City has interpreted and applied these standards for other similar religious institutions within Minnetonka. The supportive documentation is as outlined below and supported by our other submitted application materials:

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:**
The proposed project site specifically meets this requirement:
  - The site is situated adjacent to both an arterial roadway (Hopkins Crossroad) and a major collector roadway Hillside Lane. This allows for site access that is “provided without conducting significant traffic on local residential streets.”
  - The site is located at the edge the R-1 neighborhood as it is bisected by the arterial roadway of Hopkins Crossroad, an area appropriate for the increased use of a religious institution.
  - The initial traffic study completed by the City expert “concluded that there would be minimal overall change in area traffic operations resulting from the proposed Chabad Center.”

2) **Buildings set back 50 feet from all property lines:**
The proposed building meets or exceed the 50’ setback requirement:
  - The setback along the east side is between 50’ and 58’.
  - The setback along the south side is between 93’ and 132’ (excluding the existing single-family home).
  - The setback along the west side is between 59’ and 91’.
  - The setback along the north side is between 140’ and 244’.

3) **Parking spaces and parking setbacks subject to section 300.28 of this ordinance:**
The project meets or exceeds all parking and loading requirements as detailed in 300.28/12, including:
  - The project provides for onsite parking that exceeds the code required parking requirements.
  - All parking spaces and drive lanes meet or exceed the minimum yard setback of 20’ from the property lines.

4) **No more than 70 percent of the site to be covered with impervious surface and the remainder to be suitably landscaped:**
The proposed project will have impervious surfaces not to exceed 47%, well below the maximum allowable coverage. In addition, all stormwater runoff will be managed onsite, an improvement from the existing conditions. Minimum design standards are detailed in the submitted documents.

The remainder of the site will be carefully designed to provide contextual infill trees to provide screening from the surrounding residences. This will include a mix of existing significant trees, new coniferous trees, new deciduous trees, bushes and low-maintenance groundcover. Initial minimum landscape design is included in the submitted documentation.

5) **Site and building plan subject to review pursuant to section 300.27 of this ordinance:**
   The proposed project will satisfy the relevant site and building design requirements as detailed in 300.27. Such conformance is detailed in our current submittal, or will be provided at the appropriate time in the review and submittal process.

The proposed project meets the intent and purpose this ordinance seeks to accomplish:

   a) **Implement the comprehensive plan:**
      As detailed in prior responses, the project as proposed meets the goals and intent of the comprehensive plan. Specifically, religious institutions are explicitly listed as conditionally permitted uses in R-1 zoning districts.

   b) **Maintain and improve the city’s tax base to a reasonable extent:**
      Although the project itself will not increase the City's tax base, we anticipate the addition of a heritage quality religious institution within the community will enhance the quality of life within the City and have a positive overall long-term impact on the tax base:
      - The new institution will attract a broader base of residents that will desire to live in the vicinity.
      - The quality of the building will improve the aesthetic and streetscape experience of the community.

   c) **Mitigate to the extent feasible adverse impacts of one land use upon another:**
      As detailed in prior responses, the residentially inspired and scaled project is designed to blend with the surrounding neighborhood and limits the impact of the project on the adjacent residents. This includes:
      - The project is located adjacent to Hopkins Crossroad and Hillside Lane. Site access off of Hillside Lane, as requested by the City and neighborhood, will limit traffic through the residential neighborhood.
      - The project is residential scaled and designed, and significantly under the maximum required FAR and height.
      - The project is sited and landscape to be screened from the surrounding homes.
      - The exterior lighting is designed to meet or exceed the Dark Sky requirements, and will meet or exceed the lighting requirements of the Zoning Code limiting light levels onto adjacent properties.

   d) **Promote the orderly and safe flow of vehicular and pedestrian traffic:**
      - The initial traffic study completed by the City expert “concluded that there would be minimal overall change in area traffic operations resulting from the proposed Chabad Center.”
      - The location of the site within the R-1 zoning area is well positioned according to the priorities of the City Zoning Code and 2030 Comprehensive Plan, as stated in the 2030 Strategic Vision and Goals:
         - The site is situated adjacent to both an arterial roadway (Hopkins Crossroad) and a major collector roadway Hillside Lane. This...
allows for site access that is “provided without conducting significant traffic on local residential streets.”

- The site is located at the edge the R-1 neighborhood as it is bisected by the arterial roadway of Hopkins Crossroad, an area appropriate for the increased use of a religious institution.
  - The siting and site access of the project, in response to community and City Council concerns raised during the prior design process, creates site access off of Hillside Lane only for guests in order to enhance public safety.
  - The entrance off of Hillside Lane coordinates with the City’s stated plan to provide sidewalk infrastructure along Hillside Lake in the future.
  - The provision of the City code required parking onsite to accommodate typical daily and weekly activities ensures street parking is not needed. This enhances public safety.
  - The agreement with Ackerberg to provide overflow parking for significant holiday events decreases traffic on these days, and limits the parking lot size onsite.

The proposed project meets the review Standards as per 300.27/5:

- **a)** Consistency with the elements and objectives of the city’s development guides, including the comprehensive plan and water resources management plan:
  - As detailed in prior responses, the project as proposed meets the goals and intent of the comprehensive plan. Specifically, religious institutions are explicitly listed as conditionally permitted uses in R-1 zoning districts.
  - The proposed project will enhance the neighborhood compared to the existing structures onsite, ensuring continued community vitality and redevelopment. Given the sites proximity to such a significant arterial road, it questionable if the properties would otherwise attract new residential single-family home development.
  - Stormwater management will exceed City requirements and improve upon the current conditions, as detailed within our submittal.

- **b)** Consistency with this ordinance:
  - As detailed in prior responses, the project as proposed meets the goals and intent of the comprehensive plan. Specifically, religious institutions are explicitly listed as conditionally permitted uses in R-1 zoning districts.
  - The project is similar in scale, scope, site size and characteristics of other religious institutions within R-1 zoning areas that have been approved in the past by the City.
  - The project meets all zoning requirements, and requires no variances.

- **c)** 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:
  - The siting of the building, and proposed landscape plan, maintains as many significant trees to the extent possible, and proposes the addition of new trees and plantings. These trees will maintain and eventually enhance a rich tree canopy, as well as screen the project from the surrounding neighborhood.
  - The building has been carefully sit to minimize grading within the site, and minimize the impact and view corridors of the surrounding neighborhood.

- **d)** 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:
The building has been carefully site to minimize grading within the site, and minimize the impact and view corridors of the surrounding neighborhood.

- The design is residential in architectural style, inspired by a modern “prairie style” architecture of horizontal roof planes and beautiful masonry walls broken by open expenses of glass.
- The design deconstructs the mass of the building into component elements, which reduces its perceived size and creates a human scaled design.
- The building is sited to bring the height of the floor level as low to the site as is feasible. This limits the perceived scale of the building from the surrounding properties.

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

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 building has been carefully site to minimize grading within the site, and minimize the impact and view corridors of the surrounding neighborhood.
   - The design is residential in architectural style, inspired by a modern “prairie style” architecture of horizontal roof planes and beautiful masonry walls broken by open expenses of glass.
   - The design deconstructs the mass of the building into component elements, which reduces its perceived size and creates a human scaled design.
   - The building is sited to bring the height of the floor level as low to the site as is feasible. This limits the perceived scale of the building from the surrounding properties.

2) the amount and location of open space and landscaping:
   - The building has been carefully site to minimize grading within the site, and minimize the impact and view corridors of the surrounding neighborhood.

3) 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:
   - The design is residential in architectural style, inspired by a modern “prairie style” architecture of horizontal roof planes and beautiful masonry walls broken by open expenses of glass.

4) 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:
   - All site circulation has been carefully designed by the civil engineers and landscape architect to ensure adequate widths for turning of both autos and emergency vehicles.
f) 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:
   - As a new building, the project will meet or exceed the new building and energy codes.
   - The project has been sited to reduce grading to the extent possible. Any usable fill will be stored and reused onsite.

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:
   - No stormwater runoff will go onto the surrounding properties.
   - The project has been sited and landscaped to buffer the project from all surrounding residences—including of views, light, air, site and sound.

Supporting documentation is contained within the submitted documents.

**The proposed project meets the Architectural Standards as per 300.27/12, including:**
- The building is designed with quality architectural materials, including masonry, metal or composite panel and glass. The design is residential in style and scale, and are of a quality to complement or exceed the surrounding neighborhood structures.
- All mechanical equipment, trash and recycling bins, will be enclosed consistent with the design and materials of the building. Such services are located to as not to intrude upon the surrounding properties.
- All utilities for the project will be provided underground.

**The proposed project meets the or exceeds the Minimum Landscaping Requirements as per 300.27/15:**

a) All areas of the lot that are not hardscape will be landscaped overstory trees, understory trees, shrubs, and ground cover materials. The minimum initial landscape design is provided in our submittals. The proposed budget for the landscape will meet or exceed required minimum value of 1%, or $45,000.

b) The project has been sited and graded in such a way as to preserve as many existing trees as is feasible, as detailed in our submittals.

c) All new trees will meet the minimum requirements for size upon installation, as detailed in our submittals.

d) All areas that are not hardscape, or covered with existing vegetation, will be covered with sod or ground cover, as detailed in our submittals.

e) An underground sprinkler system will be provided to all landscaped areas, except where existing natural landscape is being preserved.

f) All trees will be of approved species and mix as required, and as detailed in our submittals.

**The proposed project meets the or exceeds the Interior Parking Lot Landscaping Requirements as per 300.27/16, including:**

b) The proposed site plan provides for landscaped and curbed parking islands to breakup any expanse of parking area. Such islands will contain trees and appropriate ground cover. The number of trees will exceed the requirement of one for every 15 parking spaces. Details are contained within our submittals.

**The proposed project meets the or exceeds the Screening and Buffering Requirements as per 300.27/20, including:**

3) The proposed off-street parking area will be screen and buffered from the adjacent residential lots through a combination of deciduous and conifer
trees, and select perimeter site fencing. Details are provided within our submittal.

4) All trash and recycling dumpsters are located to be concealed and screened by landscape from the surrounding lots and public roads. Details are provided within our submittal.
CHABAD CENTER FOR JEWISH LIFE
2327, 2333, 2339 HOPKINS CROSSROAD /11170 MILL RUN ROAD / 11021 HILLSIDE LANE WEST, MINNETONKA, MN 55305

CLIENT
MINNEAPOLIS CHABAD LUBAVITCH
2845 HEDBERG DR.
MINNETONKA, MN 55305
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PHONE: 952.929.9922

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Professional Engineers
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CONTACT: DAVE POGLI PE
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CIVIL

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211 1ST STREET NORTH, #350
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SURVEY
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9063 LYNDALE AVENUE SOUTH
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P/K

LANDSCAPE ARCHITECT
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MINNEAPOLIS, MN 55401
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PHONE: 612.760.0494

P/K
MATERIALITY

1. MASONRY
2. METAL SURROUNDS / COMPOSITE PANEL
3. NATURAL WOOD
2390 VERNON CIRCLE

NEIGHBOR SECTION DIAGRAM

6' FENCE
NEW SCREENING TREES
50' SETBACK

VIEW FROM NEIGHBOR'S BACK YARD
2391 VERNON CIRCLE

VIEW FROM NEIGHBOR'S BACK YARD

NEIGHBOR SECTION DIAGRAM

6' FENCE
NEW SCREENING TREES
50' SETBACK

CHABAD CENTER FOR JEWISH LIFE
PETERSSEN/KELLER ARCHITECTURE
2919 JAMES AVENUE SOUTH
MINNEAPOLIS, MN 55408
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VISUAL COMPARISON TO RESIDENTIAL USE

These diagrams show massing of speculative houses (in red) that meet the City of Minnetonka's height, setbacks, F.A.R., and lot coverage code for single-family homes. If four new houses were to be built on these lots, they would likely be taller and have more combined square footage than the proposed single-story Chabad Center.
Chabad Center
2339 Hopkins Crossroad & 11170 Mill Road
Minnetonka, MN

10.11.2018 SD MTG 1
10.26.2018 SD MTG 2
10.28.2018 SD MTG 3
12.18.2018 C.U.P.
PRELIMINARY PLANS FOR THE  
CHABAD CENTER  
MINNETONKA, MN  
DECEMBER 2018

OWNER: Minneapolis Chabad Lubavitch  
2945 Hedberg Dr  
Minnetonka, MN 55305  
Attn: Rabbi Mordochai Grossbaum  
Ph: 952.929.9922

SURVEY: Harry S. Johnson Co. Inc.  
9063 Lyndale Avenue South  
Bloomington, MN 55437  
Attn: Thomas Hodorf  
Ph: 952.884.5341

CIVIL: Civil Methods, Inc.  
1551 Livingston Avenue, Ste. 104  
West St. Paul, MN 55118  
Attn: Dave Popp, PE  
Ph: 763.210.5713

ARCHITECT: Petersen / Keller Architecture  
2919 James Avenue South  
Minneapolis, MN 55408  
Attn: Ryan Fish  
Ph: 612.353.4920

CITY: City of Minnetonka  
14600 Minnetonka Blvd  
Minnetonka, MN 55345  
Attn:  
Ph: 952.939.8200

WATERSHED DISTRICT: Minnehaha Creek Watershed District  
15320 Minnetonka Blvd.  
Minnetonka, MN 55345  
Attn:  
Ph: 952.471.0590

LANDSCAPE ARCHITECT: Travis Van Liere Studios, LLC  
2111 5th Street North #350  
Minneapolis, MN 55406  
Attn: Travis Van Liere  
Ph: 612.760.5494

SHEET INDEX
T01 TITLE SHEET
C01 SITE LAYOUT
C02 UTILITIES
C03 GRADING
C04 VEHICLE SWEEP PATH ANALYSIS
C05 EROSION & SEDIMENT CONTROL
C06 SWPPP
C07 - DETAILS
L01 LANDSCAPING
L02 TREE INVENTORY

PLAN REFERENCES:
1. MINNESOTA DEPT. OF TRANSPORTATION - STANDARD SPECIFICATIONS FOR CONSTRUCTION, 2018 (XXXX) OR MVDOET XXXX.
2. CITY ENGINEERS ASSOCIATION OF MINNESOTA STANDARD SPECIFICATIONS 2013 EDITION.
3. UNREINFORCED CONCRETE PER ACI 330R-08 AND ACI 335.1-03

THE EXISTING UTILITY INFORMATION SHOWN IN THIS PLAN HAS BEEN SURVEYED BY OTHERS. THE CONTRACTOR SHALL FIELD VERIFY EXACT LOCATIONS PRIOR TO COMMENCING CONSTRUCTION AS REQUIRED BY STATE LAW. NOTIFY 811 OR Gopher State ONE CALL (1.800.252.1166).

THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS UTILITY QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF CIDASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA."

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

DAVID W. PRUNETT, PE  
CIVIL ENGINEER  
SIGNATURE  
DATE: 12/18/2018  
LICENSE NUMBER: 0113600  
PROFESSIONAL REPORT: 12/18/2018  
REV. 0

CIVIL METHODS, INC.  
1551 Livington Avenue, Suite 104  
West St. Paul, MN 55118  

MINNEAPOLIS CHABAD LUBAVITCH  
2945 HEBERG DRIVE  
MINNETONKA, MN

TSF:  
TITLE: CHABAD CENTER  
MINNETONKA, MN  
SHEET: T01
SITE DATA:

CURRENT ZONE: R-1
CONDITIONAL USE: INSTITUTIONAL
PROPERTY SIZE: 151,650 SQ FT (3,481 AC)
TOTAL PROPERTY: 124,477 SQ FT (2,858 AC)
RESIDENTIAL: 27,173 SQ FT (0.624 AC)
OVERFLOW PARALLEL: 8
TOTAL PARKING: 60
DISABILITY ADA: 3
TOTAL PAVED: 52 STALLS
COMPACT: 12
IMPERVIOUS %: 70% (INSTITUTIONAL)
IMPERVIOUS PROP: 46% (INSTITUTIONAL)

INSTITUTION:
STRUCTURE FRONT: 50 FT
STRUCTURE SIDE: 50 FT
STRUCTURE REAR: 50 FT
PARKING & DRIVE: 20 FT

LEGEND:

- PROPOSED 110' x 247' RESIDENTIAL LOT, SEE PLAT
- APPROX. DIAGONAL EASEMENT, SEE PLAT
- STRUCTURE TO BE REMOVED
- 6' CURB, MDOT BH12
- 6' CURB, MDOT BH12 GUTTER OUT
- RECLAIMED CURB
- REFUSE ENCLOSER, SCREEN PER CITY CODE
- ADA ACCESSIBLE WALK
- GD猴=GD
- GD猴=GD
- GD猴=GD
- GD猴=GD
- GD猴=GD

MINNEAPOLIS CHABAD LUBAVITCH
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MINNETONKA, MN 55305

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1551 Livingston Avenue, Suite 104
West St. Paul, MN 55118

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
NOTES:
1. Contours shown to finished grade.
2. Elevations shown at four feet, unless noted otherwise.
EROSION CONTROL NOTES:

1. See SWMP sheet for additional information.
2. Install construction-embankment and perimeter controls prior to beginning grading operations.
4. Temporary erosion control design shall be per MDOT 2019-2023.
5. Soil erosion control shall be in place during all phases of construction and until site is seeded and mulched.
6. Soil or seed areas to be seeded maintains low maintenance turf, MDOT M96-25-131 (3870).
7. See Landscape Plan for additional landscaping details.
8. Erosion control blanket, MDOT Cat. 3 (3865), shall be installed on swale bottoms, and side slopes at 2:1 or greater.
9. All drain green space shall consist of plantings, soil, or seed with hydraulic must grades (3866-82).
10. Stormwater control, Type 4 (3867), shall be installed on swales.
11. Randomized crisscross slacks per MDOT 2017 shall be of class and quantity as indicated, and shall include geotextile fabric (3720).
12. Erosion discovered during construction shall be repaired immediately by the Contractor.
13. Contractor is responsible for preventing sediment transport from site; sediment tracked onto adjacent streets will be swept immediately upon discovery (incidents).

MINNEAPOLIS CHABAD LUBAVITCH
2845 HEBERG DRIVE
MINNETONKA, MN 55305

CIVIL METHODS, INC.
1551 Livingston Avenue, Suite 104
West St, Paul, MN 55118
Chabad site FAR in red outline
- 0.13 = Religious Institution
- (0.16) = Religious Institution and Existing Home

Floor Area Ratio
To: Susan Thomas, Assistant City Planner
   City of Minnetonka

From: Matt Pacyna, PE, Principal
      Tom Sachi, PE, Associate

Date: January 31, 2019

Subject: Chabad Center for Jewish Life Traffic Study

Introduction

SRF has completed a traffic study for the Chabad Center for Jewish Life development in Minnetonka, Minnesota (see Figure 1: Project Location). The project site is generally located east of Hopkins Crossroad (County Road (CR) 73) between Hillside Lane and Mill Run. The main objectives of this study are to quantify existing operations, identify traffic impacts associated with the proposed development, and recommend any necessary improvements to ensure safe and efficient operations. The following provides the assumptions, analysis, and study findings offered for consideration.

Existing Conditions

The existing conditions were reviewed to establish a baseline for comparison and to determine potential impacts associated with construction of the proposed Chabad Center development. The evaluation of existing conditions includes various data collection efforts and an intersection capacity analysis.

Data Collection

Vehicular turning movement counts were collected by SRF during typical weekday a.m. (7:15 to 8:15), Friday p.m. (5:00 to 6:00), and Saturday midday (12:30 to 1:30) peak hours the week of January 7, 2019. The timeframes collected correspond to the expected service times for the proposed development. Note that the weekday data collection occurred while area Hopkins Schools were in session, including Tanglen Elementary School (8:58 a.m. start), Hopkins North Junior High (7:47 a.m. start), and Hopkins High School (7:50 a.m. start).

The data collected focused on the Hopkins Crossroad (CR 73) and Hillside Lane intersection, which is the closest intersection to the proposed development driveway. Existing average daily traffic volumes along Hopkins Crossroad (CR 73) are approximately 14,500 to 15,200 vehicles per day (vpd) within the study area. Note that historically since 1998, average daily traffic volumes along Hopkins Crossroad (CR 73) within the study area have ranged from 11,400 to 15,200 vehicles per day.
Project Location
Chabad Center of Jewish Life Traffic Study
City of Minnetonka

Figure 1

Project Location:
Hillside Lane
Fetterly Road
Mill Run
Hopkins Crossroad

[Map of project location with marked areas and streets]
Field observations were also completed to identify roadway characteristics within the study area (i.e. roadway geometry, posted speed limits, and traffic controls). Hopkins Crossroad (CR 73) is a Hennepin County facility and primarily a two-lane undivided urban minor arterial roadway with a 40 mile per hour (mph) posted speed limit. There are right- and left-turn lanes at this study intersection. The Hopkins Crossroad (CR 73) and Hillside Lane intersection is unsignalized with side-street stop control. Existing traffic volumes, roadway geometry, and traffic controls within the study area are shown in Figure 2.

**Volume Comparison**

A comparison of the traffic volumes at the Hopkins Crossroad (CR 73) and Hillside Lane intersection was completed to determine how volumes have changed since previous data collection efforts were completed in Spring 2018. The following observations were noted for the peak collection hours:

**Weekday a.m. peak hour**
- Hopkins Crossroad (CR 73) volumes decreased by 33 vehicles, approximately three (3) percent
- Hillside Lane volumes increased by 38 vehicles, approximately 12 percent
- Total intersection volume increased by five (5) vehicles

**Friday p.m. peak hour**
- Hopkins Crossroad (CR 73) volumes increased by 213 vehicles, approximately 18 percent
- Hillside Lane volumes increased by 11 vehicles, approximately seven (7) percent
- Total intersection volumes increased by 224 vehicles, approximately 16.5 percent

**Saturday midday peak hour**
- Hopkins Crossroad (CR 73) volumes decreased by 38 vehicles, approximately four and a half (4.5) percent
- Hillside Lane volumes decreased by 6 vehicles, approximately three and a half (3.5) percent
- Total intersection volumes decreased by 44 vehicles, approximately four (4) percent

Differences in the volumes may be attributed to climate and school related activities, and these traffic volume fluctuations are common and within typical daily variations.

**School Queues**

A review of the queues along Hillside Lane during the morning arrival period for Tanglen Elementary school was completed to determine if school traffic would be expected to impact operations at the proposed development. The maximum observed queues were between six (6) and eight (8) vehicles (i.e. 200 feet) turning eastbound right into the school. Based on the maximum observed queue, there is estimated to be approximately 600 feet between the maximum queue and the driveway to the proposed development and no issues would be expected.
**Intersection Capacity Analysis**

A detailed intersection capacity analysis was conducted for peak conditions to establish a baseline condition to which future operations can be compared. The study intersection was analyzed using Synchro/SimTraffic software (Version 9).

Intersection capacity analysis results identify a Level of Service (LOS) which indicates how well an intersection is operating. Intersections are ranked from LOS A through LOS F. The LOS results are based on average delay per vehicle, which correspond to the delay threshold values shown in Table 1. LOS A indicates the best traffic operation and LOS F indicates an intersection where demand exceeds capacity. Overall intersection LOS A through LOS D is generally considered acceptable in the Twin Cities Metropolitan area.

**Table 1. Level of Service Criteria for Signalized and Unsignalized Intersections**

<table>
<thead>
<tr>
<th>LOS Designation</th>
<th>Signalized Intersection</th>
<th>Unsignalized Intersection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average Delay/Vehicle (seconds)</td>
<td>Average Delay/Vehicle (seconds)</td>
</tr>
<tr>
<td>A</td>
<td>≤ 10</td>
<td>≤ 10</td>
</tr>
<tr>
<td>B</td>
<td>&gt; 10 - 20</td>
<td>&gt; 10 - 15</td>
</tr>
<tr>
<td>C</td>
<td>&gt; 20 - 35</td>
<td>&gt; 15 - 25</td>
</tr>
<tr>
<td>D</td>
<td>&gt; 35 - 55</td>
<td>&gt; 25 - 35</td>
</tr>
<tr>
<td>E</td>
<td>&gt; 55 - 80</td>
<td>&gt; 35 - 50</td>
</tr>
<tr>
<td>F</td>
<td>&gt; 80</td>
<td>&gt; 50</td>
</tr>
</tbody>
</table>

For side-street stop controlled intersections, special emphasis is given to providing an estimate for the level of service of the minor approaches. Traffic operations at an unsignalized intersection with side-street stop control can be described in two ways. First, consideration is given to the overall intersection level of service. This takes into account the total number of vehicles entering the intersection and the capability of the intersection to support these volumes. Second, it is important to consider the delay on the minor approach. Since the mainline does not have to stop, the majority of delay is attributed to the minor approaches. It is typical of intersections with higher mainline traffic volumes to experience increased levels of delay (i.e. poor levels of service) on the side-street approaches, but an acceptable overall intersection level of service during peak hour conditions.

Results of the existing peak hour capacity analysis, shown in Table 2, indicate that the Hopkins Crossroad (CR 73) and Hillside Lane intersection operates at an acceptable overall LOS A during the peak hours reviewed with the existing geometric layout and traffic control. Average side-street delays from Hillside Lane during both the weekday a.m. and Friday p.m. peak hours are 24 seconds and 27 seconds, respectively. The northbound right-turn and southbound left-turn queues were accommodated within the existing turn lane storage provided (i.e. approximately 100 feet). Note that during the a.m. peak hour, the southbound left-turn is expected to have 95th percentile queue of approximately 90 feet.
Table 2. Existing Peak Hour Intersection Capacity Analysis

<table>
<thead>
<tr>
<th>Hopkins Crossroad (CR 73) Intersection</th>
<th>Weekday A.M.</th>
<th></th>
<th>Friday P.M.</th>
<th></th>
<th>Saturday Midday</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Overall</td>
<td>Side-Street</td>
<td>Overall</td>
<td>Side-Street</td>
<td>Overall</td>
<td>Side-Street</td>
</tr>
<tr>
<td>Hillside Lane</td>
<td>A (3 sec)</td>
<td>C (24 sec)</td>
<td>A (2 sec)</td>
<td>D (27 sec)</td>
<td>A (2 sec)</td>
<td>C (15 sec)</td>
</tr>
</tbody>
</table>

The average number of vehicles waiting to turn from Hillside Lane onto Hopkins Crossroad (CR 73) was observed to be approximately one (1) vehicle during the peak hours. The 95th percentile queues along Hillside Lane extended from three (3) to four (4) vehicles during the peak weekday a.m. and Friday p.m. peak hours, respectively. Based on observations, these queues were a result of vehicles waiting for a westbound left-turning motorist to perform their maneuver.

**Proposed Development**

The proposed development includes construction of a 16,400 square foot Jewish Life Center, as shown in Figure 3. The proposed development is expected to contain sanctuary space for services, classrooms, and a social hall. There is expected to be 52 parking stalls on site, three (3) of which are handicapped accessible. Additionally, there are expected to be eight (8) overflow parallel stalls, if necessary, for an ultimate total of 60 stalls. Access to the proposed development would be located on Hillside Lane approximately 275 feet east of Hopkins Crossroad (CR 73).

**Year 2021 Build Conditions**

The proposed development was assumed to be completed by the year 2020. Therefore, traffic forecasts were developed for year 2021 conditions (i.e. approximately one year after opening). Year 2021 build condition traffic forecasts were developed and include both general area traffic growth and trips generated by the proposed development. The following information provides a summary of the year 2021 build conditions.

**Background Traffic Growth**

To account for general background traffic growth in the area, a review of historical ADT volumes was completed. Based on this review, area traffic volumes have grown by approximately one (1) percent per year since 2006, although average daily traffic volumes along Hopkins Crossroad (CR 73) have ranged from 11,400 to 15,200 vehicles per day since 1998. Therefore, existing traffic volumes collected were grown at one (1) percent annually to reflect year 2021 background traffic volumes.

**Trip Generation**

To account for traffic impacts associated with the proposed development, trip generation estimates for the typical peak hours of operation were developed. The trip generation estimates were developed using information provided by the Chabad Center, shown in the Appendix, and include a comparison with the *Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition*. The following
1) Weekday Morning Service Attendance: 10 to 15 guests
2) Friday Evening Sundown Service (Typical Week) Attendance: 10 to 15 guests
3) Friday Evening Sundown Service (Once per Month) Attendance: 75 to 125 guests
4) Saturday Midday (Shabbos) Service Attendance: 50 to 100 guests

Note that other services and classes are expected to occur throughout the day. However, these additional events are expected to have fewer attendees or occur outside of the peak traffic periods along Hopkins Crossroad (CR 73) and Hillside Lane. To help determine the expected trip generation, the average vehicle occupancy for the weekday morning service was assumed to be one (1) attendee per vehicle based on information provided by the Rabbi. During the Friday evening and Saturday midday services, the average vehicle occupancy was assumed to be approximately 2.25 attendees per vehicle, which is similar to City parking code requirements. The difference in vehicle occupancy relates to the type of attendees, where the Friday and Saturday services are expected to have more families, which correlates to a higher vehicle occupancy. The trip generation estimate, shown in Table 3, includes both the expected vehicle trips base on the previously mentioned assumptions, as well as the ITE Trip Generation Manual.

Table 3. Trip Generation Estimates

<table>
<thead>
<tr>
<th>Approach Land Use (ITE Code)</th>
<th>Size</th>
<th>Peak Hour</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Weekday A.M. (No Dinner)</td>
<td>In</td>
<td>Out</td>
<td>In</td>
<td>Out</td>
</tr>
<tr>
<td>Chabad Center</td>
<td>16,400 sf</td>
<td>18</td>
<td>18</td>
<td></td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>ITE Approach Synagogue (561)</td>
<td>16,400 sf</td>
<td>25</td>
<td>15</td>
<td></td>
<td>27</td>
<td>21</td>
</tr>
<tr>
<td>Difference</td>
<td>+7</td>
<td>(-3)</td>
<td>+20</td>
<td>+14</td>
<td>(-28)</td>
<td>+16</td>
</tr>
</tbody>
</table>

Results of the trip generation estimate shown in Table 3 indicate that the proposed development is expected to generate a total of approximately 36 weekday a.m., 14 Friday p.m., 60 Friday p.m. (once per month), and 50 Saturday midday peak hour trips using the attendance assumptions previously discussed. Note that using the ITE approach for a Synagogue land use results in a relatively similar overall trip generation, however the ITE approach is only based on one (1) study that may not have the same service types. Therefore, to provide an accurate estimate, the attendance approach was utilized for the future capacity analysis.

The new trips generated by the proposed development were distributed to the study area based on the directional distribution shown in Figure 4. The distribution was developed based on the existing travel patterns in the area and engineering judgement. Traffic forecasts for year 2021 build conditions, which includes historical background growth and trips generated by the proposed development are shown in Figure 5.
Directional Distribution
Chabad Center of Jewish Life Traffic Study
City of Minnetonka

Figure 4

Hillside Lane
60%

Fetterly Road
15%

Hopkins Crossroad
25%

HENNEPIN COUNTY

N

Figure 5

<table>
<thead>
<tr>
<th>Location</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hillside Lane</td>
<td>15,650</td>
</tr>
<tr>
<td>Fetterly Road</td>
<td>2,050</td>
</tr>
<tr>
<td>Hopkins Crossroad</td>
<td>14,900</td>
</tr>
</tbody>
</table>

**LEGEND**

- XX - Weekday A.M. Peak Hour Volume
- [XX] - Friday P.M. Peak Hour Volume (No Dinner)
- {XX} - Friday P.M. Peak Hour Volume (Shabbat Meal)
- (XX) - Saturday Midday Peak Hour Volume
- X,XXX - Estimated Average Daily Traffic Volume
- - Side-Street Stop Control
Supplemental Trip Generation Considerations

The following information provides additional trip generation considerations with respect to time of year, day of the week, and time of day. The intent of this information is to provide additional context with respect to the potential trip generation of the proposed development.

Note that the Friday (no dinner) p.m. peak hour trips shown in Table 3 are not expected to occur on a weekly basis. The trips shown coincide with the Friday evening sundown service, which varies by time of day and is based on the actual sundown timeframe. This service is expected to coincide with the p.m. peak of the adjacent roadway (4:00 p.m. to 6:00 p.m.) between November and February, as shown in Figure 6, which equates to four days a year. Throughout the rest of the year, the arrival and departure time for the Chabad Center would be later than the Friday p.m. peak period along Hopkins Crossroad (CR 73).

Figure 6. Sunset Times

Graphs indicating the impact of the expected Chabad Center trip generation in relation to existing traffic volumes along Hopkins Crossroad (CR 73) and Hillside Lane are shown in Figures 7, 8, and 9 for typical weekday, Friday, and Saturday conditions, respectively.
Figure 7. Typical Weekday Trip Generation

Figure 8. Friday (Dinner Service) Trip Generation
Intersection Capacity Analysis

To determine impacts associated with the proposed development, year 2021 build conditions were analyzed. Once again, a detailed intersection capacity analysis was completed using Synchro/SimTraffic (Version 9). The Friday p.m. peak hour was analyzed under both a typical weekly service (no dinner) and a monthly service (Shabbat dinner) condition.

Results of the year 2021 build capacity analysis shown in Table 4 indicate that the study intersection and proposed access location are expected to operate at an overall LOS A during the peak hours with the current geometric layout and traffic control. Average delays along Hillside Lane are expected to increase by approximately three (3) to six (6) seconds during the peak hours, except for the Friday p.m. peak hour with dinner service, which increased by 10 seconds, as shown in the side-street comparison section of Table 4. It is expected that the increase in delay would be experience during the peak arrival period of guests attending the monthly Shabbat dinner service at 6:00 p.m.

Average and 95th percentile queues on Hillside Lane are expected to increase by one (1) vehicle during the a.m. peak hour and Saturday midday peak hour to approximately five (5) and four (4) vehicles, respectively. Queues on Hillside Lane are expected to remain similar during the Friday p.m. peak hour conditions.
Table 4. Year 2021 Build Intersection Capacity Analysis and Comparison

<table>
<thead>
<tr>
<th>Hillside Lane Intersection</th>
<th>Peak Hour Level of Service (Delay)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Weekday A.M.</td>
<td>Friday P.M.</td>
</tr>
<tr>
<td></td>
<td>Overall</td>
<td>Side-Street</td>
</tr>
<tr>
<td>Hopkins Crossroad</td>
<td>A (3 sec)</td>
<td>D (30 sec)</td>
</tr>
<tr>
<td>Chabad Center Access</td>
<td>A (1 sec)</td>
<td>B (11 sec)</td>
</tr>
</tbody>
</table>

The average and 95th percentile queues at the proposed development driveway are expected to range from one (1) to two (2) vehicles during all peak hours. It is expected that there will be minimal changes to the average and 95th percentile queues on Hopkins Crossroad (CR 73) for both the northbound right-turn and southbound left-turn. Both queues are still expected to be accommodated within the existing turn lane storage length of 100 feet.

**Site Plan Review**

A review of the site plan was completed regarding parking and circulation. Results of the review indicate that parking spaces 51 and 52 on the south side of the parking lot will prohibit access to proposed refuse area. Further information is needed to determine how access to this refuse area will be provided to avoid conflicts with these two parking spaces or if a different management condition is planned. Furthermore, the driveway aisle services this area appears to be approximately 20-feet wide, which is generally not wide enough to provide two-way operations, particularly with respect to refuse vehicles.

Landscaping within the area should be maintained to allow for adequate sight distance from the site driveway to Hillside Lane. Easements or right-of-way should also be considered to accommodate future sidewalk and/or trail facilities along Hillside Lane and Hopkins Crossroad (CR 73).
Conclusions and Recommendations

The following study conclusions and recommendations are offered for consideration:

1. The existing average daily traffic volume along Hopkins Crossroad (CR 73) is 14,500 vehicles per day. Historically since 1998, average daily traffic volumes along Hopkins Crossroad (CR 73) have ranged from 11,400 to 15,200 vehicles per day.

2. The Hopkins Crossroad (CR 73) and Hillside Lane intersection currently operates at an acceptable overall LOS A during the peak hours reviewed with the existing geometric layout and traffic control.
   a. Average side-street delays from Hillside Lane during both the weekday a.m. and Friday p.m. peak hours are 24 seconds and 27 seconds, respectively.
   b. The average number of vehicles waiting to turn from Hillside Lane onto Hopkins Crossroad (CR 73) was observed to be approximately one (1) vehicle during the peak hours.
   c. The 95th percentile queues along Hillside Lane extended from three (3) to four (4) vehicles during the peak weekday a.m. and Friday p.m. peak hours, respectively.

3. The proposed mixed-use development includes the construction of a 16,400 square foot Chabad Center for Jewish Life.
   a. Access to the proposed development is located along Hillside Lane approximately 275 feet east of Hopkins Crossroad (CR 73).

4. Results of the trip generation estimate indicate that the proposed development is expected to generate a total of approximately 36 weekday a.m., 14 Friday p.m., 60 Friday p.m. (once per month), and 50 Saturday midday peak hour trips based on the attendance assumptions provided.

5. Under year 2021 build conditions, average daily traffic volumes along Hopkins Crossroad (CR 73) are expected to be approximately 15,650 vehicles per day. Average daily traffic volumes along Hopkins Crossroad (CR 73) would need to increase by approximately 1,500 vehicles per day to reach the theoretical capacity of the roadway.

6. Results of the year 2021 build operations analysis indicate that all study intersections are expected to continue to operate an overall LOS A during the reviewed peak hours.
   a. No significant operational impacts are expected as a result of the proposed development.

7. A review of the site plan includes the following considerations:
   a. Parking spaces 51 and 52 on the south side of the parking lot will prohibit access to the enclosed refuse area. Further information is needed to determine how access to this refuse area will be provided to avoid conflicts with these two parking spaces or if a different management condition is planned.
   b. Landscaping should be maintained to ensure adequate sight distance is provided.
   c. Easements or right-of-way should be considered to accommodate future sidewalk and/or trail facilities along Hillside Lane and Hopkins Crossroad (CR 73).
Jan. 31, 2019 – Meeting between Minnetonka residents and Chabad applicants.

Attendance:

Soo Weins
Lierdahl/Flint
Moscowitz
Rabbi Grossbaum
Councilmember Schack
Architectural Team
Julie Wischnack, AICP, Community Development Director

The remaining lot on the north - questions about what would happen. Rabbi indicated that the property would be privately owned after the development.

Questions about safety requirements for access onto Hillside in terms of line of sight.

Design of building courtyard, does it reflect the sound. The architect, indicated the undulation of the building would help address the sound.

If a school where added to the building where would it go? Architect responded that they had not been asked to accommodate in building designs and it would be difficult to add without some accommodation in this design.

There were questions about the kinds of glass do that they have on east end. The architect indicated that the glass would have a screen, but also indicated lighting is very important to consider.

Questions about what trees they were saving. Architect provided a map that indicated the existing tree locations.

A resident asked what the size of the courtyard? Architect indicated 24 x 50.

How long would it take for the landscaping to grow? Landscape architect indicated 3-5 years.

Rear elevations and the windows - architect showed the area.

From the entrance from Hillside, Vernon Circle residents had concerns about headlights all the way from the entry to the turning. Headlights and turning into area.

Hillside on the south side, stays for the underground garage.

Parking – concern still. Size of events. Architect indicated the extra spaces in the driveway area. Mill Run or Vernon Circle – the resident indicated that he felt that parking would still be a problem. Resident asked about the parking agreement. Rabbi indicated Ackerberg agreement as long as they live there.

Lighting issues on the east side. Clerestory windows and the lights – inside the building. Probably shading in the windows as well. Suggestion for shades.
Glad the building is not as tall.

Outside lighting. Technical requirements of the city. Architect indicated that they would be sensitive to the neighboring properties.

Traffic is still a big concern. There are a lot of users of Hillside, a lot of different users. Hillside – left turn from CR 73.

Mass, intensity of use are different, some felt it was somewhat addressed. But some neighbors are still concerned about the intensity of use.

Property management – sophistication of the design is a concern in terms of on-going management.
2018 Proposal Exhibit and Council Minutes
Location Map

Project: Chabad Center for Jewish Life
Address: 2339 Hopkins Xrd
Ellingson moved, Happe seconded a motion to adopt ordinance 2018-08 and Res. 2018-073 approving the Master Development Plan amendment and Site and Building Plan Review with drive aisle and stall length variances. All voted “yes.” Motion carried.

D. Order for tobacco license violation at Freedom Valu Center #57, 17516 State Hwy 7

Ellingson moved, Happe seconded a motion to approve issuing the Findings of Fact, Conclusion, and Order for the Freedom Valu Center #57, 17516 Hwy 7. All voted “yes.” Motion carried.

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

Ellingson moved, Happe seconded a motion to adopt resolution 2018-074 providing for the issuance and sale of approximately $10 million General Obligation Utility Revenue Bonds, Series 2018A. All voted “yes.” Motion carried.

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.

Ellingson moved, Happe seconded a motion to adopt resolution 2018-075 approving a conditional use permit for a medical clinic, with parking variance, at 10653 Wayzata Blvd. All voted “yes.” Motion carried.

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

City Planner Loren Gordon gave the staff report.

Wagner asked if the road were to be perfectly reconstructed, what the width of the lanes would be. City Engineer Will Manchester said if the road were to be reconstructed, the county would do an extensive study. A common width of lanes per state aid standards would be 11 feet. He said the county would look to add a trail and a sidewalk to each side as well as widening the shoulder on the west. Wagner asked what the likelihood the road could be widened in the next four to five years where the guard rails were located. Manchester said it was a very expensive widening because it would require retaining walls. This was usually done as part of a reconstruction given the costs.
Happe asked if the current plan was for the trail to be built in 2023. Manchester confirmed that was correct.

Wagner asked if the grading plan had changed from what the council had previously seen. Gordon said that was mostly true. Berming had been previously discussed. It was decided during the neighborhood meetings that trying to berm might lead to unintended consequences. Wagner said it appeared that in the grading plan there was a contour where the parking lot would be. The fence would be 10 feet high. He asked what the impact of headlights would be during the wintertime. Gordon noted the parking lot was four to five feet lower than the property line. The fence would block the headlights but the question was if the light would shine over the top of the fence. Wagner asked staff to come up with some conditions for approval to address this issue.

Wiersum said he was sensitive to the headlight issue as well but thought there was a difference between having headlights shine directly into people’s windows as opposed to having the light being refracted. The intensity was dramatically different.

Wagner said the parking was being based on the assembly standard seating with 99 seats. If that increased there was a trigger for the council to look at the conditional use permit again. He asked staff’s opinion on maximum capacity. He said the applicant’s document inferred the maximum would be 125 for a large gathering. Gordon said when the parking study was done, staff wanted to look at existing conditions as well as the proposed parking. Conditions were looked at for a typical week day as well as Saturdays. The study indicated parking would be adequate during these times. Wagner said there would be special events with 250-300 people attending. He said he would like to hear comments on how parking would work for those events.

Rabbi Mordechai Grossbaum said there had been a lot of discussion about traffic and landscaping. He said Ackerberg agreed it would provide additional parking. This would suffice for the larger events. He said he had committed over and over to working with the city on the landscaping.

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Wagner said the parking was being based on the assembly standard seating with 99 seats. If that increased there was a trigger for the council to look at the conditional use permit again. He asked staff’s opinion on maximum capacity. He said the applicant’s document inferred the maximum would be 125 for a large gathering. Gordon said when the parking study was done, staff wanted to look at existing conditions as well as the proposed parking. Conditions were looked at for a typical week day as well as Saturdays. The study indicated parking would be adequate during these times. Wagner said there would be special events with 250-300 people attending. He said he would like to hear comments on how parking would work for those events.

Rabbi Mordechai Grossbaum said there had been a lot of discussion about traffic and landscaping. He said Ackerberg agreed it would provide additional parking. This would suffice for the larger events. He said he had committed over and over to working with the city on the landscaping.

David Abrams, 11501 Fetterly Road W, asked what the nature of the contractual commitment was for things like landscaping and water management. What was the process should the city find the verbal commitments were not being met? He said the plantings shown in the pictures would take a number of years to provide adequate screening. He asked what the plan was for replacing the plantings should they die. He grew up in a home where headlights came directly into his bedroom. He said it was utterly important that the lighting provide the proper security. He asked how bright the security lights would be. He said the city already had experience at the other three synagogues in the city for understanding what parking was needed during the high holidays.

Aaron Parker, the project architect, said if there was a violation of the storm water management, the property owner would be penalized. He said he was working closely with a civil engineer to ensure there would not be a problem with
the storm water management. The existing situation would be improved. He said there would be adequate security lighting that would be well back from the property line. He was as concerned as others about the security. He said headlights should not be an issue given the slope and the fencing. A fast growing very dense cedar would be used for the landscaping.

Jo Soo, 2391 Vernon Circle, asked the council to require an eight foot tall fence. The fence would provide better noise mitigation. He also asked that the council require a 50 foot green space that would act as a buffer to the properties to the east. He said the neighbors still have an issue with the size and mass of the building that was too close to the neighboring homes.

Candace Velasquez, 11512 Fetterly Road, said the safety issues caused by the proposal were very disturbing. She said the school parking lot and bus stop at Fetterly Road and Hopkins Crossroads was precarious. Her children do not use it because it was too dangerous. She was very concerned with the dedicated left turn lane at the expense of the homes in the area that lose a dedicated right hand turn lane. She said the Mill Run and Overlook neighborhoods were very small neighborhoods. The Fetterly neighborhood was much larger and had a lot of inbound and outbound traffic. She asked the council to reject the proposal.

Vladimir Greengauz, 15200 Willowood Drive, said he tried to imagine a situation where something big was moving into his neighborhood. The first question he would have was if the proposal was legal. This proposal was legal. He might then take the attitude he wouldn’t like the proposal no matter what, no matter how many changes were made. Everyone wants something nice facing their front yard. Something would definitely be built on the property whether or not the council approved Chabad. He said the congregation was part of the community. He asked that when the council made its decision it did not think only about the upset neighbors but also the people looking for a place to pray.

Lori Fritz, 11111 Mill Run, noted she had emailed a court case to all the councilmembers that involved a CUP in Bloomington. The city denied the CUP citing safety concerns and the Minnesota Supreme Court upheld the denial. She said if the council denied this proposal due to safety concerns, the next proposal would also be denied for the same reason. The concerns had nothing to do with this being a religious organization. She said the new striping design would make her right turn less safe because it was taking away the area she uses to speed up to merge into traffic. As a public entity the city had the obligation to design and maintains roads that do not pose a reasonably foreseeable risk.

Susan Wiens, 2346 Vernon Circle, said she recognized that the staff recommendation was for approval of the project. She also recognized the council were elected by residents to use their own judgment to make an independent determination on the proposal. She said there was factual basis to deny the CUP. The city zoning was enacted to promote public health and safety and general welfare. The CUP gave even more specific requirements for approval. The neighboring houses were dwarfed by the proposal and the land use was not compatible. The structure was jammed into a small space. Congestion was not
limited to County Road 73. The neighbors were thankful for the city and the county attempting to address the issues, but what was before the council was not the solution. She said the CUP required that the proposed use did not have an undue, adverse impact on the public health, safety and welfare. The location of the curb cut had not been changed even though there had been many discussions about moving it more toward Hillside. The re-striping did not help the access and sightline issues. The drivers exiting Chabad by taking a left hand turn, would have to cross two lanes of traffic instead of one. The problem had not been solved by the re-striping. The county’s spacing guidelines were not met. There was a known risk that was being created by the additional use of the site. The county commented on the re-striping plan by indicating its preference for relocating the access point further north because of safety concerns. She said if there was an agreement of offsite parking the agreement should be in writing and should ensure the arrangement continued into the future. The ordinance required the council to consider what the design capacity was. The design capacity was not 99 people.

Amy Weiss, 2308 Nottingham Court, said her children use the bus stop. Eliminating the right turn lane would make it even more difficult for the children to safely get on the bus. Making the right turn required the driver to do so slowly because the width of the road was narrow. Doing this with cars driving 40 mile per hour behind you was an accident waiting to happen.

Michael Leirdahl, 2390 Vernon Circle, said his house was directly adjacent to the project property’s parking lot. The 10 foot high fence was needed to address the lighting, the noise and the visual coming from the property. The six foot tall arborvitae would not grow the first two years. After that there would be roughly eight inches of growth a year. It would take 10 years for the arborvitae to provide the same amount of privacy for his property as a 10 foot fence. Because there was not a light plan, the height of the lights was not known. He said he felt disrespected by some of Grossbaum’s comments and those comments made him concern about what type of neighbor Chabad would be.

Marvin Liszt, the attorney for Chabad, 9701 Oak Ridge Trail, said change was difficult and could be disconcerting. Human nature was to like things the way they are. That’s not what always happens. Land use changes occur in both urban and suburban environments. The city’s ordinances allow religious institutions and other institutions in R1 neighborhoods. He said all the comments he heard from the neighbors could be made for any proposal for an institution going into an R1 neighborhood where the facility was larger than the surrounding homes, was visible by the surrounding homes, and may create more traffic than a single family or two single family homes. The staff report indicated there were 21 other religious facilities in the city in R1 zones. Every one of those were larger than the homes around them but they still coexisted well with the surrounding environment. He said the traffic studies indicated the additional traffic from this proposal was negligible. He noted the staff report indicated the proposal met the CUP standards. Three experts, SRF, city engineering staff, and county engineering staff had looked at the project in terms of safety. All three didn’t find a safety issue with the use and the re-striping project. He said in the Supreme
Court case involving the CUP in Bloomington, there were competing expert traffic engineering reports and there was a 26 percent increase in traffic as a result of the proposed use. He noted the resolution before the council contained a provision that would allow the council to consider revisiting the CUP if there were any changes from what was approved and issues arose. He supported this language. He said there was no legal basis to deny the CUP.

Amy Taswell, 11120 Mill Run, said the staff report for the April planning commission meeting contained the word “safety” one time. The staff report indicated there was not a safety issue but it did not address specific concerns. There was nothing about the increased turning traffic on County Road 73, pedestrian traffic, bicycle traffic, parking or congestion. The re-striping would not address the safety issue. She said the staff report was heavily reliant on the traffic study and the traffic study was heavily reliant on information provided by the applicant. If the information provided by the applicant was wrong or incomplete, there was a safety issue.

Skylar Silberman, 11123 Mill Run, said she was 18 years old and had been driving for a little over a year. She is Jewish and in high school was the regional leader of the Minnesota Chapter of the B’nai Brith Youth Organization. She asked the council to reject the proposal because of the safety concerns. She waited to get her driver’s license because she was terrified of driving. She still dreads making the left hand turn from Mill Run onto Hopkins Crossroad. Her younger sister who just began driving would also be affected. Silberman said her sister often walks to Ridgedale with her friends. Change should always be for the better and not make things less safe for her sister, herself and other residents. One accident that took a life would be on the hands of the people who approved the project.

Susan Flint, 2390 Vernon Circle, said the traffic expert the neighbors hired indicated there were safety issues. Similar to the Supreme Court case, there were conflicting expert opinions. She said the language in the resolution that Liszt cited allowed the council to review the CUP if there were changes, however it wasn’t mandatory that the council do so. She requested that be changed. She noted that the last time the council reviewed this proposal, Wiersum asked the city attorney how much latitude the council had in making a decision. The city attorney indicated that whatever decision was made there was a requirement to support the decision with findings. There were some objectives standards not subject to debate, but there were also some subjective standards that allow some exercise of discretion. Flint said all the information from the community had been reasonable, founded in fact, and credible. There were at least 16 discretionary standards that were identified that should lead the council to deny the application. The council was fully in its purview to deny the application.

James Bechtold, 11320 Fetterly Road, said the hill coming up Fetterly Road should be three lanes, not two. When somebody parks on the hill there was only room for one car to get up to the stop sign. Eliminating the right turn lane would stop traffic. He said the right turn lane on the east side of County Road 73 should be extended as far down as possible and the entrance to Chabad should be as
far north as possible. He was concerned about the safety on County Road 73 whether this proposal was approved or not. He suggested Chabad pay for the right turn lane.

Parker said the request for the fence on the east side was related to security, sound, and visibility. He said the type of fence being discussed would provide no noise mitigation. The height of the fence had to do with the fence being able to withstand strong winds.

Kristin Soo, 2391 Vernon Circle, said she hoped the city would ask Chabad to put in a fence that would provide noise mitigation.

David Carlson, 11171 Mill Run, said the project would negatively impact the neighborhood. If it wasn’t going to adversely impact the neighborhood there would be no need to have a schematic showing the re-striping. If three single family homes were built, there would be no discussion about re-striping the road. He questioned why taxpayer money was being used for the re-striping.

Gordon said he and Manchester reviewed the issue related to headlights. Based on the slope, headlights would shine below halfway up on the fence. There would not be direct headlights on to the properties to the east but there might be some glare. In terms of safety, staff looked at the issue from a volume standpoint. As far as the access currently there were two driveways and the proposal was to consolidate them into one. He said if something were not built as approved, the correction would be handled administratively. If the issue wasn’t discovered until after construction was complete, the CUP could come back to the council. Wischnack said every project came with financial security to ensure things were done as approved. Gordon said the costs of the re-striping would be shared by the city, county, and applicant.

Wagner said the re-striping was a $20,000 project. He asked what the additional benefit was to having a right turn lane. Manchester said staff looked at the intersections to see what would fit in and the impact to the shoulder of the road. The road could be widened to accommodate a right turn lane. The volume of traffic during peak hours was looked at. In this case there were around 20 cars in a peak hour that would take the turn. Typically what triggers a turn lane was 100 cars in a peak hour. Wagner said this was the location of the bus stop, which gave him pause. There was not a perfect solution. This was the way the county was designing roads. He said driving down Minnetonka Road, he had to wait for drivers turning right into the Marsh. He agreed with the traffic study’s conclusion that this proposal would not generate a lot of traffic. What he didn’t necessarily agree with was that the turns would not have an impact.

Wiersum said that was what he had been grappling with. Was County Road 73 unsafe? The neighbors indicated it was. The lane width after the re-striping would meet the current way roads were being done. The center turn lane was the wave of the future if not the wave of the present. This was done on many roads in the area. The question he had was if there were characteristics of certain
intersections in this neighborhood that made some of the intersections inherently less safe.

Calvert asked for clarification of the location of the access out of Chabad on to Hopkins Crossroad. Gordon pointed to the access point on the plans drawn up by Chabad. He said when the county was asked to review the driveway permit, they may decide to request it be moved north. Staff and SRF do not believe there would be sight or visibility issues if the access was as shown.

Acomb said traffic on the road already was an issue. She agreed the impact of the proposal would be negligible although it certainly would not make things better. She asked if there had ever been a project involving a road of this grade that was denied because of the impacts of traffic. Gordon said normally an engineered solution is agreed upon that accommodates a project through an improvement of some type. He cited the Fingerhut development on Baker Road as an example. Acomb asked if Baker Road was graded as a "D" like County Road 73. Gordon said it probably doesn’t have quite the same volume. Wagner said Syngenta was another example.

Wagner said at the May meeting there were concerns about the locations of the Mikveh and playground. He asked if anything had changed. Parker said the entrance to the Mikveh was moved from the east side to the south side. It had not been determined if there would be a playground.

Wagner said if the council approved the proposal, he had identified some things that should be considered so that expectations were aligned. He was not comfortable with the lack of specificity in the CUP for a site this small in an R1 neighborhood. It was a permitted use and the center would be fabulous addition to the city. The proposal met the objective criteria. As far as the subjective criteria, he thought there were some challenges associated with the fears of the neighborhood. The council was entrusted with making sure the issues could be effectively managed. He didn’t want staff to be in the position of being a mediator to an issue every month. He suggested codifying some language related to event or large gathering management plans. During his time on the council he had only received one call about Adath and it was because Adath had such a management plan in place. The council policy was in order to get no parking on a street, the city had to receive a petition. He didn’t think this was the right policy for Mill Run. One thing that gave him pause was dragging staff into ongoing deliberations. He said he was extremely involved with the Syngenta landscaping. What worked out well was there was an active neighborhood with similar concerns so a landscaping plan was developed. Expectations were communicated about the ongoing maintenance. He didn’t want staff to get in the middle of ongoing management of the plan. He said another fear of the neighborhood was what would happen if there was a great deal of increased usage. Determining upfront how to mitigate this should it occur, was something that also should be discussed. He had great concern about the proposal related to the footprint and the intensity of the usage of the site tied to the pinch points on Hopkins Crossroad and that a trail would not exist for another five years. This would have some adverse effects on the safety in the area.
Acomb said as she thought about this project she thought back to other projects that had similar neighborhood engagement. One such project was the Highland Bank building that had a great deal of pushback from the neighbors. The biggest concerns were around traffic. That situation was totally different because the city had control over the road. Because the city was a responsive government the decision was made to redo the road at a major expense. This project involved a county road. She noted the trail was not scheduled for another five years and asked if the trail plan had been looked at to move it up on the list. Barone said there was a list of trails in the CIP that were prioritized based on predetermined criteria. There were other projects ahead of this trail. She said the council could reprioritize projects in order to move this trail up on the list.

Calvert said at the last council meeting she had brought up the idea of making a right turn only out of the parking lot. This was absent a request for a median. If there was a way to encourage people only to turn right, many of the concerns would be addressed. She said she belonged to a congregation that had a flexible space. She appreciated Wagner’s comments about an event or large gathering management plan. She didn’t think this issue was insurmountable. Parking at Ackerman would accommodate a number of people.

Happe said religious institutions were generally pretty good neighbors. This location from a redevelopment standpoint was attractive to do something different. He continued to have grave concerns about traffic, pedestrian, and bicycle safety. This was an area that already had issues. Because of the safety concerns, he was not in a position to support the proposal.

Bergstedt said the zoning allowed religious institutions. The county approved an access on to County Road 73. He still had concerns about the mass of the development on a very small piece of property. This had led to elaborate landscaping plans to protect the neighbors. If Chabad was willing to work with the neighbors on the landscaping, proper buffering was possible. He said he was really struggling with the public safety issue. This was a very dangerous road especially for people walking and biking. The pinch points were a serious matter. A lot of his concerns would somewhat be alleviated if the trail was going in at the same time as this proposal. He was concerned about eliminating the right turn lane on to Fetterly Road because this would add to the danger. There were benefits to the re-striping but as he looked at the re-striping plan he saw as many negatives as positives.

Calvert said this was prime real estate in the city and everyone agreed Chabad would make good neighbors. The county proposed an initial solution to some of the roadway intensity issues. She worried what could end up on the property if this was not approved. If it were three single family homes, the driveway access would be an issue. She said this project met the objective standards. She thought it was a very intense use of the property. The original traffic study showed there would be a .7 percent added traffic. The property would not remain empty forever and whatever ended up going there would also add complexity.
Heine said the ordinance contains purpose and intent sections that do not create independent standards. The burden was on the applicant to show he met the conditions for this use set forth in the ordinance. There were both objective and subjective standards. The applicant had to meet all the standards. When it came to the subjective standards the council had to consider all of the evidence in the record and needed to make a determination and judgement on whether the subjective standards had been met. If the council found that all the standards had been met, it couldn’t go back to the purpose and intent sections and say that something did not meet the intent. The intent and purpose sections were meant to guide and inform the council in determining what the actual set standards were. She said all the testimony on the traffic related to the standard of public health, safety and welfare. The testimony related to the site plan and landscaping related to the standard of protection of adjacent and neighboring properties. Both of these standards were subjective standards.

Ellingson said he agreed with the other councilmembers who felt this was a good project and Chabad would be a good neighbor. He also shared the concerns about public safety and traffic. It was a difficult decision because this was a good project. He was apprehensive about accidents that might happen.

Acomb agreed Chabad would be a good neighbor and good member of the community. She appreciated the efforts made to the landscaping design. Her concern was about the safety of the road. She worried about the location of the bus stop and kids having to cross multiple lanes to the other side.

Calvert said one of the things she thought about was that most of the activities of the center would occur during nonpeak traffic times. This lessened some of her concerns.

Wiersum said when the proposal was first before the council the issues were with the landscaping and not knowing if the county would agree the access could be off Hopkins Crossroad. The county agreed to that access. He said he heard many comments that the council had not even discussed safety issues. There was no need to get into the safety issue if the county had denied the access on to Hopkins Crossroad. Now the safety issues needed to be discussed. If Hopkins Crossroad was striped the way other roads in the city were being striped, it wouldn’t be inherently unsafe. At the same time he wasn’t willing to say it was a safe road for pedestrians. One of the things he was pushing for as the mayor was greater attention to pedestrian safety. He wanted people to be able to walk safely in the city. He wanted people to stop at yellow lights and not accelerate through the intersection. He wanted people to be able to step into a crosswalk and not worry about getting run over. The geometry of County Road 73 was not kind to pedestrians even if the lanes of traffic were conforming and the way of the future. He said the proposal technically met the CUP standards. Religious institutions were allowed in R1 zoning. He said this was a poor location for this facility. It was an intense use on the smallest religious institution property in the city. Most religions want to grow. If this facility was a success that meets its mission the intensity of use would get greater. The added traffic was not so great it would dramatically change the safety of County Road 73. He said this use was
exceedingly intensive. He said Chabad satisfied him with the proposed landscaping. He would love if they found a larger property in the city. He didn’t know if his concern about the intensity was a valid reason to deny the CUP. Pedestrian safety and the general safety associated with this location was a valid reason for denial.

Heine said the question if this was an appropriate site was a valid consideration for the council if it determined the intensity of use on this particular parcel was not appropriate for the neighborhood and did not meet the CUP.

Wiersum said if the proposal were to be approved there needed to be a special event management plan if there were 125 people or more as Wagner suggested. The management plan would need to include things like temporary no parking signs in the neighborhood, a specific offsite parking plan, and a specific traffic management plan.

Gordon said an approval resolution was included in council packet. The council could add whatever conditions it deemed necessary. If the council was of the mind to deny the proposal then it needed to state findings of fact. Heine provided language to include in the resolution about the event management plan.

Bergstedt said given the size of the parcel, the proposal was way too intense. His biggest concern was not to come up with an event management plan, it was the public safety concerns. He wasn’t concerned about number of cars exiting Chabad during the day, but he was concerned about the re-striping plan, loss of the turn lane and having a middle turn lane. The additional turning movements would affect the traffic all day long. There were existing safety issues.

Acomb said public safety was her biggest concern and she leaned toward denial.

Wagner said it was important to keep in mind that rarely has the council wrestled with something like this. There was a 7-0 vote for approval of the Highland Bank. Here, the council was split. The council doesn’t always strive for 7-0 votes but many of them end up that way because through the process the proposal gets better. He said this proposal never went through a concept review plan and many of the comments made at this meeting would have been made at a concept plan review. This would not be a bad site for this proposal if the site was bigger. It was not a bad site if some of the improvements could be done. He suggested coming up with findings of fact to deny the request. He said the council found the drivers for denial being tied to the intensity of use and turning movements that it generated negatively impact the public safety on the county road. Also, there were multiple driveways within a short distance with limited shoulder widths.

Heine said those comments along with Bergstedt’s comments about the turning movements and the lack of a right turn lane for Fetterly Road would be used for findings of fact. She said several councilmembers made comments about pinch points in terms of the narrowed shoulders. Comments were also made about the development adding additional traffic onto a roadway that the council already considered unsafe. Wagner said he disagreed with that suggested finding. He
thought the concerns were with the turns that would be generated not the amount of traffic coming from the development. Wiersum agreed. Heine said all those findings would support a determination that the applicant had not met the burden of demonstrating that the use would not have undue adverse on public health and safety.

Wagner asked if it would be helpful to include in a motion that the council agreed it was a conditionally permitted use because this was a site specific issue not a use specific issue. Heine said it was undisputed that the use was conditionally permitted in this district provided they met all the objective and subjective standards. The council was finding that due to the traffic safety and intensity of use on a small site that the application did not meet the standards.

Wagner moved, Bergstedt seconded a motion to deny a conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run based on the stated findings. Acomb, Happe, Bergstedt, Wagner, Ellingson and Wiersum voted “yes.” Calvert voted “no.” Motion carried.

Wiersum called a recess at 10:26 p.m. He called the meeting back to order at 10:37 p.m.

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;
3) Final site and building plan.

Gordon gave the staff report.

Wagner said he disagreed with some of the planning commission and staff dialogue. There was discussion there was a fixation with the building and not about the site. He when he was talking about mass it was about how much mass the site had that was buildable and not the slopes. When the existing building was approved the council had approved a dual use site. The city had encumbered itself with a relatively new, highly valued building while also wanting residential on the site. Staff and the developer seemed to take the council’s comments that the mass and intensity of the site did not include the office building. He said for him, it did. Wieschnack said the council had talked about footprint so that was part of the planning commission discussion. Gordon said the staff and planning commission talked about the functionality of the site with the office building. He said some of the planning commissioners were not concerned with the intensity of the site and would have supported a five or six story building.

Wiersum said the scale of the new building was quite a bit smaller. The concerns about the mass and scale of the building had largely dissipated. He agreed with staff that having an office building that wasn’t visible from the primary road was a problem. Given the office building was there he asked what changes could be
Planning Commission Change Memo
and Meeting Minutes
C. Resolution approving a conditional use permit and site and building plans for a religious institution located at 11021 Hillside Lane West; 2327, 2333 and 2339 Hopkins Crossroad; and 11170 Mill Run.

Chair Kirk 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.

Rabbi Mordechai Grossbaum, representing Chabad Jewish Community, applicant, stated that:

- He thanked the neighbors for their input to make sure the proposal would fit in the neighborhood.
- The applicant would continue to perfect the project to fit in the neighborhood.
- He introduced realtor Jeff Herman of Urban Anthology, architects Gabe Keller and Ryan Fish, and attorney Marvin Liszt.

Mr. Herman stated that the applicant is looking for a home with a welcoming feeling. The proposed site was for sale for one year. He understood the neighbors’ concerns with the intensity of the use and public safety. Purchase of a second property would allow access to the site from Hillside Lane. He was excited to present a project that would make a lot of sense. There is a sidewalk system that goes along the street and another synagogue along that street. He requested that the project be approved.

Ryan Fish and Gabe Keller, architects with Peterssen Keller Architects, introduced themselves. Mr. Keller stated that:

- Thomas did a good job covering the history of the proposal in her report.
- The proposal would be similar to the residential houses that the architectural firm works on. The building would not be two stories or large. The building would be spread out and modestly scaled.
- He reviewed the revised site plan with neighbors who had previously expressed concerns. The landscape architect found a way to spread coniferous trees along the driveway, increase fencing, and grade the site to prevent vehicle lights from leaving the site.
- Finding the perfect elevation would help the building feel balanced.
- There would be more parking than required by code requirements. More would be available for special events.
- There would be plenty of green spaces.
- There would be no variances.
- Safety of the site would be improved. There would be no through traffic, so Mill Run would only have traffic from the private residences.
- The floor plan would remain the same. Activities would be contained inside the building and the court yard.
• The materials used would be beautiful and of high quality. Masonry, wood, and glass would be used.
• There is an existing drive to Hopkins Crossroads that would be removed.
• He reviewed the designs and explained how light would be mitigated.
• Native grasses would be used to soften the edges of the property.
• Lighting would have a residential feel. Shades would be on a timer and shut automatically in the evening.
• The applicant was not dismissing any of the neighbors’ concerns.
• He was available for questions.

Chair Kirk asked how a pedestrian would access the building. Mr. Keller explained the foot-traffic pattern. Thomas explained that a trail on Hopkins Crossroads is scheduled to be constructed in 2023.

Mr. Keller encouraged residents to continue to reach out to him and continue the dialogue. He stated that the building would be 17 feet in height. The sanctuary space would extend to 23 feet in height. Thomas explained that the height of a home is measured at the midpoint of a pitched roof. The peak of the roof would be higher. Gordon provided that the maximum height of the roof would be 35 feet. The technical height of the proposed building is 17 feet.

In response to Henry’s question, Mr. Keller stated that the neighbors did not mention a preference with the height of the proposed six-foot fence. Mr. Keller added that very specific light standards that restrict how much light may extend onto an adjacent property would be met. Software would be used to verify the coverage areas of the parking lot lights.

Luke confirmed with Thomas that the standard for surrounding cities for parking of a religious institution is one parking stall for three sanctuary seats.

The public hearing was opened.

Gregg Hoogeveen, 2525 Cedar Hills Drive, stated that:

• There are ten vehicles usually at each service.
• There is a path through the forest.
• There is plenty of parking on his street.

Sarina Harris, Golden Valley resident, stated that:

• Chabad would make really good neighbors.
• The synagogue is being built for herself and her family.
• She hoped commissioners would support the proposal.

Jo Soo, 2391 Vernon Circle, stated that:
• He likes the building design. It looks wonderful. The design and architecture would fit in well with the neighborhood. His concern with the building height has been addressed. The design and location of the courtyard shows that it was designed to minimize the noise of outside activities.
• The screening with trees and lighting plans will help minimize the impact on neighbors.
• The number of pedestrians would increase.
• There will be young drivers in the neighborhood.
• He questioned how large events would impact the neighborhood.
• He asked if the driveway location would be a safe location.
• This is a vibrant community.
• The proposal would have more visitors than the number listed in the application and would have a serious impact on the traffic.

Michael Lierdahl, 2390 Vernon Circle, stated that:
• The proposal has been greatly improved.
• He noted that trees or buffering would be needed to prevent headlights from hitting the houses on Vernon Circle.
• He wants a new fence rather than fixing the existing fence. He would like the good side of the fence facing his property. It should be tall enough to block the headlights.
• He was concerned with overflow parking for large events. Fifteen to 20 times a year would be a lot.

Tanya Farber, 11025 Joy Lane, stated that:
• She moved here to be part of the Chabad community.
• The design, location, and access from Hillside Lane would provide safety for pedestrians.
• The building looks beautiful. She is excited to have Chabad so close to where she lives and build relationships with the neighbors.
• She requested the application be approved.

Yvette, a resident of St. Louis Park, stated that:
• She is a member of Chabad.
• She wants to be part of a community that will embrace her and her family for years to come.
• Chabad would be an excellent addition to the community.

Sam Black, 2265 Cape Cod Place, stated that:
• The design is fantastic. It is much more harmonious with the neighborhood.
• Hillside Lane is already busy with drivers who do not stop at the stop sign in front of his house. There needs to be more marking and signs to provide pedestrian safety.
• He opposed monument signs being located on Hillside Lane.
• He suggested a long-term plan be created for the two residential lots on Hillside Lane and Hopkins Crossroads.

Susan Wiens, 2346 Vernon Circle, stated that:
• Many of her issues and concerns have been solved by removing the access from of Hopkins Crossroads.
• The proposal would have five lots. She questioned how many lots combined would be too many for an R-1 district. She suggested creating a policy to restrict the number of lots that could be combined.
• She asked how screening for the lot not included in the conditional use permit would be enforced.
• The traffic study looked at the normal, general use of the property. It did not include special events. There needs to be conditions to address large events that would cause overflow parking.

Mike Anderson, 11105 Hillside Lane, stated that:
• Tonight was the first he heard of screening for his property.
• He was concerned with noise from traffic on the driveway.
• He was concerned with headlights hitting his house and yard.
• The building would be attractive, but it would be larger than most of the houses in the neighborhood.
• After getting the easement, the rest of the property could be sold.
• It would be an intense use of the property.
• He was concerned with lighting hitting his property and house.
• It is difficult to drive onto Hillside Lane West.
• There would be several occasions where the capacity would be exceeded.

A current Edina resident who recently purchased 2600 Crescent Ridge Road, stated that:
• He and his wife purchased the residence to be close to Chabad and be part of the community.

Emilia Kvasnik, 14540 Woodruff Road, stated that:
• The new plan has addressed many issues and the applicant is willing to keep addressing and fixing concerns.
• She wants residents in the neighborhood to be as comfortable as possible.
• The proposal is balanced between the needs of the neighborhood and the benefits that Chabad would provide.
• She is very excited for Chabad to join the community.

Kristin Soo, 2391 Vernon Circle, stated that:

• She appreciated the building being changed to address her concerns.
• She requested protection from headlights for residences on Hillside Lane.
• Once the driveway location is confirmed, she requested that the sight distance be evaluated for the intersection.

No additional testimony was submitted and the hearing was closed.

Thomas explained that:

• The lot on the north would be laid out so that a new, single-family house could be constructed. The lot would exceed all minimum lot requirements for an R-1 lot. There does not need to be a plan for the property at this time. She clarified that the total site is over three acres in size. The space for the religious institution and drive area would utilize 2.86 acres and the site would still have additional land that could be used for a single-family residence.
• The driveway must be located as close to the crest of the hill on Hillside Lane as possible to provide good sight lines on both sides. The drive location would not be an issue for a single-family house lot, but would be for the driveway of a religious institution and is the reason for the conditional use permit making a distinction between the part of the site to be used for a religious institution and the part that could potentially be used for a residence in the future.
• The driveway easement would be recorded with the property. A change of owner would make no difference.
• A monument sign would be allowed in accordance with the sign ordinance.
• City staff does not have the authority to prevent a property owner from combining lots. That could be done by filling out a form with the county.

Chair Kirk noted that a logical course of action would be to create designated areas for pedestrians to cross Hillside Lane West and Hopkins Crossroad.

Thomas stated that:

• Property owners could petition the city to have “no parking” signs installed on the street. There would need to be a strong consensus among all property owners adjacent to the street. The city council has the authority to approve “no parking” signs.
• The city is not allowed to restrict the number of visitors to a site or the number of special events held.
• Fencing and landscaping would not be requirements of the conditional use permit. Commissioners could add fencing or landscaping as a condition of approval if it would mitigate the impact to or make the use more compatible with the surrounding area.
• A traffic study identifies what would occur on a regular basis rather than specific holidays or special life events.

Luke asked if there would be a setback requirement from the driveway. Thomas answered that the required setback would be 20 feet which is what is illustrated on the site plan.

Henry asked if there would be a setback requirement from parking spaces to the adjacent residence. Thomas answered in the negative. The existing house would be removed.

Henry is totally impressed with the improvements to the plan. He supports staff’s recommendation.

Knight really likes the proposal. The building itself looks magnificent. The concern with traffic on Hopkins Crossroad has been remedied. Many drivers would turn right when exiting the site. He understood the initial concern neighbors felt, but he thought it would end up being a good fit for the neighborhood.

Luke was impressed with the drawing of the building. It would be beautiful. She was impressed with the partnership and the understanding between the neighbors and the applicant. Compromises have been made. She encourages the applicant to continue working with neighbors. She supports staff’s recommendation.

Hanson was overall supportive of the project. He encouraged the applicant to maintain communication with the neighbors to address light and noise issues.

Sewall encouraged the applicant to finish strong by keeping neighbors informed and being open to changes to be the good neighbors he knows they would be.

Chair Kirk felt that the process has taken the proposal to a better conclusion than where it was a year ago. The neighborhood would be impacted by the project. He hoped the landscaping plan would be more developed for the city council’s review. He preferred more coniferous trees than fences. He would like to see a clear pedestrian access. He liked the use of glass and stone. It makes the building attractive and look more natural. He supports the project and appreciated the neighborhood and applicant working together.

Henry moved, second by Hanson, to recommend that the city council adopt a resolution with modifications provided in the change memo dated Feb. 7, 2019.
approving items for the Chabad Center for Jewish Life located at 11021 Hillside Lane West; 2327, 2333, and 2339 Hopkins Crossroad; and 11170 Mill Run.

Sewall, Hanson, Henry, Knight, Luke, and Kirk voted yes. Powers was absent. Motion carried.
ITEM 8C – Chabad Center for Jewish Life

- **Report.** Staff's general recommendation was included in the “Summary Comments” section of the report, but was cut off from the “Staff Recommendation” paragraph. For clarity, please note:

  **Staff Recommendation**
  Recommend the city council adopt the resolution approving a conditional use permit for a religious institution at 11021 Hillside Lane West; 2327, 2333 and 2339 Hopkins Crossroad; and 11170 Mill Run

- **Resolution.** Please add the following condition to the landscape plan requirements, beginning on page 9 of the resolution:

  Plantings must be field located, and approved by city staff, to maximize buffering of area residences.

- **Attachments.**
  - The city attorney’s 2018 memo was inadvertently not include with the report. It is attached.
  - Several comments were received after publication of the report. They are also attached.
To: Planning Commission Members
From: Corrine Heine, City Attorney
Date: April 20, 2018
Subject: Religious Land Uses and Institutionalized Persons Act of 2000 (RLUIPA)

The Chabad Center for Jewish Life has submitted an application for a conditional use permit to construct a religious institution or facility within an R-1 zoning district. The application is scheduled for a public hearing before the planning commission on April 26, 2018. This memo provides general legal guidance to assist the commission in its review of the application. The intent of the memo is to point out the legal parameters within which the commission must exercise its discretion, not to dictate how that discretion should be exercised.

Members of the planning commission are familiar with the laws related to conditional use permits. To summarize those general requirements:

- If an applicant meets the requirements set forth in the zoning code for the issuance of a conditional use permit (CUP), the applicant is legally entitled to have the CUP approved.
- If the proposed use creates adverse impacts that could cause the CUP to fail to meet a requirement of the ordinance, but the applicant offers to accept a condition that would mitigate that adverse impact, it is arbitrary to refuse to consider the proposed mitigation. However, the city is not required to accept the proposed condition if it is insufficient to mitigate the harm. (For example, assume an application for a gas station CUP, and the evidence shows that lighting and headlights could have adverse impacts on neighboring properties. If the applicant offers to accept conditions that restrict the hours of operation and require fencing around the property, the city must consider whether the conditions will mitigate any adverse impact. The city may reject the condition if it reasonably determines that the harm will still occur, even with the fencing and restricted hours.)

The general laws related to conditional use permits apply to the proposed CUP. In addition to those general requirements, because this application involves a religious institution, the provisions of the federal Religious Land Uses and Institutionalized Persons Act of 2000 (“RLUIPA”) also apply. This purpose of this memo is to provide a general overview of RLUIPA as it relates to land use approvals.

Congress enacted RLUIPA to address concerns that local zoning authorities sometimes discriminated against religious institutions by placing excessive or unreasonable burdens on the ability of congregations and individuals to exercise their faith. RLUIPA provides the following protections for religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions:
Protection against substantial burdens on religious exercise. RLUIPA prohibits any land use regulation that imposes a “substantial burden” on the religious exercise of a person or institution except where justified by a “compelling governmental interest” that the government pursues in the least restrictive way possible.

- Courts determine whether a zoning restriction constitutes a “substantial burden” on a case-by-case basis. Whether there is a substantial burden depends upon the context, including the size and resources of the burdened institution, the actual religious needs of the institution, space constraints, whether alternative properties are reasonably available, past efforts to locate within a community, and other factors.
- Any of the following could constitute a substantial burden: effectively barring the use of a particular property for religious activity; imposing a significantly great restriction on religious use of a property, or creating significant delay, uncertainty or expense in constructing a religious facility.
- Examples where courts have found a substantial burden: onerous off-street parking requirements; denial of expansion plans for a religious school.
- Examples of no substantial burden: church was denied the amount of off-street parking it preferred because reasonable parking alternatives were available; church was denied ability to demolish a landmarked building for expansion when there was other suitable space on the church property.

Protection against unequal treatment for religious assemblies and institutions: RLUIPA requires that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.

- When reviewing this application, planning commission members must not treat the use any differently than a non-religious place of assembly, such as a school, places of assembly or community center.

Protection against religious or denominational discrimination. RLUIPA prohibits discrimination against any assembly or institution on the basis of religion or religious denomination.

- It is important for the planning commission to ensure a fair and unbiased hearing. If, for example, a member of the public comments on the religious practices of the applicant’s religious group, the chair should rule such comments out of order and direct planning commissioners to consider only the land use and land use impacts and not the specific religious practices of the applicant.

Protection against total exclusion of religious assemblies: Governments may not totally exclude religious assemblies from a jurisdiction.

- The city does not exclude religious assemblies. They are allowed by conditional use permit in residential zones.

Protection against unreasonable limitation of religious assemblies: Government may not unreasonably limit “religious assemblies, institutions or structures within a jurisdiction.”

While the sheer length of RLUIPA’s title can sound intimidating, compliance with RLUIPA is not complicated. The application must be evaluated based upon the contents of the application, and the requirements of the city’s ordinance. The commission must look at land use impacts, not
specific religious practices. Lastly, the applicant’s proposed use cannot be subjected to standards that are any more restrictive than would be required for any other type of assembly, such as a school or a community center.
February 5, 2019

City of Minnetonka
Planning Commission Members
14600 Minnetonka Blvd.
Minnetonka, MN  55354

Re:  Chabad Proposed Development on Hopkins Crossroad, Mill Run and Hillside Lane

Dear City of Minnetonka Planning Commissioners:

We are Minnetonka residents residing in the Tanglen Woods cul-du-sac on Vernon Circle that abuts the Chabad Center for Jewish Life (Chabad) development proposed to be built on property located on Hopkins Crossroad, Mill Run and Hillside Lane. We have participated in the City’s review and denial of prior proposals submitted by Chabad for a similar project and understand the changes Chabad proposes for the current application. We offer the following comments and suggestions.

The current proposal for the Chabad center has improved in significant ways that diminishes our concerns about the health and safety of the public from what would have been increased traffic congestion and pedestrian traffic on Hopkins Crossroad. With the new entrance proposed to be constructed on Hillside Lane, we anticipate that pedestrian traffic will no longer be required on Hopkins Crossroad. We also anticipate that the stacking problems on Hopkins Crossroad that would have been caused by left-hand turns into the previously proposed entrance, as demonstrated by the neighbors’ real-time videos, will no longer be of concern. Additionally, the revised design proposal takes into consideration many of the neighbors’ concerns about height and visual appeal. We are appreciative of these changes and submit that the current Chabad proposal addresses many of the concerns the neighbors raised in response to Chabad’s initial proposed development. However, two concerns raised in the prior proposal remain; the disproportionate size of the building for the neighborhood and overflow parking in small residential neighborhoods.

The current design did not reduce the size of the proposed facility from Chabad’s original proposal but is slightly larger at approximately 16,400 square feet. You may recall the first proposal before the Planning Commission included three residential lots. The final proposal considered and rejected by the City Council included four residential lots. The current proposal includes five residential lots – a signal that this proposal is too large to fit within the small residential lots nestled in a small residential community. This proposed facility is four to eight times larger than the homes in neighboring areas. As part of the Planning Commissions’ deliberations on this application, the Commissioners should ensure the City Council and the Planning Commission would have continued regulatory power under the
terms of the Conditional Use Permit (CUP) and the City’s ordinances for all future proposed activities and developments. All five parcels, in their entirety, should be included within the confines of the CUP.

The City’s CUP ordinance is not clear whether these properties must be combined into one lot before they may be properly approved under the CUP ordinance but the benefit of such a requirement is that no further changes or alterations on the five parcels will be permitted if all such parcels are included in the request for a CUP. Whether or not a formal process for combining these five lots into a single lot for purposes of the CUP application is utilized, as suggested by Minnetonka Code of Ordinances, Sec. 400.020, subp. 1. (that “all changes to property lines or boundaries, by subdivision, by combination or lot line adjustments must be approved by the City”), the Planning Commission should carefully consider this issue as the decision to combine five residential lots to make way for a 16,400 square foot non-residential facility has not only significant consequences for the many adjacent neighborhoods but will have significant precedential effect. Has the Planning Commission ever approved the combining of five or more residential lots to make way for a large non-residential complex? My review of historical projects in the City did not reveal any precedent where multiple residential lots in an R-1 zone were combined to allow for the building of a new larger non-residential facility. Further, if five residential lots can be combined into one lot to allow for construction of a building that is roughly four to eight times the mass of all nearby residence, where is the limit? Can 20 residential lots in the heart of a residential neighborhood be combined to allow for a non-residential building?

These are questions the Planning Commission should be prepared to answer before it approves Chabad’s request for combining the proposed residential lots. Chabad’s need for five residential lots for its proposed development is an indication that the proposal is too massive for the single family home residential neighborhood in which it is proposed. Chabad has the option to locate its center to a more appropriate location but the unfortunate reality for the neighbors surrounding the proposed development is that our homes cannot be moved. Before setting a precedent for all Minnetonka residential communities that may forever change single family neighborhoods, the Planning Commission should consult with the City Council to consider proposing an ordinance that addresses issues resulting from the combination of multiple residential lots and hold public hearings, so Minnetonka residents and other stakeholders can thoroughly debate and thoughtfully developed an appropriate strategy and ordinance.

If the Planning Commission recommends the combining of five residential lots to make way for a 16,400 square foot facility without any further discussion, we continue to have concerns regarding overflow parking in the neighborhood and specifically on Vernon Circle. The applicant admits that insufficient parking exists for events where more than 150 visitors are present at the facility but proposes that no events at the facility will exceed 150 visitors, and therefore, no parking issues are present in the neighborhood. However, the applicant does not indicate how it intends to limit such attendance nor what it will do if this limit is exceeded. As the neighbors have expressed in writing to prior proposals, a facility of this magnitude with the amenities it will hold, will be an enviable place for large events like weddings, bar and bat mitzvahs and significant holidays. When these events take place, there is no suitable plan for offsite parking. A proposed solution for busing from an off-site location is not acceptable as we know that if local street parking is available, visitors will choose the easiest, quickest option to access the facility.

Chabad has not provided a plan for over flow parking as it does not currently believe it will have attendance at any event in excess of 150 visitors. For reasons provided above, it is unrealistic to expect
that attendance at any single event will never exceed 150 people. This is not a realistic portrayal of how a 16,000 square facility will be used now or in the future. Nevertheless, should the Planning Commission recommend approval of the CUP application, then to accommodate the neighbors’ legitimate concerns regarding the lack of adequate on-site parking for these larger events, we ask the Planning Commission to consider the following options:

1) If Chabad continues to assert no more than 150 people will attend the facility for any one event, limit the number of people that may attend the facility and place that limit in the approval of the CUP; or

2) Limit the number of events that can be held each year where more than 150 visitors are expected to attend – to under five or six -- and require that Chabad submit a parking management plan to the City for approval before the CUP is granted that provides, at a minimum, the requirement to work in conjunction with the Minnetonka City Police department to direct traffic and to temporarily restrict parking on small neighboring streets.

Additionally, as residents of the Vernon Circle neighborhood, we also request that if the Planning Commission recommends approval of the CUP that parking on Vernon Circle be limited to parking on one side of the street (in addition to the current limitation that parking is not allowed on either side of the street during school days).

Thank you for your consideration of these issues.

Respectfully,

Jon and Susan Wiens

cc: Mr. Brad Wiersum, Mayor (via email)
Ms. Rebecca Schack, Ward 2 Council Member (via email)
Ms. Susan Thomas, Project Planner (via email)
Ms. Julie Wischnack, Community Development Director (via email)
Dear Mayor, Council Members, Planning Commissioners and City staff,

I am writing in regards to the new Chabad Center project application. First of all, I want to acknowledge the effort by the Applicant and the new architect to ensure that the architectural design fits in better with the neighborhood. This time around, the architect and the Rabbi is able to take neighbors' concerns into account, on issues such as the building design, building height and placement of windows. By containing outdoor activities in the enclosed courtyard, hopefully it would minimize noise impacts to adjacent neighbors. Kudos!

Further collaboration with neighbors on the placement and types of trees, as well as lighting plans would hopefully help preserve the privacy of adjacent neighbors and for the Chabad Center to be harmonious with its neighbors.

I have a few questions about the project:

1. The traffic report does not indicate suitability of sight distances from both Hopkins Crossroads and Vernon Circle/Drive to the proposed driveway. Does the traffic study performed by SRF agree or disagree that the proposed driveway provides a safe stopping sight distance and intersection sight distance from all the relevant intersections (73/Hillside and Vernon Drive/Vernon Circle/Hillside)? Does the City agree that the proposed driveway would not cause undue harm to pedestrians and motorist? This wasn’t documented in the traffic report.

2. The traffic counts and analysis does not look like it fully covered anticipated large events. If I read it correctly, seems like most, if not all of the analysis and resulting recommendations were for the regular service.

3. For the Saturday service (10:00am-2:00pm) analysis, why aren’t counts collected from 9:30am-2:30pm, when traffic would most probably occur, not during the service?

The following are some concerns that I have, and I’ve provided some solutions. I am asking the Planning Commission and the City Council to seriously consider these concerns and to also agree with the proposed solutions and set them as conditions to the CUP, as the City is allowed to do.

1. Traffic Flow

   Concerns:
   - Vehicle turn-around in Vernon Circle/Vernon Drive
   - Vehicle turn-around in Cape Cod
   - Vehicle turn-around in Tanglen Elementary
   - Hillside Lane/Vernon Circle intersection is the only available exit for Vernon Circle residents

   Solution:
   - Use of traffic officers if expected attendees are over 75 people to prevent concerns above. I saw this effectively used at the River Valley Church - Crosstown Campus tonight, as well as other places of worship during events.
2. Parking

Concern:
- Vehicles parking in neighborhood streets

Solutions:
The Rabbi can work with the neighborhood and be a great influence to visitors
- Put up signs in the center to remind people not to park on neighborhood streets
- Put up signs to encourage use of shuttle
- Provide friendly reminder during service/events not to park on neighborhood streets
- City/Chabad to put up "No non-resident parking" signs on close-by neighborhood streets if expected attendees are over 75 people

3. Headlights

Concerns:
- Intrusive headlights into homes
- Affecting most homes in Vernon Circle
- Affecting homes at 11018 Hillside Lane, 2223 Hopkins Crossroads and 11105 Hillside Lane

Solution:
- Put up fencing in strategic areas along the propose driveway
- Dense year-round tree coverage along the proposed driveway
- Dense year-round tree coverage across from driveway entrance on Hillside Lane

Thank you for your time and commitment to the safety, diversity and prosperity of the City of Minnetonka!

Sincerely,

Jo Soo
2391 Vernon Circle
February 7, 2019

City of Minnetonka Planning Commission

Regarding: Planning Commission Review of Chabad Center for Jewish Life
11021 Hillside Lane west, 2327, 2333 and 2339 Hopkins Crossroad, at 11170 Mill Run

We are writing to express concerns regarding the proposed Chabad Center for Jewish Life. My wife Susan and my home adjoins the property on the east and north side and will be affected by the development if approved.

Overview

2019 Plan versus 2018 Plan
The 2019 plan for the proposed Chabad structure is far superior in aesthetics, height and mass to the 2018 plan. However, we have some concerns that we would like the applicant, the Planning Commission, City Council and City staff to review and address.

Hillside Lane west Entrance and Driveway Concerns
The proposed entrance and driveway to the Chabad Center will create headlight issues for our home (2390 Vernon Circle), our neighbors’ homes on Vernon Circle and the homes on the north side of Hillside Lane west. The new driveway bisects a residential neighborhood leaving homes on both the north and south side of the driveway exposed to headlights and noise from the driveway.

This issue is shown on a second document that accompanies this letter. This document plats the proposed development with surrounding homes and illustrates how vehicle headlights will be both directly and indirectly shining into the living spaces of at least 10 homes that neighbor the proposed driveway.

Since much of the year it is dark for the proposed services at Chabad both in morning and in the evening, this will be a constant issue and needs to be addressed so as to eliminate the direct and indirect vehicle head lights from invading neighboring homes. No neighbor should have to close window coverings because of the head light issues created by the proposed Chabad driveway.

Landscaping
We request that Chabad be required to collaborate with neighbors on the proposed fence, placement and types of trees, as well as lighting plans to preserve the privacy of adjacent neighbors and for the Chabad Center to be harmonious with its neighbors.

Traffic Flow
Because the proposed entrance is very close to County Road 73 and located at the top of a significant hill to the west, we are concerned about traffic flow. Many cars will turn east on Hillside Lane because of traffic stacking issues on Hillside Lane going to the west. There is less than 300 feet for cars to stack on Hillside Lane before the intersection with County Road 73. This issue will be exacerbated on large holidays and life cycle events at the proposed Center. The Hillside Lane/Vernon Circle intersection is the only available exit for Vernon Circle residents.
Our concerns are as follows:

- Vehicles should not be allowed to turn-around in Vernon Circle/Vernon Drive
- Vehicles should not be allowed to turn-around in Cape Cod
- Vehicles should not be allowed to turn-around in Tanglen Elementary

Proposed solution:
- We would request that the city require the use of traffic officers if expected attendees are over 75 people to prevent concerns above.

Parking

Vehicles parking in neighborhood streets including Vernon Circle will be an ongoing issue

Proposed solution:
- We request that the City require the applicant to do the following.
  - Have permanent signs in the Center to remind people not to park on neighborhood streets
  - Have permanent signs to encourage use of the proposed shuttle service
  - Provide reminders during service/events not to park on neighborhood streets

We request that the City or Chabad put up "No non-resident parking" signs on close-by neighborhood streets if expected attendees are over 75 people

Thank you for your time and commitment to the safety, diversity and prosperity of the City of Minnetonka.

Sincerely,

Michael Leirdahl & Susan Flint
2290 Vernon Circle
Minnetonka, MN 55305
Proposed Chabad Driveway Vehicle Headlight Issues

January 31, 2019 - Prepared by Michael Leirdahl, 2390 Vernon Circle
February 7, 2019

Dear Susan,

As an adjacent neighbor to the Chabad project I acknowledge and appreciate the effort on the part of the applicant and architects to use the increased acreage to create a one-story design which is sensitive to the privacy of neighboring homes, especially on the east side of the property. With a more harmonious structure and solid landscaping plan, if approved I hope that this intent towards harmony would extend to the increased intensity of use in terms of activity levels, traffic and parking.

Some comments on the proposal:

- As discussed at the meeting with the applicant and the city, we appreciate attention to ensuring that the floor-to-ceiling vertical sanctuary windows have the appropriate amount of metal screening/obfuscation of views to east side homes
- The glass-windowed hallway/gathering place outside the sanctuary will be visible from east side homes/deck – what solution is there for privacy until the landscaping grows in?

Concerns per activity and traffic safety:

- Adding institutional traffic to this segment of Hillside Lane. Hillside has a steep slope and topographical challenges that we often try to avoid, especially considering how easy it is for cars to slide down the hill to CSAH 73 in the winter.
- Impact to neighboring Hillside homes – increase in turning traffic and lights into homes will affect quality of life. How can this be mitigated?
- Sight distance at the driveway which was not assessed in the traffic study. Would appreciate this being evaluated/documentated once the driveway location is finalized.

Thanks for your consideration,

Kristin Soo
Vernon Circle neighborhood, Minnetonka
February 7, 2019

Dear Planning Committee, City Council Members, and Staff:

My name is Mike Anderson. I am the owner of the property at 11105 Hillside Ln. W.

I was just recently informed by the City of the Chabad Project and would like to express my opinion about it. I called Susan Thomas on February 5, as I had not received any information about the project. I receive my water bill and tax bill from the City through the mail but have not gotten City information about any development projects. Susan said that she researched this problem and found that mailings about them were being sent to a different, and incorrect, address. Hopefully, this has now been corrected.

I believe that the Chabad Project will have a substantial impact and adverse effect on the land-use of my and surrounding properties. When I bought my property some thirty years ago, I went to the city and reviewed records, asking about proposed and possible future development around my house. I was told that the area was already fully-developed and would not change, as this is an “R-1 Area.” I understand the city R-1 Code and how it has considerations for religious properties; however, I believe that this project is too large for, and will be very disruptive to, our residential community.

Shortly after I purchased the Hillside property, in 1988, I was told that the neighboring owner at 11021 Hillside wanted to split his lot into two properties. I attended a Planning Commission meeting about this and voiced my concerns, citing potential problems that would be caused by this action. The city decided that the lot in question was not large enough to split and denied his proposal. Thirty years later, not only will the Chabad Project split a lot but build a road as well. Let’s be clear – this will be a real road, not a “driveway,” as they have named. A driveway is meant to be used by only several cars. The proposed area of pavement could potentially be used several hundred times per day, used by not only cars but by business vans, delivery trucks and school buses. The city would never allow a homeowner to build such a thoroughfare in a residential area and I question how the Chabad Project proposal would be considered appropriate.

The Chabad Project states that the project will have less impact on its surrounding properties than single-family homes. This is just not true. Using the numbers cited in the proposal, the parking lot will be easily maxed-out during regular usage and additional parking will be needed on a routine basis. Special events, such as religious holidays and weddings that draw large audiences, could easily exceed the proposed numbers.

Considering this is a 3.4 acre site, only 2.2 acres will be used for the bulk of the project because another .6 acres is planned for a single-family home and the new road will take up the other .6 acres.

Below are my specific concerns:
1. There will be safety issues concerning additional cars on the road, people walking and biking in the area, and traffic impacting the Tangland Elementary School in the area. I currently have safety issues getting out of my property as it is now situated. The proposed road would only make things worse by increasing the numbers of vehicles passing my property.

2. There has been no discussion about landscaping, fencing, bushes or berms around my property from the east, and little about the south side, concerning the protection of privacy the project is willing to accommodate for its neighbors. My property, one of the most affected by this project, will essentially lose its residential status and become a neighbor to a commercial property. My property will be affected almost 180° by vehicle headlights from the proposed road and parking lot. The proposal shows a drawing of the impact of headlights on neighboring homes but my property is not shown to be affected. If this proposal is approved, the very busy County Road 73, to my west, will affect my property the least of the 4 sides, which is dramatic.

3. As I am reading that Chabad wants to be good neighbors, I also notice that parking lots next my property will be built at a 20 ft. minimum distance to the lot line; however, the rabbi’s house, and others, are a minimum of 50+ feet to any property. Could the construction be moved to the south a bit, to be more fair, and split the distance on each side of the project? As a good neighbor, this would help mitigate some concerns. However, this does not negate the fact that the proposal is too intense of a use of this small of an area of acreage.

4. It has been stated that this project will have less effect on the area than a single family home. I have yet to see a +16,400 sq. ft. single family home, that has up to 150 or more people coming and going many times monthly, perhaps even daily. and certainly even more on a yearly basis. This amount of traffic and activity is certainly not in the gentility of our quiet residential neighborhood.

5. There should be concerns about water management over to the corner of Cty Hwy 73 and Hillside Lane. This area already has water problems and to add more runoff, undoubtedly caused by the buildings and so much pavement, would not be wise. In addition, the proposal states that there would be more drainage to Hillside Lane. I have concerns and difficulty understanding where the water would flow that it would not impact others properties.

6. There would be an impact to the wildlife in the area. There are many deer and other animals that move between all of the area properties. This project will have a direct effect on their environment and movement patterns.

7. It has been repeated many times that the proposed buildings have a “residential look.” I have yet to see a +16,400 sq. ft. property of any kind that looks like a neighborhood home, and this one does not either, Just because the City has no maximum home size limitation, it should not mean that an unlimited-size building, which is not home, can be built in a residential area. The area, if you include the rabbi’s home and the +16,400 sq. ft., add up to
more than 20,400 sq. ft. of buildings on only 2.2 acres. If this land would have single family homes on it, maybe there would be 3 homes, approximating a total of +/- 9,000 sq. ft. Even this estimate per home would be considered very large for the current neighborhood. Again, the intensity of use proposed is far too much for this site.

8. As I have stated several times, to substantiate other specific concerns, the use of space proposed in this project is just too intense for the acreage. The project would have a substantial effect on land-use and traffic, admitted by their suggestion that buses will be used during peak times of attendance, to bring people to the property from off-site parking. Yes, Chabad may have an agreement with a local business for temporary off-site parking but that only reinforces the fact that this proposal is weak. Without being able to provide for adequate parking spaces, it seems obvious that there is not enough land for this project.

9. There has been no plan or recommendation provided to mitigate the increased noise level impacting surrounding properties.

10. This development will isolate my property from the neighborhood and, even more, will take away the climate of the residential quality of living in this peaceful pocket of a community neighborhood. The project completely changes every aspect of why current residents have searched for, and made a home in, this area of the hustle and bustle of the Twin Cities.

Thank you for your time, for reading my letter, and for considering my concerns.

Sincerely,

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

There was a 10-minute recess.

C. Resolution approving a conditional use permit and site and building plans for a religious institution located at 11021 Hillside Lane West; 2327, 2333 and 2339 Hopkins Crossroad; and 11170 Mill Run.

Chair Kirk 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.

Rabbi Mordechai Grossbaum, representing Chabad Jewish Community, applicant, stated that:

- He thanked the neighbors for their input to make sure the proposal would fit in the neighborhood.
- The applicant would continue to perfect the project to fit in the neighborhood.
- He introduced realtor Jeff Herman of Urban Anthology, architects Gabe Keller and Ryan Fish, and attorney Marvin Liszt.

Mr. Herman stated that the applicant is looking for a home with a welcoming feeling. The proposed site was for sale for one year. He understood the neighbors’ concerns with the intensity of the use and public safety. Purchase of a second property would allow access to the site from Hillside Lane. He was excited to present a project that would make a lot of sense. There is a sidewalk system that goes along the street and another synagogue along that street. He requested that the project be approved.

Ryan Fish and Gabe Keller, architects with Peterssen Keller Architects, introduced themselves. Mr. Keller stated that:

- Thomas did a good job covering the history of the proposal in her report.
- The proposal would be similar to the residential houses that the architectural firm works on. The building would not be two stories or large. The building would be spread out and modestly scaled.
- He reviewed the revised site plan with neighbors who had previously expressed concerns. The landscape architect found a way to spread coniferous trees along the driveway, increase fencing, and grade the site to prevent vehicle lights from leaving the site.
- Finding the perfect elevation would help the building feel balanced.
- There would be more parking than required by code requirements. More would be available for special events.
- There would be plenty of green spaces.
• There would be no variances.
• Safety of the site would be improved. There would be no through traffic, so Mill Run would only have traffic from the private residences.
• The floor plan would remain the same. Activities would be contained inside the building and the court yard.
• The materials used would be beautiful and of high quality. Masonry, wood, and glass would be used.
• There is an existing drive to Hopkins Crossroads that would be removed.
• He reviewed the designs and explained how light would be mitigated.
• Native grasses would be used to soften the edges of the property.
• Lighting would have a residential feel. Shades would be on a timer and shut automatically in the evening.
• The applicant was not dismissing any of the neighbors’ concerns.
• He was available for questions.

Chair Kirk asked how a pedestrian would access the building. Mr. Keller explained the foot-traffic pattern. Thomas explained that a trail on Hopkins Crossroads is scheduled to be constructed in 2023.

Mr. Keller encouraged residents to continue to reach out to him and continue the dialogue. He stated that the building would be 17 feet in height. The sanctuary space would extend to 23 feet in height. Thomas explained that the height of a home is measured at the midpoint of a pitched roof. The peak of the roof would be higher. Gordon provided that the maximum height of the roof would be 35 feet. The technical height of the proposed building is 17 feet.

In response to Henry’s question, Mr. Keller stated that the neighbors did not mention a preference with the height of the proposed six-foot fence. Mr. Keller added that very specific light standards that restrict how much light may extend onto an adjacent property would be met. Software would be used to verify the coverage areas of the parking lot lights.

Luke confirmed with Thomas that the standard for surrounding cities for parking of a religious institution is one parking stall for three sanctuary seats.

The public hearing was opened.

Gregg Hoogeveen, 2525 Cedar Hills Drive, stated that:
• There are ten vehicles usually at each service.
• There is a path through the forest.
• There is plenty of parking on his street.

Sarina Harris, Golden Valley resident, stated that:
• Chabad would make really good neighbors.
The synagogue is being built for herself and her family.
She hoped commissioners would support the proposal.

Jo Soo, 2391 Vernon Circle, stated that:

- He likes the building design. It looks wonderful. The design and architecture would fit in well with the neighborhood. His concern with the building height has been addressed. The design and location of the courtyard shows that it was designed to minimize the noise of outside activities.
- The screening with trees and lighting plans will help minimize the impact on neighbors.
- The number of pedestrians would increase.
- There will be young drivers in the neighborhood.
- He questioned how large events would impact the neighborhood.
- He asked if the driveway location would be a safe location.
- This is a vibrant community.
- The proposal would have more visitors than the number listed in the application and would have a serious impact on the traffic.

Michael Lierdahl, 2390 Vernon Circle, stated that:

- The proposal has been greatly improved.
- He noted that trees or buffering would be needed to prevent headlights from hitting the houses on Vernon Circle.
- He wants a new fence rather than fixing the existing fence. He would like the good side of the fence facing his property. It should be tall enough to block the headlights.
- He was concerned with overflow parking for large events. Fifteen to 20 times a year would be a lot.

Tanya Farber, 11025 Joy Lane, stated that:

- She moved here to be part of the Chabad community.
- The design, location, and access from Hillside Lane would provide safety for pedestrians.
- The building looks beautiful. She is excited to have Chabad so close to where she lives and build relationships with the neighbors.
- She requested the application be approved.

Yvette, a resident of St. Louis Park, stated that:

- She is a member of Chabad.
- She wants to be part of a community that will embrace her and her family for years to come.
- Chabad would be an excellent addition to the community.
Sam Black, 2265 Cape Cod Place, stated that:

- The design is fantastic. It is much more harmonious with the neighborhood.
- Hillside Lane is already busy with drivers who do not stop at the stop sign in front of his house. There needs to be more marking and signs to provide pedestrian safety.
- He opposed monument signs being located on Hillside Lane.
- He suggested a long-term plan be created for the two residential lots on Hillside Lane and Hopkins Crossroads.

Susan Wiens, 2346 Vernon Circle, stated that:

- Many of her issues and concerns have been solved by removing the access from Hopkins Crossroads.
- The proposal would have five lots. She questioned how many lots combined would be too many for an R-1 district. She suggested creating a policy to restrict the number of lots that could be combined.
- She asked how screening for the lot not included in the conditional use permit would be enforced.
- The traffic study looked at the normal, general use of the property. It did not include special events. There needs to be conditions to address large events that would cause overflow parking.

Mike Anderson, 11105 Hillside Lane, stated that:

- Tonight was the first he heard of screening for his property.
- He was concerned with noise from traffic on the driveway.
- He was concerned with headlights hitting his house and yard.
- The building would be attractive, but it would be larger than most of the houses in the neighborhood.
- After getting the easement, the rest of the property could be sold.
- It would be an intense use of the property.
- He was concerned with lighting hitting his property and house.
- It is difficult to drive onto Hillside Lane West.
- There would be several occasions where the capacity would be exceeded.

A current Edina resident who recently purchased 2600 Crescent Ridge Road, stated that:

- He and his wife purchased the residence to be close to Chabad and be part of the community.

Emilia Kvasnik, 14540 Woodruff Road, stated that:
• The new plan has addressed many issues and the applicant is willing to keep addressing and fixing concerns.
• She wants residents in the neighborhood to be as comfortable as possible.
• The proposal is balanced between the needs of the neighborhood and the benefits that Chabad would provide.
• She is very excited for Chabad to join the community.

Kristin Soo, 2391 Vernon Circle, stated that:

• She appreciated the building being changed to address her concerns.
• She requested protection from headlights for residences on Hillside Lane.
• Once the driveway location is confirmed, she requested that the sight distance be evaluated for the intersection.

No additional testimony was submitted and the hearing was closed.

Thomas explained that:

• The lot on the north would be laid out so that a new, single-family house could be constructed. The lot would exceed all minimum lot requirements for an R-1 lot. There does not need to be a plan for the property at this time. She clarified that the total site is over three acres in size. The space for the religious institution and drive area would utilize 2.86 acres and the site would still have additional land that could be used for a single-family residence.
• The driveway must be located as close to the crest of the hill on Hillside Lane as possible to provide good sight lines on both sides. The drive location would not be an issue for a single-family house lot, but would be for the driveway of a religious institution and is the reason for the conditional use permit making a distinction between the part of the site to be used for a religious institution and the part that could potentially be used for a residence in the future.
• The driveway easement would be recorded with the property. A change of owner would make no difference.
• A monument sign would be allowed in accordance with the sign ordinance.
• City staff does not have the authority to prevent a property owner from combining lots. That could be done by filling out a form with the county.

Chair Kirk noted that a logical course of action would be to create designated areas for pedestrians to cross Hillside Lane West and Hopkins Crossroad.

Thomas stated that:
• Property owners could petition the city to have “no parking” signs installed on the street. There would need to be a strong consensus among all property owners adjacent to the street. The city council has the authority to approve “no parking” signs.
• The city is not allowed to restrict the number of visitors to a site or the number of special events held.
• Fencing and landscaping would not be requirements of the conditional use permit. Commissioners could add fencing or landscaping as a condition of approval if it would mitigate the impact to or make the use more compatible with the surrounding area.
• A traffic study identifies what would occur on a regular basis rather than specific holidays or special life events.

Luke asked if there would be a setback requirement from the driveway. Thomas answered that the required setback would be 20 feet which is what is illustrated on the site plan.

Henry asked if there would be a setback requirement from parking spaces to the adjacent residence. Thomas answered in the negative. The existing house would be removed.

Henry is totally impressed with the improvements to the plan. He supports staff’s recommendation.

Knight really likes the proposal. The building itself looks magnificent. The concern with traffic on Hopkins Crossroad has been remedied. Many drivers would turn right when exiting the site. He understood the initial concern neighbors felt, but he thought it would end up being a good fit for the neighborhood.

Luke was impressed with the drawing of the building. It would be beautiful. She was impressed with the partnership and the understanding between the neighbors and the applicant. Compromises have been made. She encourages the applicant to continue working with neighbors. She supports staff’s recommendation.

Hanson was overall supportive of the project. He encouraged the applicant to maintain communication with the neighbors to address light and noise issues.

Sewall encouraged the applicant to finish strong by keeping neighbors informed and being open to changes to be the good neighbors he knows they would be.

Chair Kirk felt that the process has taken the proposal to a better conclusion than where it was a year ago. The neighborhood would be impacted by the project. He hoped the landscaping plan would be more developed for the city council’s review. He preferred more coniferous trees than fences. He would like to see a clear pedestrian access. He liked the use of glass and stone. It makes the building attractive and look more natural. He supports the project and appreciated the neighborhood and applicant working together.
Henry moved, second by Hanson, to recommend that the city council adopt a resolution with modifications provided in the change memo dated Feb. 7, 2019 approving items for the Chabad Center for Jewish Life located at 11021 Hillside Lane West; 2327, 2333, and 2339 Hopkins Crossroad; and 11170 Mill Run.

Sewall, Hanson, Henry, Knight, Luke, and Kirk voted yes. Powers was absent. Motion carried.

9. Other Business

A. Concept plan for redevelopment of the property at 14525 Hwy. 7.

Gordon reported. Staff recommends that the planning commission provide comments and feedback on the identified key issues and any other issues commissioners deem appropriate.

Sewall asked how this proposal is different from a previous application. Gordon explained that the commercial building was the back building and the apartment building was between the commercial building and the road in the previous proposal. This proposal would be the reverse. The commercial building would be located on the front of the property and the residential building in the rear.

Perry Ryan, of Lakewest Development, applicant, stated that staff’s report described the proposal well. He stated that:

- The proposal would add an apartment building with four stories and underground parking.
- He plans on meeting with Gray to discuss affordable housing.
- A neighborhood meeting was conducted.
- The existing building is fairly empty. It has a hair salon, massage business, coffee shop, fitness space, and real estate and insurance office.
- It is a great location. Metro transit stops within a block of the site on Williston Road.
- There is a building permit being reviewed for exterior renovation of the existing building. He was hopeful to move forward with the exterior renovation. The proposed apartment building would have some matching features.

Knight noted that none of the apartments are labeled as having three bedrooms. He questioned what view a person standing on the hill at the adjacent park would have in relation to the proposed apartment building. Mr. Ryan explained that the top of the apartment building would be 10 or 12 feet taller than the park hill. The second-floor parking is at grade and then there would be four stories above that.
Revised Landscape Plan
and Exhibits
CONCEPTUAL SITE PLAN

LEGEND:
1. ENTRY MONUMENT
2. ENTRY DRIVE
3. OVERFLOW PARKING
4. MAIN PARKING LOT
5. PROPOSED WALL
6. PROPOSED BRUSH THICKET PLANTING
7. PROPOSED DECIDUOUS TREES
8. PROPOSED SCREENING TREES
9. PROPOSED MEADOW AREA
10. MAIN BUILDING ENTRY
11. COURTYARD SPACE
12. RESIDENCE
13. BOLLARDS
14. GARDEN AREAS
15. PROPOSED FENCE
16. PROPOSED LAWN
17. PROPOSED ORNAMENTAL TREE
18. RESIDENCE DRIVE
19. FUTURE RESIDENCE LOCATION
20. LANDSCAPE BERMS
21. EXISTING HOUSE ON SITE

EXISTING TREES

CONCEPT NARRATIVE:
The approach to the landscape design of the Chabad Center combines careful plant species selection with strategic intervention to create a low-impact, beautiful, functional, and ecologically balanced landscape. The landscape design will reflect the Chabad Center's desire to be a good neighbor and to be a welcoming and inspiring community asset. The landscape minimizes the contrast of an institutional presence in a residential neighborhood by incorporating a contextually sensitive materials palette and layering plantings for visual screening.

NOTE: NUMEROUS EXISTING TREES UNDER 6" TRUNK DIAMETER NOT SHOWN ON PLAN

PROPERTY LINE

SCALE: 1' = 30.0'
CONTEXTUALLY SCALED + WELCOMING SPACES
NEW SCREENING CONIFEROUS TREES (~12' YEAR 1)

6' FENCE

4' BERM

SECTION AT ENTRY DRIVE / 2390 VERNON CIRCLE
SECTION AT PARKING / 11105 HILLSIDE LANE WEST

NEW SCREENING CONIFEROUS TREES (~12 YEAR 1)

3' FENCE OR HEDGE ROW
CHABAD CENTER SANCTUARY

VIEW FROM INTERIOR LOOKING EAST - SHADES DOWN

CHABAD CENTER SANCTUARY
Recent Neighborhood Feedback and Staff Response Memo
Dear Susan,

Thank you for the information about the change in the meeting date. Can you tell me why the date was changed?

I am also writing you with a few concerns that have surfaced about this project. The first is the review of the traffic study and the new letter from STS. I would like to know if this is being be reviewed. When my car is parked in my driveway, that makes it hard, if not impossible to see cars coming up the road, where the driveway is proposed. This is a major safety hazard for myself leaving and for others trying to get onto Hillside from the new proposed driveway and the cars going east on Hillside. As we talked earlier, I feel that the driveway should be farther east to increase the sight lines, which would still be less than what the STS memo chart states.

The other concern I have is the first traffic study did not address the South bound traffic on County road 73, turning onto Hillside, and the queue, of that traffic. It only stated that it should be fine. I feel that is currently a problem now, and will only make it a bigger problem. This should have been included in the study.

Thank you for your time and look forward to your response.

Sincerely,

Mike Anderson
February 16, 2019

To:    Susan Thomas, Assistant City Planner  
       City of Minnetonka

From:  Vernon Swing, PE, Swing Traffic Solutions  
        Mill Run/Fetterly/Hillside Neighborhood

Re:    Chabad Center Traffic and Parking Study Review

Per the request of the Mill Run/ Fetterly/Hillside neighborhood, Swing Traffic Solutions, LLC has reviewed the City of Minnetonka’s traffic and parking study which was conducted to determine the impacts to the area associated with development of the Chabad Center for Jewish Life in Minnetonka, MN. The proposed development is planned on the east side of Hopkins Crossroad, also known as Hennepin CSAH 73, just north of Mill Run Road, and just south of Hillside Lane W. The development is proposed to have a single access point approximately 275 feet east of CSAH 73 on Hillside Lane W. In general, the traffic and parking study has addressed many issues related to operations and safety and has been conducted in accordance with industry standards. However, one safety item should be elaborated upon to allow the neighborhood to fully understand the traffic impacts of the development.

The traffic study did not provide a sight distance analysis at the access on Hillside Lane W. If the traffic engineer could discuss the stopping sight distance on Hillside Lane W, as it relates to industry standards, and also provide intersection sight distance information from the driveway it would be beneficial in understanding whether the flow of site generated traffic will be a safe maneuver. The Table below summarizes the engineering standards related to sight distance.
In summary, the traffic and parking study has addressed many of the neighborhood concerns regarding the traffic operational and safety impacts associated with the development of the Chabad Center for Jewish Life. It is requested that the traffic study include additional information related to sight distance at the site access on Hillside Lane W. Thank you for considering our concerns. Please contact me at 612-968-4142 or via email at vswingtraffic@gmail.com with any questions.
Our family has lived in Minnetonka for 40 years on Cape Cod Place, so we feel we have a very thorough knowledge of this site.

We strongly oppose approval of this project based upon the following:

1. The traffic on Hopkins Crossroad is already under severe strain much of each day, and turning on to or off of Hopkins Crossroad is complicated and dangerous. Entering or leaving Hillside, Runnymede, Mill Run or Joy Lane is seldom easy, and the idea that more traffic, and more turns on or off this road would be acceptable, seems that no one making this decision lives in this area and deals with this mess. There are hours of each day that it must simply be avoided. Many people take Lindbergh to the stoplights at Cedar Lake Road to avoid this danger. But that is not a panacea either, what with the heavy, congested and speeding traffic that occurs when students are arriving or leaving any of the schools. Teenagers driving 40mph in the 25mph zone, and frantic parents dropping off or picking up children at Tanglen or Adath present a formidable challenge that calls for less cars, not more. You do not want to try to walk, run or drive during those times.

2. We are very concerned about building this structure adjacent to the yards of numerous residents. We believe that it is a proper expectation that when one builds or buys a home in a residential setting, that that setting will continue to be residential. We suspect that a good number of those residents would not be in those homes if they had ever thought there was the slightest chance that this commercial project could someday abut their property. Are there no limits to what can be done to destroy ones expectations about their surroundings?

Please find an appropriate commercial setting for this facility, one that has good traffic access and egress, and one that does not destroy a residential neighborhood.

Thank you, Jim Achter
Dear Rebecca:

This email is in response to your request of Jim Moscowitz and Amy Taswell after the 1/31/19 neighborhood meeting with Rabbi Grossbaum and his architect that they make some suggestions for stipulations in the event that the City Council approves the Chabad application. Please review its contents with your fellow council members at this evening’s study session. The size and impact of this proposed development necessitates numerous stipulations in order to achieve compliance with the ordinances of the CUP.

When one googles the term “Chabad zoning disputes” numerous articles pop up from communities all over the country that describe litigation. Given what has happened with Chabad applications in other municipalities, we recognize that the City Council and the city staff may be considering this application under the implied threat of an RLUIPA lawsuit. The stipulations we are asking you to approve in their entirety would allow the municipality to conform to RLUIPA and ensure that the development does not create an undue adverse impact on the public health, safety and welfare.

Before we list our recommendations for stipulations, we highlight two issues from the 1/31 neighborhood meeting with city staff, applicant and the applicant’s architects:

1. Chabad has hired a better architect who has designed a more attractive building. However, none of the fundamental issues about the project have changed. It has the same pedestrian safety issues, parking issues, congestion concerns and density problems as the previous application that was denied by the City Council in July, 2018.

2. When discussing the applicant’s remote parking/shuttle/valet plan, the purpose of which is to eliminate overflow parking, it was disclosed that the “agreement” will last only as long as Stuart Ackerberg owns the property where cars will be parked. When a concern was raised over the security of this “agreement” being based on the tenure of Ackerberg’s ownership, the architect interjected that Ackerberg’s father didn’t sell properties and neither does Stuart Ackerberg. That comment should be rejected from any consideration. No one other than Stuart Ackerberg can predict what he might do with any of his properties.

On 2/13 Jim and Amy sent a letter to the city staff requesting, among other items, historical information on stipulation precedents for approvals of religious institution CUPs in the City of Minnetonka. The city staff’s response was helpful in providing a number of stipulation precedents, specifically attached to the Conditional Use Permit approval of Adath Jeshurun in 1993. Given that a number of Chabad supporters, including Rabbi Grossbaum and David Segal, former president of Adath Jeshurun, have cited Adath as an important precedent in favor of
approval of Chabad application, we feel the stipulations attached to its approval are also important precedents.

In the event that the City Council decides to approve the Chabad application, we request that the following stipulations/variances (“variance” was the term used at the time of the Adath application) be attached to an approval. There are precedents for most of these stipulations, locally and nationally. These stipulations will help the neighborhoods retain their character and quality of life as well as help the applicant meet its stated intention of being a good neighbor. Finally, the stipulations/variances will help prevent possible future conflicts between the neighborhoods and the applicant that would require city intervention.

As previously stated, many of these stipulations have precedents in the City of Minnetonka, including conditions attached to CUP approvals for the Hopkins High School athletic facilities. RLUIPA does not allow municipalities to use zoning laws to discriminate against religious institutions. It also doesn’t allow zoning laws to favor religious institutions.

**STIPULATIONS:**

1) *Any Chabad-related motor vehicle use on Mill Run and Vernon Circle is limited to three (3) days per year. We recommend that those days be the High Holy Days of Rosh HaShana and Yom Kippur.*

   Precedent a): Variance #8 from the minutes of the 8/23/93 city council meeting where the Adath CUP was approved requires that a plan be submitted to the city staff that allows for vehicular traffic on neighboring Lake Windsor Dr. no more than ten (10) days per year. Adath is approximately 50,000 square feet on 26 acres. Chabad, if approved, will be 16,000 square feet on a 2.5 acre site. A three (3) day vehicular traffic allowance for parking or passage is proportionate. Given that the city has deemed the parking on the site to be sufficient and the rabbi has submitted a remote parking plan, this is an applicable and justifiable precedent.

   Precedent b): Toms River, NJ Chabad Settlement, April, 2018. Article 9(d): “Plaintiffs will inform any guests of Chabad House that no parking is allowed on Church Road.”

   We are attaching a recent photograph of Vernon Circle. Parked cars in some winter conditions would make neighborhood streets impassable.

2) *Literature and signage will be placed in prominent locations in the building advising patrons not to park in Mill Run, Vernon Circle and Fetterly Rd. outside of three (3) designated days per year and providing directions for accessing the site from Hillside.*
Precedent a): Variance 8d from the minutes of the 8/23/93 City Council meeting includes a requirement that literature be provided to the patrons of the Adath, which provides direction to and from the synagogue off of Hillside Ln.

Precedent b): Toms River, NJ Chabad Settlement, April, 2018. Article 9(d): “Plaintiffs will inform any guests of Chabad House that no parking is allowed on Church Road.”

3) **Require notice to residents and approval by the Planning Commission and the City Council if Chabad submits an application for a day care, a preschool, a K-12 school (including any variations within this such as K-3, K-5).**

Precedent: Variance #16 of the Adath CUP approval from the minutes of the 8/23/93 meeting requires City Council approval if the Adath wished to add a K-12 school to the existing school.

4) **A construction management plan that does not allow any construction vehicle parking or the vehicles of construction workers to be parked on Mill Run, Vernon Circle and Fetterly Rd.**

Precedent: Variance #12 of the Adath CUP approval from the minutes of the 8/23/93 meeting was a construction management plan that included construction vehicle parking. Mill Run, Vernon Circle and Fetterly Rd. are narrow, curved and with difficult sightlines. Construction vehicle parking would be a safety hazard and a nuisance. The applicant controls five lots, including one large outlot that is not yet designated for development. There is sufficient onsite space for all construction related vehicles.

5) **A variance from the city’s construction noise ordinance that will limit construction activities from 7 am to 6 pm Monday through Friday.** In the event of approval, the proximity of this project to residential homes and the time of year when the bulk of the outside work will take place, we request that construction hours be limited to the aforementioned. Summer evenings in Minnesota are a precious and short-lived commodity. This kind of a literal backyard disruption is not neighborly.

6) **Pursuant to the application, the applicant must provide a signed contract with the Ackerberg Group (or the actual ownership entity of the property where the referenced remote parking lot is located) that attendees will be bussed or there will be a valet service from the remote lot when event attendance exceeds available onsite parking. The contract is required to have a noncancellation clause in the event that the property where the parking lot is located is sold.**

7) **A fifty (50) foot setback from the east property line to be dedicated to “passive” green space, to provide a buffer for adjacent properties.**
8) **Event Management Plan for all events greater than 175 people.** Events of that size will be subject to a detailed management plan submitted to city staff, the Planning Commission and the City Council prior to the issuance of the building permit. The Event Plan shall include, but not be limited to, the following:

a) The applicant shall hire off-duty police officers to direct traffic and perform other duties as needed.

b) The applicant shall conduct an educational campaign, approved by the city staff, to advise proper methods of access and parking.

Precedent: Minnetonka City Council Meeting 5/6/91. CUP approval of Hopkins Stadium.

9.) **That Chabad pay for and install new fencing between the Soo/Flint.Leirdahl properties as agreed to in a letter from Chabad attorney Marvin Liszt dated June 28, 2018 and is attached to this correspondence.** The agreement was reached by discussions that were held at the request of the City Council between the Soo’s/Flint.Leirdahl’s and Chabad. The discussion was on landscaping and fencing between the properties to mitigate the visual and noise impact on the adjacent homes owned by the Soo’s and Flint.Leirdahl’s from Chabad.

The Soo’s and Flint.Leirdahl will agree to a fence height of 6’ high for this area as requested by Mr. Liszt in his letter. However, with the increase in Chabad’s geographic footprint additional fencing is needed to continue on the Flint.Leirdahl/Chabad property line to its northern border and along the Flint.Leirdahl north property line. The length and height of the fence on the north property line needs to be determined once the grade and position of Chabad’s driveway has been executed to ensure that noise and headlight issues are minimized as much as possible.

It is requested that Julie Wischnack and Loren Gordan from the city mediate the discussions between Chabad and the Flint.Leirdahl’s for the north property line fencing/landscaping as they did for the 2018 discussions. If no agreement is reached, it is requested that the City Council make the final decision.

10.) **Noise levels must be in accordance with MN Pollution Control Agency regulations.**

Please note the following from MPCA regulations:

Some common land uses associated with the NACs include: NAC 1: Residential housing, **religious activities**, camping and picnicking areas, health services, hotels, educational services

For residential locations (NAC 1), the limits are $L_{10} = 65 \text{ dBA}$ and $L_{50} = 60 \text{ dBA}$ during the daytime (7:00 a.m. – 10:00 p.m.) and $L_{10} = 55 \text{ dBA}$ and $L_{50} = 50 \text{ dBA}$ during the nighttime (10:00
p.m. – 7:00 a.m.) (Minn. R. 7030.0040). This means that during a one-hour period of monitoring, daytime noise levels cannot exceed 65 dBA for more than 10 percent of the time (six minutes) and cannot exceed 60 dBA more than 50 percent of the time (30 minutes).

Noise area classifications (NAC) are based on the land use at the location of the person who hears the noise, which does not always correspond with the zoning of an area. Therefore, noise from an industrial facility near a residential area is held to the NAC 1 standards if it can be heard on a residential property.

Local governments are required to take reasonable measures to prevent the approval of land use activities that will violate the state noise standard immediately upon establishment of the land use (Minn. R. 7030.0030). Municipalities should consider the state noise standard when reviewing and approving new projects in their jurisdiction. The MPCA can provide some expertise to support this review process.

A couple recent examples of the impact of noise and size are instructive. On February 11, 2019, Jim Moscowitz and Amy Taswell attended the Orthodox Jewish wedding of their son-in-law’s sister at a synagogue in Closter, NJ. It was a loud, raucous, high-spirited and fun affair. The event was about six hours long and there were approximately 275 guests. The synagogue was set back from the road and surrounded by trees. The building appeared to be larger than 16,000 square feet and there appeared to be more than sixty parking spaces in the lot. There were probably fewer than 2.5 passengers per car in the parking lot. The music was so loud that it was likely well above the MPCA residential noise limits of sixty decibels at the firepit outside of the social hall where some of the guests retreated to get away from the volume. If that same raucous, fun event were held at the applicant’s site, it would have been felt intensely throughout the surrounding neighborhoods.

There was an article in the Star Tribune describing the wedding of Rabbi Grossbaum’s daughter last summer on a Tuesday at an event center in Mounds View. There were 380 guests. If that same event were held at the applicant’s site, it would be felt intensely throughout the surrounding neighborhoods.

We recognize that religious institutions hold life cycle events. We cite the aforementioned examples because the applicant’s narrative lacks disclosure on this topic, especially given the size of the project, its limited parking and its proximity to nearby homes. The applicant’s narrative doesn’t reference a gathering greater than 175 people.

We strongly request that the City Council seriously consider how this proposed development will alter the residential character of the surrounding neighborhoods. We believe that the aforementioned stipulations allow the City Council to follow federal law. The requested stipulations partially address the undue adverse impact of this development on public health, safety and welfare and are justifiable because they adhere to City of Minnetonka precedents, they follow the precedents of other municipalities, they comply with MPCA regulations and they are consistent with CUP language.
Thank you for your consideration of this letter and these stipulations.

Kindest Regards,

Mill Run Residents
Jim Moscowitz and Amy Taswell
Lori and Brad Fritz
Bruce and Karen Simon
Debbie and Ralph Powell
Alison and Stu Silberman
Mark and Marie Calabria

Vernon Circle Residents
Kristin and Jo Soo
Todd and Nancy Lurie
Susan and Jon Wiens
Michael Leirdahl and Susan Flint

Fetterly Residents:
Amy Weiss
David Abrams

Hillside Residents:
Sam and Christina Black
On March 4, 2019, the city received a letter from several area residents regarding the proposed Chabad Center for Jewish Life. The letter outlines 10 stipulations that the residents request be imposed if the city council chooses to approve the conditional use permit for the center. This memo responds to those requested stipulations:

**Stipulation 1:** Any Chabad-related motor vehicle use on Mill Run and Vernon Circle is limited to three (3) days per year. We recommend that those days be the High Holy Days of Rosh HaShana and Yom Kippur.

**Staff Response:** The resident letter suggests that restriction on motor vehicle use would be consistent with the city’s 1993 approvals of Adath Jeshurun. This is not accurate. The specific condition of approval requires that, "access to Lake Windsor Lane from the Adath Jeshurun synagogue driveway [be] limited to no more than 10 days per calendar year." The condition only required that the driveway at Windsor Lane be closed; it did not prohibit use of the public street.

The city cannot single out Chabad-related vehicles and prevent them from using public streets; even if it could do so legally, there would be no practical means of enforcing such a requirement. The residents of Mill Run and Vernon Circle could request the city establish a No Parking restriction on these roadways. Such restriction would apply to all members of the public.

**Stipulation 2:** Literature and signage will be placed in prominent locations in the building advising patrons not to park in Mill Run, Vernon Circle and Fetterly Rd. outside of three (3) designated days per year and providing directions for accessing the site from Hillside.

**Staff Response:** The city cannot prevent vehicle use of public streets by certain members of the public. If a No Parking restriction were applied to Mill Run and Vernon Circle, signs would provide notice of such restriction.

**Stipulation 3:** Require notice to residents and approval by the Planning Commission and the City Council if Chabad submits an application for a day care, a preschool, a K-12 school (including any variations within this such as K-3, K-5).
Staff Response: This is generally covered by 4.01(6) in the resolution provided for council consideration, which states: “This conditional use permit approves the land use as presented in the plans outlined in this resolution and as outlined in associated staff reports.” However, additional language could be added to the condition, such as: “This conditional use permit approves the land use as presented in the plans outlined in this resolution and as outlined in associated staff reports. For example, the addition of a daycare, preschool, or any primary or secondary school would require an amendment to conditional use permit.” Public notice must to be provided in conjunction with planning commission or city council review.

Stipulation 4: A construction management plan that does not allow any construction vehicle parking or the vehicles of construction workers to be parked on Mill Run, Vernon Circle and Fetterly Rd.

Staff Response: This is generally covered by 4.01(3)(6) in the resolution provided for planning commission and council consideration, which requires submittal of “[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.” The city-approved template includes a condition that “construction vehicles will not be parked on [insert location.]” City staff generally enters the names of surrounding local streets. Nevertheless, additional language could be added to the resolution specifically prohibiting construction vehicle parking on Mill Run, Vernon Circle, and Fetterly Road West.

Stipulation 5: A variance from the city’s construction noise ordinance that will limit construction activities from 7 am to 6 pm Monday through Friday.

Staff Response: City Code Section 850 – Noise Regulations – establishes, “a person must not engage in, permit, or allow construction or grading activities involving the use of power equipment, or other activities resulting in unreasonably loud or disturbing noise for a person of ordinary sensitivity at any time other than between 7:00 a.m. and 10:00 p.m.” The city has not restricted construction hours beyond those allowed by noise ordinance for any other project, and the city attorney advises that there is no basis for treating this construction project differently.

Stipulation 6: Pursuant to the application, the applicant must provide a signed contract with the Ackerberg Group (or the actual ownership entity of the property where the referenced remote parking lot is located) that attendees will be bussed or there will be a valet service from the remote lot when event attendance exceeds available onsite parking. The contract is required to have a noncancellation clause in the event that the property where the parking lot is located is sold.

Staff Response: To address major events, item 4.01(3)(d)(4) in the resolution provided for planning commission and council consideration requires submittal of “an off-site parking plan for major events.” However, the applicant’s proposal meets the parking standard as outlined by city code. If the city were to require off-site parking, and in particular a signed contract, it would be subjecting the
Chabad Center to a standard more onerous than that established by ordinance.

**Stipulation 7:** A fifty (50) foot setback from the east property line to be dedicated to “passive” green space, to provide a buffer for adjacent properties.

**Staff Response:** The applicant’s proposal meets the building setback requirement as outlined by city code. The ordinance does not establish a required setback for activities or use of property. Were the city to require a dedicated “passive” green space, it would be subjecting the Chabad Center to a standard more onerous than that established by ordinance.

**Stipulation 8:** Event Management Plan for all events greater than 175 people. Events of that size will be subject to a detailed management plan submitted to city staff, the Planning Commission and the City Council prior to the issuance of the building permit. The Event Plan shall include, but not be limited to, the following:

a) The applicant shall hire off-duty police officers to direct traffic and perform other duties as needed.
b) The applicant shall conduct an educational campaign, approved by the city staff, to advise proper methods of access and parking.

**Staff Response:** The city has not required an event management plan for other religious institutions. If the city were to require an event management plan, it would need to be on the basis of characteristics that distinguish the Chabad Center from other institutions in the city. City staff is unable to identify any characteristics that would justify different treatment in this case.

**Stipulation 9:** That Chabad pay for and install new fencing between the Soo/Flint/Leirdahl properties as agreed to in a letter from Chabad attorney Marvin Liszt dated June 28, 2018 and is attached to this correspondence.

**Staff Response:** The referenced agreement was made as part of the 2018 conditional use permit application, which was different from the current application in many respects. The 2018 application was denied. Since the planning commission meeting related to the current application, the applicant has submitted a detailed landscape plan including fencing and plantings. The council needs to evaluate the adequacy of the current landscape plan based on the current application.

**Stipulation 10:** Noise levels must be in accordance with MN Pollution Control Agency regulations.

**Staff Response:** The proposed stipulation is unnecessary. City Code Section 850 establishes noise regulations. All properties in the community must abide by these regulations regardless of the land use occurring on the site.

Finally, staff would note that in several places the residents’ letter includes reference to out of court settlements and conditions of approval pertaining to Chabad applications in other states. These settlements/conditions do not establish any precedent for the application made by
Chabad Center for Jewish Life. Each of the cited cases would depend upon the laws and ordinances in effect for that particular zoning authority, as well as the particular physical characteristics of the property in question. The city attorney has advised that, to the extent comparisons are made, the city should look to previous applications for similar land uses in the city of Minnetonka.
Dear Susan, Julie and Loren;

In the interest of safety for the neighborhood, we respectfully request that for the upcoming City Council meeting on March 18th, for SRF to confirm that the stopping and intersection sight distance at the access point is in the safest location possible. It would be appreciated by the neighborhood, considering the significant hill and proximity to neighboring roads and homes.

Also, if SRF could elaborate on the increase in stacking on the southbound turn lane of Co Rd 73 (turning left on to Hillside Lane from Hopkins Crossroads) at peak hours, as it did for Hillside Lane, that would be helpful as well.

Both of these topics were discussed at the neighborhood meeting as concerns, so SRF’s attention to these questions is appreciated. Attached is a document from our traffic consultant pointing out the need to further elaborate on the items above.

Thank you,

Jo and Kristin Soo
Tanglen Woods neighborhood
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.**  
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Phone: (763) 546-1200  
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BERNICKLIFSON.COM  
Business Lawyers - See What makes us different
Resolution No. 2019-

Resolution approving a conditional use permit and site and building plans for a religious institution located at 11021 Hillside Lane West, 2327, 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 11021 Hillside Lane West, 2327, 2333 and 2339 Hopkins Crossroad, and 11170 Mill Run

1.02 The site is legally described on Exhibit A of this resolution.

1.03 On Feb. 7, 2019, 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. Based on the staff’s comments and review, 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 immediate 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.

3.02 The proposal would meet the specific conditional use permit standards outlined in City Code 300.16 Subd.3(b).

1. The proposed facility would have access to Hillside Lane West, which is defined as a neighborhood collector 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 98 people, requiring 39 parking spaces. 60
parking spaces would be available on site. Staff notes additional areas would be available as proof-of-parking.

4. Impervious surface would cover roughly 46 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 significant alteration of the site, including changes to grade and tree removal/impact. However, site disturbance would be limited to the extent practicable, given construction of a building and parking lot.

4. The new building and parking lot would be appropriately located at the center of the site, maintaining green space and the opportunity for new plantings at its perimeter.

5. The location of buildings relative to open space and paved areas is appropriate. The plan incorporates natural building materials and neutral color palate, which are residential in character. Additionally, proposed building height would be consistent with residential homes. City code allows homes to be constructed to a height of 35 feet, as measured to the midpoint of a pitched roof. The proposed building would have an average height of 17 feet, measuring 23 feet at its highest point.

6. As new construction, the building code requires use of energy saving features.

7. Generally, any change to the use of a property will result in changes to drainage patterns, sounds, and site lines. The objective conditional use permit 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 and site and building plans are 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 Layout Plan, dated Dec. 18, 2018
- Utilities Plan, dated Dec. 18, 2018
- Grading Plan, dated Dec. 18, 2018
- Landscape Plan, dated Feb. 7, 2019
- Floor Plan, dated Dec. 18, 2018
- Building Elevations, dated Dec. 18, 2018

2. A grading permit application must be submitted through the city’s electronic permit system. A complete application submittal must include the following:

a) Final site, grading, stormwater management, utility, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.

1) Final site plan must:

   a. Illustrate B618 curb/gutter at the Hillside driveway entrance. The driveway must have either 3-inch valley gutter or knockdown B618 curb. If a concrete apron is installed it must not be integral to the curb and gutter.

2) Final grading plan must:

   a. Include no grading below the floodplain elevation of 949.0.
   
   b. Confirm retaining wall elevations. Note, walls exceeding four feet must be engineered by a structural engineer.

3) 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:

   a. Volume Control: Provide onsite retention of 1-inch of runoff from impervious surfaces. The city prefers that this be accomplished through infiltration practices.
   
   b. 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.

c. 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:

d. Provide detailed plans for the StormTech MC-3500 chambers, including inverts, outlet elevation, and detailed storage curve.

e. Provide soil boring at the proposed infiltration location.

f. Revise the chamber design to meet 48-hour drawdown requirement.

g. Provide a HydroCad model to reflect the entire parcel area. Note, the parcel area reports in the project summary and the stormwater management narrative conflict.

h. Water quality modeling should be provided in MIDS or P8.

i. Provide evidence that the underground system will be able to support 83,000 pounds and 10,800 pounds per square foot outrigger load.

j. The underground facility must be inspected by a qualified third party during installation and that party must verify that the pressure requirements are adequately met.

4) Final utility plan:

a. Illustrate unused water service pipes removed back to the main with the corporation stops turned off.

b. Illustrate unused sanitary sewer removed back to the main with wye being cut and sleeved.

In addition, note:

c. Separate sewer and water permits, tests, and inspections are required for on-site work located
outside of public utility easements. Permits must be submitted by a licensed contractor.

d. Water service piping must be run to complete from wet tap valve to inside building by same contractor during one installation.

e. All sanitary sewer service piping must run at minimum 2% grade.

f. Piping for rain water collection from manhole to ten feet outside building must be scheduled 40 pipe minimum.

g. Stormwater piping crossing watermains must be installed per The 2015 MPC 4714.720 and 609.2.

3. Prior to issuance the grading permit:

a) This resolution must be recorded at Hennepin County.

b) Secure utility permits from Hennepin County for sewer and water service disconnects and installations.

c) Secure right-of-way permit from Hennepin County for removal of existing driveways from the Hopkins Crossroad right-of-way.

d) Submit the following:

1) A 10-foot wide trail easement adjacent to Hopkins Crossroad and Hillside Lane West for future trail purposes.

2) A 25-foot wide temporary easement for grading work necessary to construct future trail segments.

3) Private driveway easement or declaration of easement for review and approval by the city attorney.

4) An off-site parking plan for major events.

5) All required hook-up fees.

6) 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.

7) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an engineers estimated cost to comply with grading permit and 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) as-built drawings have been submitted; (2) a letter certifying that the underground facility has been completed according to the plans approved by the city has been submitted; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

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 or grading problems.

e) 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.

4. A building permit application must be submitted through the city’s electronic permit system. Prior to issuance of the permit:

a) The Hopkins Crossroad and Mill Run properties must be tax combined.

b) Obsolete public easements must be vacated.

c) Submit the following:

1) A final landscaping plan:

   a. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions. Staff suggests replacement of proposed sugar maple in parking lot islands.
b. Plantings must be field located, and approved by city staff, to maximize buffering of area residences.

c. Final tree mitigation plan must include a minimum of 34 inches of mitigation, plus 10, 2-inch trees.

d. Plantings must be field located, and approved by city staff, to maximize buffering of area residences.

2) An exterior lighting and photometric plan.

5. In the event that the city observes recurrent parking demand exceeding on-site parking supply, proof-of-parking spaces must be constructed within a reasonable and mutually agreeable timeframe. The property owner will be responsible for all costs associated with this construction and with any costs associated with required stormwater management facilities.

6. This conditional use permit approves the land use as presented in the plans outlined in this resolution and as outlined in associated staff reports.

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 or a significant change in character beyond that outlined in this resolution may require an amendment to the conditional use permit.

9. Construction of the building must begin by Dec. 31, 2020, unless the city council approves a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Mar. 18, 2019.

_______________________________________
Brad Wiersum, Mayor

Attest:

_________________________________
Becky Koosman, Acting 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 Mar. 18, 2019.

Becky Koosman, Acting City Clerk
EXHIBIT A

Lots 1, Block 1, Heeler’s First Addition, according to the recorded plat thereof, Hennepin County, Minnesota.
(Abstract Property)

AND

The East 165 feet of the West 429 feet of the North 264 feet of the Southwest quarter of the Northwest quarter of Section 12, Township 117, Range 11, Hennepin County, Minnesota. Subject to road.
(Abstract Property)

Lots 2, 3, and 4, Block 1, Heeler’s First Addition, according to the recorded plat thereof, Hennepin County, Minnesota.
(Abstract Property)
City Council Agenda Item #14B  
Meeting of March 18, 2019

**Brief Description**  
Ordinances amending various sections of the city code regarding:

1. Residential zoning districts;
2. Wetland overlay district;
3. Shoreland overlay district;
4. Retaining walls;
5. Opus overlay district; and
6. Sign ordinance

**Recommendation**  
Adopt the ordinance amendments

**Proposed Ordinances**

Staff has prepared several ordinances amending sections of the city’s existing zoning ordinance. As with any ordinance change, it is important to reflect how the code is administered and to identify current standards and practices. The proposed ordinance amendments would:

- be “housekeeping” in nature,
- provide clarity to property owners and staff;
- be practical; and
- align with current practice and enforcement.

The following is a summary of the proposed changes:

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Summary of proposed ordinance changes</th>
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<tbody>
<tr>
<td><strong>Section 300.02 – Zoning code definitions</strong></td>
<td>Define a.m. and p.m. peak hour trips. These terms are referenced within the Planned I394 District (PID) and the Opus Overlay District but are not clearly defined in ordinance.</td>
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| **Section 300.10 – R-1 zoning district** | Under current ordinance, property owners can have numerous detached garages but only one storage shed on their property. This is difficult to enforce because storage sheds less than 200 square-feet do not require a building permit.  
The proposed ordinance would regulate all accessory structures equally. This would allow property owners within the R-1 zoning district to:  
- have accessory structures up to 12-feet in height and 1,000 square feet gross floor area of accessory structures; |
#### Subject: Zoning ordinance amendments

- have accessory structures exceeding 1,000 square-feet or 12-feet in building height with a conditional use permit.

- have accessory structures – except detached garages - behind the front line of the home or have a setback of 50-feet when located in front of the home. This allows property owners to have a storage shed on the side of their home. It also expands the area for property owners of corner lots to locate a storage shed. Current ordinance would require that the storage shed be located behind the rear line of the existing home. Detached garages have similar setbacks to residential homes.

The current ordinance states that an accessory structure cannot occupy more than 30-percent of the side or rear yard in which it is located. Staff proposes to remove this requirement as the size of structures are a reasonable way to regulate accessory structures.

No longer regulate greenhouse structures differently than accessory structures.

Remove language restricting the number of people to occupy single family dwelling units, as the city does not regulate temporary rental facilities (such as Airbnb’s). Accessory apartments, which have recently been more clearly defined, would still require a conditional use permit.

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<table>
<thead>
<tr>
<th>Section 300.11 – R-2 zoning district</th>
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<tr>
<td>Allow property owners to have:</td>
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<tr>
<td>- accessory structures not exceed 12-feet in height or 600-square-feet of gross floor area.</td>
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<tr>
<td>- accessory structures behind the front line of the home or maintain a minimum setback of 50-feet when located in front of the home.</td>
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<tr>
<th>Section 300.23 – Wetland Overlay District</th>
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<tr>
<td>Identify the 1956 edition of “Wetlands of the United States” as a regulatory reference for the definition of wetland types in addition to the 1971 edition.</td>
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<tr>
<td>Clarify that the wetland overlay district is:</td>
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<tr>
<td>- a wetland as delineated by a professional wetland delineator and approved by the city planner;</td>
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<tr>
<td>- associated wetland buffers; and</td>
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</table>
- public waters and public water wetlands.

The following changes regarding buffer areas:

- Type 1 wetlands are seasonally flooded areas that are generally well drained during much of the growing season. Since this type of wetland appears to “dry-up” in the summer, they oftentimes are mowed or landscaped.

  Require a buffer for Type 1 wetlands when:
  1. it is not part of a proposed development;
  2. it is not currently manicured turf.

- Currently, buffer area widths are based on the wetland classification in the city’s water resources management plan. The proposed ordinance would also allow for the width to be established based on a city-approved Minnesota Routine Assessment Method (MnRAM).

- Acknowledge that wetland basins can have multiple management classifications and that the required buffer area will be determined by the classification of the adjacent wetland.

- Formally acknowledge that any development or redevelopment within the Bassett Creek Watershed must comply with the rules of the Bassett Creek Watershed Management Organization.

Reference the non-conforming use ordinance for existing structures, driveways and parking areas that are subject to a more restrictive setback or buffer area following a recent wetland delineation or buffer implementation.

**Section 300.25 – Shoreland ordinance**

Update the public waters map to exclude a portion of Minnehaha Creek that is not regulated as a public water.

The current ordinance allows public ponding and drainage facilities below the ordinary high water level (OHWL) and shore and bluff impact zones as permitted uses but requires a conditional use permit for similar private facilities.

The proposed ordinance would not regulate private facilities differently than public facilities. Rather, if the city engineer determines that there are no other viable options or locations, the facility would be allowed as a permitted use.
Clarify that no new retaining walls are allowed below the OHWL.

Allow the following with a conditional use permit:

1. Private and public recreational uses within the shore and bluff impact zones; and

2. Non-motorized public water craft landings, marinas and boat ramps at or below the OHWL and within shore and bluff impact zones.

Examples of these conditionally permitted uses in the shoreland district include the canoe launch at the Burwell House and other places along Minnehaha Creek.

**Section 300.27 – Retaining walls**

The current ordinance requires plans prepared by a licensed landscape architect or engineer when a retaining wall exceeds five feet in height. The state building code was amended to reduce the height to four feet. Staff proposes that the language be changed to simply reference the building code to avoid future inconsistencies.

**Section 300.35 – Opus overlay District**

The Opus overlay district applies a maximum number of p.m. peak hour trips, generated by a property to the Bren Rd and TH 169 interchange. A simple language amendment is proposed to clarify that the trip generation is not the number of trips at the driveway but rather the number of trips generated to the interchange.

**Section 325.06 – Sign ordinance**

Two amendments are made to Table 325.2 regarding permanent signs within residential districts.

- Amendment to allow for 8-foot tall freestanding signs for conditionally permitted uses. The recently adopted ordinance allowed 6-foot tall signs. The amendment would allow for signs consistent with the previous ordinance.

- Clarifies that educational, religious, institutional and nursing home uses are considered conditionally-permitted uses within the residential zoning district.

**City Council Introduction**

The ordinance amendments were introduced at the city council’s Feb. 11, 2019 meeting. While the council did not ask any questions or have any comments during the meeting, the council asked why the 1956 edition of the “Wetlands of the United States” should be referenced in ordinance. Staff explained that the 1956 edition of the “Wetlands of the United States” provided the first Circular 39 definitions and should be referenced in the ordinance for wetland designation purposes.
Planning Commission Hearing

The planning commission held public hearing on the ordinances at its March 7, 2019 regular meeting. The commission asked a few questions regarding accessory structures, retaining walls and signs but recommended no changes to the ordinances as presented. The commission unanimously recommended the city council approve the proposed ordinance amendments.

Staff Recommendation

Recommend the city council adopt the ordinances.

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

Originator:  Ashley Cauley, Senior Planner
Supporting Information

Voting Requirement

The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of a simple majority.

Motion Options

The planning commission has three options:

1. Concur with the staff-drafted amendments. In this case, a motion should be made recommending the city council adopt the ordinance amendments.

2. Disagree with the staff-drafted amendments. In this case, a motion should be made recommending the city council deny the ordinance amendments.

3. Table the discussion on the staff-drafted amendments. In this case, a motion should be made to table the item. The motion should include direction to staff explaining why the request is being tabled.
Brief Description
Ordinances amending various sections of the city code regarding:

1. Residential zoning districts;
2. Wetland overlay district;
3. Shoreland overlay district;
4. Retaining walls;
5. Opus overlay district; and
6. Sign ordinance

Recommendation
Recommend the city council adopt the ordinance amendments

Proposed Ordinances
Staff has prepared several ordinances amending sections of the city’s existing zoning ordinance. As with any ordinance change, it is important to reflect how the code is administered and to identify current standards and practices. The proposed ordinance amendments would:

- be “housekeeping” in nature,
- provide clarity to property owners and staff;
- be practical; and
- align with current practice and enforcement.

The following is a summary of the proposed changes:

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Summary of proposed ordinance changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 300.02 – Zoning code definitions</td>
<td>Define a.m. and p.m. peak hour trips. These terms are referenced within the Planned I394 District (PID) and the Opus Overlay District but are not clearly defined in ordinance.</td>
</tr>
<tr>
<td>Section 300.10 – R-1 zoning district</td>
<td>Under current ordinance, property owners can have numerous detached garages but only one storage shed on their property. This is difficult to enforce because storage sheds less than 200 square-feet do not require a building permit. The proposed ordinance would regulate all accessory structures equally. This would allow property owners within the R-1 zoning district to:</td>
</tr>
</tbody>
</table>
Subject: Zoning ordinance amendments

- have accessory structures up to 12-feet in height and 1,000 square feet gross floor area of accessory structures;
- have accessory structures exceeding 1,000 square-feet or 12-feet in building height with a conditional use permit.
- have accessory structures – except detached garages - behind the front line of the home or have a setback of 50-feet when located in front of the home. This allows property owners to have a storage shed on the side of their home. It also expands the area for property owners of corner lots to locate a storage shed. Current ordinance would require that the storage shed be located behind the rear line of the existing home. Detached garages have similar setbacks to residential homes.

The current ordinance states that an accessory structure cannot occupy more than 30-percent of the side or rear yard in which it is located. Staff proposes to remove this requirement as the size of structures are a reasonable way to regulate accessory structures.

No longer regulate greenhouse structures differently than accessory structures.

Remove language restricting the number of people to occupy single family dwelling units, as the city does not regulate temporary rental facilities (such as Airbnb’s). Accessory apartments, which have recently been more clearly defined, would still require a conditional use permit.

<table>
<thead>
<tr>
<th>Section 300.11 – R-2 zoning district</th>
<th>Allow property owners to have:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• accessory structures not exceed 12-feet in height or 600-square-feet of gross floor area.</td>
</tr>
<tr>
<td></td>
<td>• accessory structures behind the front line of the home or maintain a minimum setback of 50-feet when located in front of the home.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 300.23 – Wetland Overlay District</th>
<th>Identify the 1956 edition of “Wetlands of the United States” as a regulatory reference for the definition of wetland types in addition to the 1971 edition.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Clarify that the wetland overlay district is:</td>
</tr>
<tr>
<td></td>
<td>• a wetland as delineated by a professional wetland delineator and approved by the city planner;</td>
</tr>
</tbody>
</table>
- associated wetland buffers; and
- public waters and public water wetlands.

The following changes regarding buffer areas:

- Type 1 wetlands are seasonally flooded areas that are generally well drained during much of the growing season. Since this type of wetland appears to “dry-up” in the summer, they oftentimes are mowed or landscaped.

  Require a buffer for Type 1 wetlands when:
  1. it is not part of a proposed development;
  2. it is not currently manicured turf.

- Currently, buffer area widths are based on the wetland classification in the city’s water resources management plan. The proposed ordinance would also allow for the width to be established based on a city-approved Minnesota Routine Assessment Method (MnRAM).

- Acknowledge that wetland basins can have multiple management classifications and that the required buffer area will be determined by the classification of the adjacent wetland.

- Formally acknowledge that any development or redevelopment within the Bassett Creek Watershed must comply with the rules of the Bassett Creek Watershed Management Organization.

Reference the non-conforming use ordinance for existing structures, driveways and parking areas that are subject to a more restrictive setback or buffer area following a recent wetland delineation or buffer implementation.

Section 300.25 – Shoreland ordinance

Update the public waters map to exclude a portion of Minnehaha Creek that is not regulated as a public water.

The current ordinance allows public ponding and drainage facilities below the ordinary high water level (OH WL) and shore and bluff impact zones as permitted uses but requires a conditional use permit for similar private facilities.

The proposed ordinance would not regulate private facilities differently than public facilities. Rather, if the city engineer determines that there are no other viable options or locations, the facility would be allowed as a permitted use.
Clarify that no new retaining walls are allowed below the OHWL.

Allow the following with a conditional use permit:

1. Private and public recreational uses within the shore and bluff impact zones; and

2. Non-motorized public water craft landings, marinas and boat ramps at or below the OHWL and within shore and bluff impact zones.

Examples of these conditionally permitted uses in the shoreland district include the canoe launch at the Burwell House and other places along Minnehaha Creek.

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The current ordinance requires plans prepared by a licensed landscape architect or engineer when a retaining wall exceeds five feet in height. The state building code was amended to reduce the height to four feet. Staff proposes that the language be changed to simply reference the building code to avoid future inconsistencies.

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The Opus overlay district applies a maximum number of p.m. peak hour trips, generated by a property to the Bren Rd and TH 169 interchange. A simple language amendment is proposed to clarify that the trip generation is not the number of trips at the driveway but rather the number of trips generated to the interchange.

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Two amendments are made to Table 325.2 regarding permanent signs within residential districts.

- Amendment to allow for 8-foot tall freestanding signs for conditionally permitted uses. The recently adopted ordinance allowed 6-foot tall signs. The amendment would allow for signs consistent with the previous ordinance.
- Clarifies that educational, religious, institutional and nursing home uses are considered conditionally-permitted uses within the residential zoning district.

Council introduction

The ordinance amendments were introduced at the city council’s Feb. 11, 2019 meeting. While the council did not ask any questions or have any comments during the meeting, the council asked why the 1956 edition of the “Wetlands of the United States” should be referenced in ordinance. Staff explained that the 1956 edition of the “Wetlands of the United States” provided
the first Circular 39 definitions and should be referenced in the ordinance for wetland designation purposes.

**Staff Recommendation**

Recommend the city council adopt the ordinances.

Originator:  Ashley Cauley, Senior Planner
Through:    Loren Gordon, AICP, City Planner
Supporting Information

Voting Requirement
The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of a simple majority.

Motion Options
The planning commission has three options:

1. Concur with the staff-drafted amendments. In this case, a motion should be made recommending the city council adopt the ordinance amendments.

2. Disagree with the staff-drafted amendments. In this case, a motion should be made recommending the city council deny the ordinance amendments.

3. Table the discussion on the staff-drafted amendments. In this case, a motion should be made to table the item. The motion should include direction to staff explaining why the request is being tabled.
B. Ordinances amending various sections of the city code.

Chair Kirk introduced the proposal and called for the staff report.

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

Sewall thanked Cauley for providing the side-by-side graphics. He found that helpful.

Knight asked if a garage could be built in front of a house if the front yard would be at least 200 feet deep. Cauley answered affirmatively.

Knight asked for the difference between a shed and a detached garage. Gordon stated that a garage must house a vehicle.

Chair Kirk confirmed with Cauley that the retaining wall ordinance amendment would reference the building code to prevent the need to change the ordinance every time the building code would be modified. Chair Kirk suggested linking the on-line ordinances to the state building code.

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

Powers moved, second by Sewall, to recommend that the city council adopt the ordinance amendments.

Knight, Powers, Sewell, and Kirk voted yes. Hanson, Henry and Luke were absent. Motion carried.

This item is scheduled to be reviewed by the city council on March 18, 2019.

9. Adjournment

Powers moved, second by Sewall, to adjourn the meeting at 7:21 p.m. Motion carried unanimously.

By: ____________________________

Lois T. Mason
Planning Secretary
Ordinance No. 2019-

An ordinance amending city code section 300.02, regarding zoning ordinance definitions

The City Of Minnetonka Ordains:

Section 1. Section 300.02 of the Minnetonka City Code, regarding definitions, is amended to include the definition for p.m. peak hour trips and the succeeding paragraphs are renumbered consecutively:

100. “peak hour trips” – the total number of inbound and outbound motor vehicle trips generated during a continuous 60 minute period of the highest volume of traffic. The a.m. peak hours are between 7:00 and 9:00 a.m. The p.m. peak hours are between the hours of 4:00 and 6:00 p.m.

Section 2. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on March 18, 2019.

____________________________________
Brad Wiersum, Mayor

Attest:

____________________________________
Becky Koosman, Acting City Clerk

The stricken language is deleted; the single-underlined language is inserted.
Action on this ordinance:

Date of introduction: Feb. 11, 2019
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 March 18, 2019.

Becky Koosman, Acting City Clerk
Ordinance No. 2019-

An ordinance amending city code sections 300.10, 300.11, and 300.15, regarding residential zoning districts

The City Of Minnetonka Ordains:

Section 1. Section 300.10, Subdivision 3 of the Minnetonka City Code, regarding accessory structures in the R-1 zoning district, is amended as follows:

Within the R-1 district only the following uses shall be permitted as accessory uses, provided they are subordinate to, associated with and located on the same lot as a permitted use:

a) private swimming pools, except as provided for in subdivision 4;

b) detached garages, one storage shed of any size or other accessory structures, except swimming pools, unless covered with an accessory structure, not exceeding 12 feet in height or an aggregate of 1,000 square feet of gross floor area or occupying more than 30 percent of the area of the side or rear yard in which they are located and except as provided for in subdivision 4;

c) receive only satellite dish antennas and other antenna devices up to a maximum height of 60 feet as measured from the ground upon which it is located subject to the requirements provided in section 300.15, subd. 12; and radio devices no larger than one cubic foot in size that are attached to utility poles, if there is no more than one per pole;

d) solar equipment;

e) greenhouses not exceeding 12 feet in height or 1,000 square feet in gross floor area or occupying more than 30 percent of the side or rear yard in which they are located and provided they are not used for commercial purposes;

The stricken language is deleted; the single-underlined language is inserted.
g) living facilities for no more than two boarders or roomers within a single family dwelling unit, provided that such facilities do not constitute an accessory apartment and that adequate off-street parking is provided;

h) home occupations that comply with the provisions of section 300.15, subd. 14;

i) minor mass transit facilities including benches, which benches may include advertising signs consistent with the provisions of section 325 of the code of city ordinances, except as provided for in subdivision 4;

j) recreational facilities and structures, provided they contain less than 1,000 square feet of gross floor area, and except as provided for in subdivision 4;

k) evergreen material sales if in compliance with the standards specified in section 300.15, subd. 13, and the city planner has given approval;

l) public or private schools having a course of instruction meeting the compulsory education requirements of the Minnesota board of education for students enrolled in grades K-12, or any portion thereof, provided that each school:

1) serves no more than 12 students, unless each and every one of the students is living in the structure and is the child, grandchild, parent, grandparent, spouse, or ward of a family member living in the structure;

2) has no residential facilities for students who are not the child, grandchild, parent, grandparent, spouse, or ward of a family member living in the structure;

3) has no more than one employee or independent teaching contractor who lives outside the structure, unless the total number of traffic trips generated by these people does not exceed the total of one trip to and from the structure for each day of instruction;

4) complies with the sign regulations for permitted residential uses, not conditionally permitted uses, in the applicable zoning district; and

5) complies with all other applicable city ordinances regarding parking.

m) licensed day care facilities serving 12 or fewer persons, and licensed group family day care facilities serving 14 or fewer children, provided that there is not more than one outside employee in any such facility;

n) garage sales, estate sales, yard sales, rummage sales, and other sales of personal property that have similar traffic and parking patterns, if:
1) the sales occur during no more than two periods of a maximum of three consecutive days each in any 12-month period,

2) the items offered for sale consist only of items owned by a person who occupies the property as his/her residence or by friends of the resident;

3) none of the items offered for sale have been purchased for resale or received on consignment for purposes of resale, and

4) paragraphs 1, 2 and 3 do not apply to conditionally permitted educational, religious, and public institutions; and

other uses that are not regulated by this code and that are customarily associated with but subordinate to a permitted use, as reasonably determined by the city.

Section 2. Section 300.10, Subdivision 6 of the Minnetonka City Code, regarding additional requirements in the R-1 zoning district, is amended as follows:

a) All dwellings, including manufactured homes, shall have a depth of at least 20 feet for at least 50 percent of their width. All dwellings, including manufactured homes, shall have a width of at least 20 feet for at least 50 percent of their depth.

b) All dwellings shall have a permanent foundation in conformance with the Minnesota state building code.

c) Accessory structures shall conform to the setbacks established for principal structures, except for the following:

a. all accessory structures located more than 10 feet from a principal structure may be located a minimum of 10 feet from a rear or side lot line;

b. all accessory structures, except detached garages, must be located behind the front line of the principal structure or maintain a minimum setback of 50 feet which are located between the principal structure and the front lot line shall maintain a minimum setback of 50 feet; and

c. sheds or storage buildings less than 120 square feet in size shall be located behind the rear building line of the house; and

d. swimming pools shall be located behind the front building line of the house, and 15 feet side and rear setbacks as measured to the water line are required. On corner lots, swimming pools shall be subject to front yard setbacks established for principal structures.
d) Off-street parking shall be provided for at least two vehicles for all single family dwellings. A suitable location for a garage measuring at least 20 feet by 24 feet which does not require a variance shall be provided and indicated as such on a survey or site plan to be submitted when applying for a building permit to construct a new dwelling or alter an existing garage.

e) Each lot must have a buildable area as defined by this ordinance and established in section 400 of this code. The purpose for a buildable area is to ensure that each lot has a reasonable area for the location of a house, attached garage, and associated decks or patios and that there is sufficient room for the location of the house to be positioned to minimize the physical impacts on the lot and to be consistent with the surrounding neighborhood. This does not require that a house pad occupy the entire buildable area. Each lot must comply with the following:

   a. The buildable area must be designated by the applicant and approved by the city council at the time of the subdivision creating the lot. For pre-existing lots, the buildable area will be designated by the city planner based on the standards contained in this ordinance and section 400 of this code.

   b. The city may require that construction within the buildable area be located where the city determines it would reasonably:

      i. minimize the amount of adverse impacts to the physical environment on the lot, including such things as significant trees, grading, erosion, and surface water drainage, and

      ii. be consistent with the location of the structures in the surrounding neighborhood.

   c. No principal structure, or any portion of it, may be located outside the buildable area, except when intrusions into setbacks are allowed by this code.

   d. If a home exists on a lot with less than the minimum buildable area, the home may be enlarged or rebuilt within the applicable setbacks without a variance from the buildable area standard.

Section 3. Section 300.11, Subdivision 3 of the Minnetonka City Code, regarding accessory structures in the R-2 zoning district, is amended as follows:

Within the R-2 district only the following uses are permitted as accessory uses, provided they are subordinate to, associated with and located on the same lot as a permitted use:

a) private swimming pools, tennis courts, and other sport courts;
b) detached garages, storage sheds, or other accessory structures not exceeding 12 feet in height, or an aggregate of 600 square feet of gross floor area, or occupying more than 30 percent of the area of the side or rear yard in which they are located and except as provided for in subdivision 4;

c) solar equipment;

d) home occupations that comply with the provisions of section 300.15, subd. 14;

e) minor mass transit facilities including benches, except as provided for in subdivision 4;

f) licensed day care facilities serving 12 or fewer persons, and licensed group family day care facilities serving 14 or fewer children, provided that there is not more than one outside employee in any such facility;

g) garage sales, estate sales, yard sales, rummage sales, and other sales of personal property that have similar traffic and parking patterns, if:

1) the sales occur during no more than two periods of a maximum of three consecutive days each in any 12-month period,

2) the items offered for sale consist only of items owned by a person who occupies the property as his/her residence or by friends of the resident;

3) none of the items offered for sale have been purchased for resale or received on consignment for purposes of resale, and

h) other uses that are not regulated by this code and that are customarily associated with but subordinate to a permitted use, as reasonably determined by the city.

Section 4. Section 300.11, Subdivision 5(c) of the Minnetonka City Code, regarding specific district standards for accessory structures in the R-2 zoning district is amended as follows:

Accessory structures must conform to the setbacks established for principal structures, except for the following:

1) all accessory structures located more than 10 feet from a principal structure must be located a minimum of 10 feet from a rear or side lot line;

2) all accessory structures, except detached garages, must be located behind the front line of the principal structure or maintain a minimum setback of 50 feet when located between the principal structure and the front lot line, must maintain a minimum setback of 50 feet;
3) sheds or storage buildings less than 120 square feet in size must be located behind the rear building line of the house; and

4) swimming pools and sport courts must be located behind the front building line of the house, and set back a minimum of 15 feet from side and rear property lines as measured to the water line of pool or edge of the sport court. On corner lots, swimming pools and sport courts are subject to front yard setbacks established for principal structures.

Section 5. Section 300.15, Subdivision 12 of the Minnetonka City Code, regarding accessory structures, is amended as follows:

Any accessory building attached to a principal structure shall be made a structural part of the principal structure and shall comply with all requirements relating to principal structures. No accessory building which is not attached to a principal structure shall be located within six feet of a principal structure unless in conformance with fireproof requirements of the uniform building code. Accessory structures shall conform to the setbacks established for principal structures, except in R-1 and R-2 districts the following shall apply:

a) all accessory structures located more than 10 feet from a principal structure may be located a minimum of 10 feet from a rear or side lot line;

b) all accessory structures, except detached garages, which are located between the principal structure and the front lot line shall maintain a minimum setback of 50 feet from the front lot line; and

c) receive-only satellite dish antennas and other antenna devices subject to the following requirements:

1) shall be in compliance with all city building and electrical code requirements;

2) verification that the structural design has been approved by a professional engineer;

3) verification that the mounting system and installation have been approved by a professional engineer;

4) one per building or, if more than one antenna is proposed, the antennas shall be clustered in a single, screened location;

5) submission of written authorization from the property owner;

6) no advertising message shall be on the antenna structure;

The stricken language is deleted; the single-underlined language is inserted.
7) shall comply with setback requirements for accessory structures and in no event shall be located between the principal structure and the front lot line;

8) shall be screened to the greatest extent practicable to minimize visual impacts on surrounding properties. Screening shall include landscape materials for ground mounted antennas and materials compatible with those utilized on the exterior of the building for roof mounted antennas;

9) antennas located closer to a property line than the height of the antenna shall be designed and engineered to collapse progressively within the distance between the antenna and the property line;

10) shall be in compliance with all applicable federal communications commission (FCC) requirements; and

11) antenna height shall be no more than 60 feet as measured from the ground upon which it is located.

Section 6. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 7. This ordinance is effective on the date of its adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor
Attest:

Becky Koosman, Acting City Clerk

Action on this ordinance:

Date of introduction: Feb. 11, 2019
Date of adoption: 
Motion for adoption: 
Seconded by: 
Voted in favor of: 

The stricken language is deleted; the single-underlined language is inserted.
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 March 18, 2019.

Becky Koosman, Acting City Clerk
Ordinance No. 2019-

An ordinance amending Minnetonka City Code Section 300.23, regarding the wetland overlay district

The City Of Minnetonka Ordains:

Section 1. Section 300.23 of the Minnetonka City Code, regarding the wetland overlay district, is amended as follows:

SECTION 300.23. WETLANDS PROTECTION.

1. Purpose and Intent.

a) The purpose of this section is to recognize, preserve and protect the environmental, aesthetic and hydrologic functions of the city's wetlands by regulating the use of wetlands and their adjacent properties. These functions include, but are not limited to, sediment control, pollution control, filtration, fish and wildlife habitat and aquifer recharge.

b) The intent of this section is to protect wetlands to the maximum extent possible while allowing a reasonable use of the property. This section adopts the regulations and standards of the Wetland Conservation Act of 1991 (WCA), Laws of Minnesota 1991, chapter 354, as amended, and the rules adopted pursuant to the WCA. It also establishes a wetland overlay district. This overlay district further regulates the underlying land use as allowed by other districts or the WCA.

2. Designation of Protected Wetlands and Exemptions.

a) The wetlands protected and regulated by this Section are types 1, 2, 3, 4, 5, 6, 7, and 8 wetlands, as defined in circular 39, “Wetlands of the United States”, 1956 and 1971 editions, United States Department of the Interior. Protected wetlands are further generally defined as follows:

Type 1 Seasonally Flooded Basins or Floodplains: Type 1 wetlands are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottom lands along water courses. Vegetation varies greatly according
to the season and duration of the flooding, and includes bottom land hardwoods, as well as herbaceous plants.

Type 2 Inland Fresh Meadow: Occurs along the shallow edges of lakes, marshes and floodplains, or in perched depressions. The soil is usually without standing water during much of the growing season, but is waterlogged within at least a few inches of the surface. Vegetation includes grasses, sedges, rushes and various herbaceous plants.

Type 3 Inland Shallow Fresh Marsh: Soil is usually water logged during the growing season, often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, cattails, arrowheads, smartweeds and other emergent aquatic vegetation.

Type 4 Inland Deep Fresh Marsh: Soil covered with six inches to three feet or more of water during growing season. Vegetation includes cattails, reeds, bulrushes and wild rice. Open water areas may contain pondweeds, naiads, coontail, water milfoils and other submergent aquatic vegetation.

Type 5 Inland Open Fresh Water: Water is usually less than 10 feet deep and is fringed by a border of emergent vegetation. Vegetation includes pondweeds, naiads, coontail, water milfoils and other submergent aquatic vegetation.

Type 6 Shrub Swamp: Occurs along sluggish streams or on floodplains. The soil is usually waterlogged during the growing season, and is often covered with as much as six inches of water. Vegetation includes alder, willow and dogwood.

Type 7 Wooded Swamp: Occurs along sluggish streams, on floodplains, on flat perched depressions and in shallow lake basins. The soil is waterlogged to within a few inches of its surface during the growing season and is often covered with as much as one foot of water. Vegetation typical to this wetland includes tamarack, white cedar, black spruce, balsam fir, red maple and black ash.

Type 8 Bog: Occurs along sluggish streams, on flat perched depressions and shallow lake basins. The soil is waterlogged and supports a spongy covering of mosses. Vegetation typical to this wetland type includes sphagnum moss, heath shrubs and sedges. Minnesota bogs contain leatherleaf, Labrador tea, cranberries and pitcher plants. Scattered stunted black spruce and tamarack also are common features of bogs.

b) Areas that exhibit wetland characteristics but were created for a purpose other than to create a wetland are exempt from this section. This includes areas such as storm water ponds, roadway ditches, or other areas that receive artificial hydrology. The landowner has the responsibility to prove by a preponderance of the evidence that an area is exempt under this paragraph.

c) The reconstruction and maintenance of existing public roads and associated public utilities are exempt from this section 300.23 as long as they comply with the WCA as approved by city staff.

This section establishes the presumptive wetland overlay districts which consists of the wetland as described below and associated buffer. These districts are subject to additional requirements beyond those required by the WCA. The wetland boundaries of the presumptive wetland overlay districts are identified by government survey section and contour elevation above mean sea level in Appendix A to this section. The city's official wetland map graphically shows these boundaries.

If a specific wetland delineation has been done under WCA rules, then the boundaries of the wetland overlay district for that location will be as shown in the delineation rather than the presumptive boundaries. The city may require wetland delineations to determine compliance with WCA rules. However, property owners may have wetland delineations done for their properties on their own initiative. The delineation are determined by a wetland delineation performed must be done by a professional wetland delineator according to the WCA rules and in conformance with the 1987 Corps of Engineers Wetland Delineation Manual and Midwest Regional Supplement 2010, as amended. The delineation must be acceptable to the city planner or qualified desigee planning director. Public waters and public water wetlands are included in the wetland overlay district.

4. Interpretation of Wetlands Boundaries.

Whenever a delineated wetland boundary is disputed or uncertain, the city planning director or designee may convene the technical evaluation panel according to the WCA rules. The owner must have the delineated wetland boundary staked in the field in order for the panel to evaluate the area. The technical evaluation panel and city planning director or designee may require additional information to resolve the dispute or uncertainty. No boundary change may be authorized on the basis of fill that was placed on the site after the city designated the area as part of the wetland overlay district. Persons aggrieved by a decision of the city planning director, or designee may appeal the decision as provided in section 300.03, subdivision 1 of this ordinance and the WCA rules as applicable.

5. Wetland Buffer Areas.

a) This subsection establishes requirements for wetland buffer areas around protected type 21-8 wetlands. Buffer areas are necessary and beneficial to maintain the health of wetlands. Buffer areas protect the edge of wetlands from erosion while filtering sediment, chemicals and other nutrients from runoff that drains into wetlands. Buffer areas can improve the biological diversity and health of a wetland environment while reducing the adverse impacts of human activities.

b) Buffer areas regulated by this section are areas of vegetative cover that are upland of the wetland edge, and that occur in a natural condition or through restoration. Buffer areas consist of shrubbery and trees, and native grasses or forbs or both that are not mowed, fertilized or manicured in any manner.

The stricken language is deleted; the underlined language is inserted.
c) **With the exception of Type 1 wetlands that are manicured turf and not part of a proposed development,** wetland buffer areas must be created or existing buffer areas must be maintained around all protected type 21-8 wetlands in the following situations:

1) when wetlands are required to be replaced or restored;

2) when new development occurs. For purposes of this subsection, new development means:
   a) any subdivision that creates a new lot that has no principal use on it;
   b) construction of a principal use on an existing vacant parcel of land;

3) when redevelopment occurs. For purposes of this section, redevelopment means the reconstruction of the principal structure if it includes the removal of the principal structure by more than 50 percent of the square footage of the building footprint or an increase of the square footage of the building footprint by more than 50 percent. This requirement does not apply if construction is the result of more than 50 percent of the building being damaged by an involuntary force, such as fire, wind, or vandalism;

4) when the city requires a buffer as part of a variance, expansion permit, conditional use permit, or a site plan review; or

5) on any preserve wetland when grading or construction is proposed that requires a city permit and the proposed activity could potentially impact the quality of the wetland by increasing hard surface run off, altering existing drainage, or impacting an existing buffer.

d) **Except as otherwise provided in 5)d)1 and 2 below,** buffer area widths will be based on the wetland classification in the city’s water resources management plan **or on the most recent city-approved Minnesota Routine Assessment Method (MNRAM).** The following are the required buffer area widths:

<table>
<thead>
<tr>
<th>Wetland Classification</th>
<th>Width of Buffer Area From the Wetland Boundary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manage 2</td>
<td>16.5 feet</td>
</tr>
<tr>
<td>Manage 1</td>
<td>25 feet</td>
</tr>
<tr>
<td>Preserve</td>
<td>50 feet</td>
</tr>
</tbody>
</table>

1) Wetland basins may have more than one management classification based on components of a MNRAM such as vegetation, habitat structure, amphibian habitat, aesthetic/cultural resource, etc. The required buffer for a specific site will be based on the management classification of the wetland adjacent to the subject property.
2) Any development or redevelopment project within the Bassett Creek Watershed must comply with the rules of the Bassett Creek Watershed Management Organization.

e) In cases of new development or redevelopment the city may require that vegetation in the wetland buffer be installed prior to the issuance of the certificate of occupancy. To ensure installation of the buffer the city may require a cash escrow or letter of credit equal to 150 percent of the cost to install the required buffer.

f) The city may allow the disturbance of an existing buffer area during the course of construction activity. This disturbance must be kept to a minimum, soils must be decompacted to a level that will accommodate root growth, and the buffer area must be re-established as required by the city. The city will determine the amount of allowable disturbance. The city may require a cash escrow or letter of credit equal to 150 percent of the cost to re-establish the buffer to its original condition.

g) The city may require buffer area planting and maintenance when the city determines that there is inadequate vegetation in the buffer area to meet the intent of this section. The city may require a cash escrow or letter of credit equal to 150 percent of the estimated cost of the vegetation and installation. The escrow or letter of credit must be valid for up to two years and may be used by the city to replace any vegetation that dies.

h) The affected property owner or homeowner association that is responsible for the maintenance must:

1) maintain and repair damage to buffer areas from such activities as mowing, cutting, grading or other prohibited activities, unless mowing is approved by city staff as a buffer management strategy. Permission must be obtained from the city before implementing buffer management strategies, which may include mowing, burning, and the use of herbicides.

2) be responsible for maintaining only the permitted vegetation in the buffer area and must remove all noxious weeds and invasive, non-native species such as European buckthorn;

3) ensure that all soil surfaces in the buffer area are planted with the permitted vegetation and that there is no open soil surface that may result in erosion.

6. Permitted Uses.

a) Within the wetland overlay districts, no land may be used except for one or more of the following uses:

1) native wetland vegetation, provided that no change is made to the ground elevation;

2) wildlife and nature preserves;
3) public overhead utility lines and poles that are less than two feet in diameter;

4) docks, boardwalks and bridges and reasonable access to the wetland, placed on poles, posts or footings that are less than two feet in diameter, to be used for boardwalks and bridges, and

5) pervious hiking and skiing and horseback riding trails that comply with WCA standards. Pervious will mean an area where water is able to infiltrate into the ground;

6) public and private flood control structures, ponding and drainage facilities and associated accessory appurtenances if the city determines that there is no other viable alternative and as approved by the city engineer;

7) environmental monitoring or control facilities, including those related to water quality and wildlife regulation;

8) in wetlands where impervious, public trails exist, maintenance of the trail will be allowed as long as there is not an increased impact to the wetland.

b) Within wetland buffer areas no land may be used except for one or more of the following uses:

1) native vegetation, provided that no change is made to the ground elevation;

2) wildlife and nature preserves;

3) docks, boardwalks and bridges and reasonable access to the wetland, placed on poles, posts or footings that are less than two feet in diameter, to be used for boardwalks and bridges, and

4) pervious hiking and skiing and horseback riding trails. Pervious will mean an area where water is able to infiltrate into the ground;

5) public and private flood control structures, ponding and drainage facilities and associated accessory appurtenances;

6) environmental monitoring or control facilities, including those related to water quality and wildlife regulation;

7) public overhead utility poles and lines that are less than two feet in diameter, underground public utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes and other equipment that provides an essential public service;

8) fences;

The stricken language is deleted; the underlined language is inserted.
retaining walls if the city determines that the retaining wall will protect the wetland from existing conditions of erosion;

in wetland buffer areas where impervious, public trails exist, maintenance of the trail will be allowed as long as there is not any additional impact to the wetland buffer area.


Within the wetland overlay districts and the wetland buffer areas no land may be used for the following except by conditional use permit and except in conformance with the standards specified in subsection 8 of this section:

a) private and public recreational uses, including golf courses, impervious trails, picnic grounds and boat ramps;

b) public utilities not permitted under subdivision 6 of this section, including necessary structures;

c) other non-structural facilities similar to those permitted by this section which also meet the intent of this section, as determined by the city; or

d) public structures associated with recreational uses permitted by this subsection or by subsection 6 of this section that are designed in an environmentally sensitive manner and will withstand periodic flooding, except for structures designed or used for habitation or the storage of equipment.

8. Standards for Wetlands Districts, Buffer Areas and Neighboring Lands.

The following standards apply to all land within the wetlands overlay districts, wetland buffer areas, and to neighboring lands:

a) Protection of wetlands and wetland buffer areas.

1) Except as modified or regulated by the standards of this subsection, all requirements of the underlying zoning district apply.

2) No structures are allowed in the wetland overlay districts, or wetland buffer area except those allowed as of right or by conditional use permit by subsections 6 or 7 of this section.

3) Activities including, but not limited to, building, paving, mowing, cutting, filling, dumping, yard waste disposal or fertilizer application are prohibited. Mowing may be permitted when approved by city staff as a buffer management strategy. However, invasive non-native vegetation, such as European buckthorn and noxious weeds, may be removed.

4) Before grading or construction near a wetland overlay district or buffer area, the owner or contractor must place erosion control fencing on the upland side of the perimeter of the wetland overlay district or wetland buffer area.
buffer area, whichever is more restrictive, or as required by the city. This fencing must remain in place until all development activities that may affect the wetland and the wetland buffer area have been finished and adequate vegetative cover has been established.

5) All structures must have a minimum basement floor elevation not less than two feet above the 100-year flood elevation.

6) All hard surface runoff must be treated in accordance with the requirements of the city and the appropriate watershed district. Treatment may include site retention, skimmers, weirs, bioretention or infiltration basins, or sedimentation ponds of appropriate scale. Structures and ponds serving this purpose must be properly maintained and serviced by the property owner.

7) Discharge into the wetlands must occur at a rate no greater than allowed by the city engineer in accordance with the city’s water resources management plan.

b) Setbacks.

1) All structures, except those permitted within the wetland overlay districts, must be set back at least 35 feet from a wetland overlay district and at least 10 feet from a required wetland buffer, whichever is greater. The distance for a pool will be measured from the water's edge of the pool. However, uncovered porches, decks, patios, sport courts, tennis courts, pool aprons, above ground hot tubs not exceeding 120 square feet, stairways and walkways, as well as cantilevered building areas, porticos, and similar features may extend up to 10 feet into the required setbacks but not into buffer areas. For purposes of this section a pool apron is the hard surface or decking material that is contiguous to the water's edge of the pool.

2) Parking areas, roadways, driveway areas, trails and any retaining wall if it is structurally integral to the construction of these items must not be located within 20 feet of a wetland overlay district and must be outside of any required buffer area.

3) A setback is not required from the wetland overlay district for overhead public utility poles and lines that are less than two feet in diameter, underground public utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes, and other equipment that provides an essential public service.

4) A setback is not required from the wetland overlay district for fences.

5) Retaining walls may not be within 25 feet of a wetland unless needed to control existing conditions of erosion as field verified by city staff. In this instance the location of the retaining wall must be approved by city staff.
6) An existing structure, driveway or parking area becomes meeting the required setback from a city-designated wetland boundary or buffer area is considered a legally nonconforming and is governed by section 300.29 at any time that a city-approved development if a later wetland delineation or implementation of a wetland buffer shows that the wetland or its buffer is closer than the required requires a setback that is more restrictive than a previously established setback. This provision recognizes that wetland locations and classifications are susceptible to change over time.


a) Removal of wetlands from a wetland overlay district requires a zoning amendment. An amendment must be made pursuant to the provisions of section 300.09 of this ordinance and the WCA replacement rules. This amendment must be consistent with the purpose of this ordinance, the city’s water resources management plan and the goals and policies of the comprehensive plan. In determining the appropriateness of a rezoning request, the city council will consider the size of the wetland overlay district, the magnitude of the area proposed for removal, the overall impact on the function and value of the wetland, the hydrological and ecological effects and the type and function of wetlands involved in order to provide the maximum feasible protection.

b) Wetlands within an overlay district may only be removed according to the WCA rules and if at least an equal area of new wetland is created to compensate for the wetland being filled. Unless otherwise approved by the city council, compensatory wetland area must be provided within the same subwatershed district as the wetland being altered, it must be located outside of any public easement and it must not result in the loss of regulated trees. The city may require cash escrow or letter of credit equal to 150 percent of the cost to mitigate for the wetland.

c) In addition to application requirements, the city may require submission and approval of the following information:

1) a concept plan showing ultimate use of the property;

2) a grading plan with appropriate drainage calculations and erosion controls prepared by a registered engineer;

3) a landscaping or revegetation plan;

4) such other information as may be necessary or convenient to evaluate the proposed rezoning; and

5) a determination of the function and value of the wetland using the most recent version of the Minnesota routine assessment method (MNRAM) for evaluating wetland functions or other approved assessment methodology.

10. Alteration of the Wetlands.
a) Except as provided below, no alteration of land within a wetland overlay district or a wetland buffer is allowed without a wetlands alteration permit, subject to recommendation by the planning commission and approval of the city council. The planning commission must hold a public hearing after notifying the property owners within 400 feet of the proposed alteration. Activities that constitute an alteration regulated by this section include changes to the size, depth or contour of the wetlands or its buffer, dredging, or alterations of wetlands or buffer vegetation.

b) A wetland alteration permit is not required:

1) To alter the existing contour within a buffer when a wetland district is rezoned to another zoning classification;

2) to remove vegetation from the wetland or its buffer pursuant to a restoration management plan approved by qualified city staff;

3) to alter vegetation in a type 1 wetland;

34) to plant native wetland vegetation;

45) to selectively clear or prune trees or vegetation that are dead, diseased, noxious or similar hazards;

56) to remove vegetation in a contiguous width not to exceed ten feet in order to install a dock or gain access to the wetland as permitted in 6(a) or 6(b) of this section and as approved by city staff;

67) to repair and maintain existing public facilities such as ponds, trails, and utilities if the work does not result in an increased impact to the wetland or its buffer; or

78) to remove sediment and debris from the wetland that has resulted from erosion, public works projects, transportation projects or other similar activities. The removal of sediment must not result in the removal of hydric soil from the wetland basin and must be approved by city staff.

c) Alteration of land within a wetland overlay district will only be allowed if the wetland and its buffer are provided in an amount compensatory to that being altered. Unless otherwise approved by the city council, compensatory wetland area and its buffer must be provided within the same subwatershed district as the wetland being altered, it must be located outside of any public easement and it must not result in the loss of regulated trees. The city may require cash escrow or letter of credit equal to 150 percent of the estimated cost to restore the wetland and its buffer.

d) In determining the appropriateness of an alteration request, the city council will consider the size of the total wetland district, the magnitude of the area proposed for alteration, the impact on the overall function and value of the wetland, the aesthetic, hydrological and ecological effect, the type and function of wetlands

The stricken language is deleted; the underlined language is inserted.
involved, and such other factors as may be appropriate in order to provide the maximum feasible protection to the wetlands. Application for a wetlands alteration permit must be accompanied by such information as required by the city, including:

1) a concept plan showing the ultimate use of the property;

2) a grading plan, with appropriate drainage calculations and erosion controls prepared by a registered engineer;

3) a landscaping or revegetation plan;

4) such other information as may be necessary or convenient to evaluate the proposed permit; and

5) a determination of the function and value of the wetland using the most recent version of the Minnesota routine assessment method (MNRAM) for evaluating wetland functions or other approved assessment methodology.

11. Public Control of Wetlands.

a) The city council may require that the owner of any property affected by this ordinance must record wetland and buffer area easements or restrictive covenants within the property's chain of title. These easements or covenants must describe the boundaries of the wetland and buffer area and prohibit any building, paving, mowing (unless approved as a management strategy), cutting, filling, dumping, yard waste disposal or fertilizer application within the wetland and the buffer area. The owner or developer must record these easements or covenants with the final plat, with deeds from a lot division or, if no subdivision is involved, before the city issues a grading permit or building permit for an affected property. The applicant must submit evidence that the easement or covenant has been submitted to the county for recording.

b) If the city council does not require an easement or covenant, the city may record a notice of the wetland and buffer area requirements against the property. The property owner must still comply with the requirements of this section.

12. Wetland Buffer Markers.

When new development or redevelopment results in multifamily residential or a business use, the developer may be required to place markers at the upland boundary of the wetland buffer edge at least every two hundred feet. The developer must use uniform markers provided by the city. The city will charge a reasonable cost for the markers.

Section 2. Section 300.23 is amended by repealing Appendix A.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective the day after publication.

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The stricken language is deleted; the underlined language is inserted.
Adopted by the city council of the City of Minnetonka, Minnesota, on March 18, 2019

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting City Clerk

Action on this Ordinance:

Date of introduction: Feb. 11, 2019
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 meeting held on March 18, 2019

Becky Koosman, Acting City Clerk
Ordinance No. 2019-
An ordinance amending Minnetonka City Code Section 300.25, regarding the shoreland overlay district

The City Of Minnetonka Ordains:

Section 1. Section 300.25 of the Minnetonka City Code, regarding the shoreland overly district, is amended as follows:

SECTION 300.25. SHORELAND DISTRICT.

1. Purpose.

The purpose of the shoreland district is to recognize, preserve, protect and enhance the environmental, recreational and hydrologic resources and functions of the city’s lakes and tributary creeks by regulating the use of both the public waters and adjacent land. In order to promote the general health, safety and welfare, certain protected waters in the city have been given a shoreland management classification by the Minnesota department of natural resources and the city of Minnetonka. The intent of the shoreland district is to apply the regulations and standards to public waters and adjacent land as an overlay zone, further regulating the use of land as allowed by other districts of this ordinance.

2. Classifications of Protected Shoreland Areas.

The Minnesota department of natural resources has assigned a shoreland management classification status to public water. Public water classifications as defined by the Minnesota Department of Natural Resources and the city of Minnetonka include the following:

a) Recreational Development. Recreational development lakes (RD) are characterized by moderate levels of recreational use and existing development. Many of these lakes have capacities for accommodating additional development and recreational use.

b) General Development. General development lakes (GD) have high levels and mixes of existing development. These lakes are extensively used for recreation and heavily developed around the shore.

The stricken language is deleted; the underlined language is inserted.
c) Tributary Creeks. Tributary creeks (TR) consist of all watercourses mapped in the Minnesota department of natural resources public waters inventory including the Minnehaha Creek, the Nine Mile Creek, the south fork of the Nine Mile Creek, the Purgatory Creek including both branches, and the public watercourse that flows out of Glen Lake. These creeks include those defined as tributary rivers by the Minnesota department of natural resources.

d) The following classifications of public waters have been assigned by the Minnesota department of natural resources and the city of Minnetonka:

<table>
<thead>
<tr>
<th>Lake Name</th>
<th>Classification</th>
<th>Lake Name</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Windsor (27-82P)</td>
<td>RD</td>
<td>Wing (27-91P)</td>
<td>RD</td>
</tr>
<tr>
<td>Libbs (27-85P)</td>
<td>GD</td>
<td>Rose (27-92P)</td>
<td>RD</td>
</tr>
<tr>
<td>Shavers (27-86P)</td>
<td>RD</td>
<td>Glen (27-93P)</td>
<td>RD</td>
</tr>
<tr>
<td>Mud (Minnetoga) (27-88P)</td>
<td>RD</td>
<td>Lone (27-94P)</td>
<td>RD</td>
</tr>
<tr>
<td>Shady Oak (27-89P)</td>
<td>RD</td>
<td>Minnetonka (27-133P)</td>
<td>GD</td>
</tr>
<tr>
<td>Holiday (27-90P)</td>
<td>GD</td>
<td>Crane (27-734P)</td>
<td>GD</td>
</tr>
<tr>
<td>Gleason (27-95P)</td>
<td>RD</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tributary Creek</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnehaha Creek (27-036a)</td>
<td>TR</td>
</tr>
<tr>
<td>Purgatory Creek (27-054a)</td>
<td>TR</td>
</tr>
<tr>
<td>Purgatory Creek, Eastern fork (27-055a)</td>
<td>TR</td>
</tr>
<tr>
<td>Purgatory Creek, Western fork (27-056a)</td>
<td>TR</td>
</tr>
<tr>
<td>Nine Mile Creek (27-050a)</td>
<td>TR</td>
</tr>
<tr>
<td>Nine Mile Creek, Southern fork (27-051a)</td>
<td>TR</td>
</tr>
<tr>
<td>Unnamed tributary flowing south from Glen Lake (27-052a)</td>
<td>TR</td>
</tr>
</tbody>
</table>

e) The following map illustrates the public waters to which the shoreland ordinance applies:

3. Description of Shoreland District.

The shoreland district consists of:
a) land containing or abutting public waters and assigned a shoreland management classification by the Minnesota Department of Natural Resources or the city of Minnetonka; and

b) land located within the following distances from public water:

1) 1,000 feet from the ordinary high water level (OHWL) of a lake;

2) 300 feet from OHWL (top of bank) of a tributary creek, or the upland edge of the floodplain designated by ordinance, whichever is greater.

Properties or portions of properties may be exempt from the requirements of the shoreland district if the drainage and runoff patterns from the properties are directed outside of the drainage basin of the public water as a result of a natural topographic divide. This exemption determination will be made by the city engineer.

4. Permitted uses at or Below the Ordinary High Water Level and within Shore and Bluff Impact Zones.

At or below the ordinary high water level, and within shore and bluff impact zones, no land may be used except for one or more of the following uses:

a) residential yards;

b) wildlife and nature preserves;

c) public and private parks;

d) pervious hiking and skiing trails;

e) public utilities;

f) public and private approved flood control structures, ponding and drainage facilities and associated accessory appurtenances if the city determines that there is no other viable alternative as approved by the city engineer;

g) environmental monitoring or control facilities, including those related to water quality and wildlife regulation;

h) docks no wider than 8 feet unless a permit is obtained from the Minnesota department of natural resources, boat lifts and mooring structures;

i) foot bridges over a creek if it does not obstruct passage or block navigation and is permitted by the Minnesota department of natural resources;

j) beaches;

k) public fishing piers;

l) soil stabilization techniques permitted by the Minnesota department of natural resources; and
m) retaining walls if needed to control existing conditions of erosion as field verified by staff, but only if there is absolutely no other alternative to protect the integrity of the slope. **No new retaining wall is allowed below the ordinary high water level.**

5. Conditional Uses at or Below the Ordinary High Water Level and within Shore and Bluff Impact Zones.

At or below the ordinary high water level and within shore and bluff impact zones, land may be used for the following only by conditional use permit and only in conformance with the standards specified in section 300.26 of this code:

a) **within shore and bluff impact zones,** private and public recreational uses, *such as including golf courses, ballfields, playfields,* picnic grounds, boardwalks, *and* impervious trails,—*non-motorized public water craft landings, marinas, and boat ramps;* or

b) *non-motorized public water craft landings, marinas, and boat ramps,* private ponding and drainage facilities.

6. Uses on Lands Outside the Shore and Bluff Impact Zones.

Permitted and conditionally permitted uses on lands outside the shore and bluff impact zones are those uses allowed and regulated by applicable underlying zoning districts.

7. Shoreland District Standards, Based on Classifications.

The following standards apply to all land within the shoreland district based on proximity to the specified classifications:

<table>
<thead>
<tr>
<th></th>
<th>General Development (GD)</th>
<th>Recreational Development (RD)</th>
<th>Tributary Creeks (TR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Minimum Lot Area for riparian lots</td>
<td>22,000 sq.ft.</td>
<td>22,000 sq.ft.</td>
<td>22,000 sq.ft.</td>
</tr>
<tr>
<td>b) Minimum lot area for non-riparian single family homes, R-1</td>
<td>22,000 sq.ft.</td>
<td>22,000 sq.ft.</td>
<td>22,000 sq.ft.</td>
</tr>
<tr>
<td>c) Minimum lot area for non-riparian single family homes, R-2</td>
<td>15,000 sq.ft.</td>
<td>15,000 sq.ft.</td>
<td>15,000 sq.ft.</td>
</tr>
<tr>
<td>d) Minimum lot area for non-riparian duplexes, R-2</td>
<td>20,000 sq.ft.</td>
<td>20,000 sq.ft.</td>
<td>20,000 sq.ft.</td>
</tr>
<tr>
<td>e) Minimum lot area for non-riparian triplexes, R-3</td>
<td>10,890 sq.ft.</td>
<td>10,890 sq.ft.</td>
<td>10,890 sq.ft.</td>
</tr>
<tr>
<td>f) Minimum lot area for non-riparian multi-family residential units, R-3, R-4, R-5</td>
<td>30,000 sq.ft.</td>
<td>30,000 sq.ft.</td>
<td>30,000 sq.ft.</td>
</tr>
<tr>
<td>g) Minimum water line frontage</td>
<td>75 ft</td>
<td>75 ft</td>
<td>75 ft</td>
</tr>
<tr>
<td>h) Elevation of the lowest floor above the OHWL</td>
<td>2 feet</td>
<td>2 feet</td>
<td>2 feet</td>
</tr>
<tr>
<td>i)</td>
<td>Minimum setbacks from the OHWL for principal structures, and accessory structures, including decks, patios, tennis courts, sport courts, swimming pools (including the apron of the pool), walls, retaining walls (unless permitted due to existing conditions of erosion as field verified by city staff) and any fence that obstructs lake views such as picket or privacy fence:</td>
<td>50 ft</td>
<td>75 ft</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>j)</td>
<td>Fences that are 6 feet in height or less and do not obstruct views such as chain link or wrought iron can extend up to the OHWL but not into any adjacent wetland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>k)</td>
<td>Maximum impervious surface coverage for the portion of land on a lot that is within 150 feet of OHWL.</td>
<td>30 percent</td>
<td>30 percent</td>
</tr>
<tr>
<td>l)</td>
<td>Maximum impervious surface coverage for the portion of land on a lot that is beyond 150 feet of the OHWL:</td>
<td>75 percent</td>
<td>75 percent</td>
</tr>
<tr>
<td>m)</td>
<td>The city may allow credit for pervious hard surfaces such as pavers or pervious concrete to the extent of the proven infiltration rate for the pervious pavement area. For example if pervious pavers are installed in an area totaling 100 square feet, and the pavers are proven to infiltrate 14 percent of the area, up to 14 square feet may be subtracted from the impervious surface coverage</td>
<td>30 feet</td>
<td>30 feet</td>
</tr>
</tbody>
</table>

The stricken language is deleted; the underlined language is inserted.

The following standards apply to all land in the shoreland district:

a) Water oriented accessory structures:
   1) must not exceed 120 square feet in size, or 10 feet in height, exclusive of safety rails. Detached decks must not exceed eight feet above grade at any point;
   2) must be setback from the OHWL 10 feet;
   3) must meet the standards of sections 300.23 and 300.24;
   4) must not exceed one per lot;
   5) must be treated to reduce visibility as viewed from the public water and adjacent shorelands by vegetation, topography, increased setbacks, or color, assuming summer-leaf on conditions;
   6) must not be designed or used for human habitation and must not contain a water supply or sewage treatment facilities;
   7) cannot be used principally for water craft storage; and
   8) may use the roof as a deck with safety rails, but not with enclosed walls or as a storage area.

b) The person proposing any land altering activity on a riparian property, such as building a structure, road or driveway, or grading activity, that will impact a topographic area having an average slope of 12% or more measured over a horizontal distance of 50 feet or more, must demonstrate that the land altering activity will not impact the public water regulated by this section and must;
   1) demonstrate that soil erosion will not occur as a result of the project activity;
   2) demonstrate preservation of the existing vegetation to the extent practical; and
   3) provide screening of structures such as buildings and vehicles as viewed from the water in summer leaf on conditions.

The stricken language is deleted; the underlined language is inserted.
In no instance is land altering activity on a riparian property allowed on a slope averaging 20% or greater if it will have an adverse impact on the public water regulated by this section, such as erosion, loss of vegetation, or loss of screening as viewed from the lake. If the applicant can demonstrate that the land altering activity will not have an adverse impact on the public water then the activity must comply with the section 300.28 subsection 20, the steep slope ordinance. Stairways, landings and permitted retaining walls are exempt from this requirement.

c) All impervious surface runoff must be treated in accordance with the requirements of the city and appropriate watershed district. Treatment may include site retention, skimmers, weirs, infiltration basins, storm water sedimentation ponds of appropriate scale, or other acceptable methods. Facilities serving this purpose must be properly maintained and serviced by the property owner.

d) Discharge into the public waters must occur at a rate no greater than the rate allowed by the city engineer in accordance with the city's water resources management plan and appropriate watershed district requirements.

e) All construction projects must provide erosion and sediment control as required by the city.

f) No building permit will be issued by the city for the construction or alteration of any principal structure on property adjoining a lake or tributary creek if that structure is not served by the city’s sanitary sewer system.

g) No structure may be placed nearer than 50 feet from the boundary of an unplatted cemetery or significant historic site protected under Minnesota statute section 307.08 unless necessary approval is obtained from the Minnesota state historic preservation office.

h) Each lot wholly or partially within the shoreland district and created through a subdivision must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the city must consider susceptibility to flooding, existing wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, near-shore aquatic conditions unstable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or the community.

i) Roadways, parking areas, driveways and trails must meet the following standards:

1) Where feasible, all roadways, parking areas, driveway areas, trails and any retaining wall if it is structurally integral to the construction of these items must meet the setback requirements established for principal structures. If no feasible placement alternative exists, they must be designed to minimize adverse impacts to the public water and must not
be constructed in the shore or bluff impact zones except as allowed under subdivision 5 of this section.

2) Roadways and drives may cross a public water. Footings for bridges may be allowed in the shore or bluff impact zone if they are designed to minimize adverse impacts to the public water.

3) Vehicles may not be parked in shore or bluff impact zones.

4) Vegetation must be used to screen parking areas when viewed from the water.

j) Stairways, lifts, and landings must meet the following standards:

1) Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas.

2) Stairways and lifts must not exceed six feet in width on residential lots. Wider stairways may be used for commercial properties and public open space recreational properties if approved as part of the site plan.

3) Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties and public open space recreational properties if approved as part of the site plan.

4) Canopies or roofs are not allowed on stairways, lifts or landings.

5) Stairways, lifts and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.

6) Facilities such as ramps or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards in items 2) through 5) are met.

k) Controlled access lots except those that existed prior to March 24, 2008, must meet the following standards:

1) Lots intended as controlled accesses to public waters for use by owners of non-riparian lots are permissible if they meet or exceed all of the standards below.

2) They must meet the width and size requirements for single family residential lots and be suitable for the intended uses of controlled access lots.
3) They must be jointly owned by all purchasers of lots in one subdivision or by all purchasers of non-riparian lots in one subdivision who are provided riparian access rights on the access lot.

4) The maximum number of watercraft docking or mooring at any controlled access lot is limited to six unless the width of the lot (keeping the same lot depth) is increased by one third of the required riparian frontage for every additional dock or moored watercraft.

5) Covenants or other legal instruments must be executed, specifying which owners have authority to use the access lot and what activities are allowed. These activities cannot significantly conflict with general public use of the public water.

9. Exceptions to Structure Setback and Impervious Surface Requirements.

The following are exceptions to the setback and impervious surface requirements for structures:

a) Setback requirements from the ordinary high water level do not apply to piers, permitted docks, boat lifts, and mooring structures. The location of these structures is controlled by applicable state and local regulations. The location of piers and docks shall be controlled by applicable state and local regulations.

b) There is no setback from the ordinary high water level or from top of bluff for overhead utility poles and lines that are less than two feet in diameter, underground utility lines and distribution equipment, fences, light poles, traffic signals, traffic regulatory signs, mailboxes, and other equipment that is associated with an essential public service.

c) There is no setback from the OHWL or from top of bluff for stairways and landings no wider than 6 feet on residential lots and for stairways and landings on commercial properties or public open space recreational properties if approved as part of a site plan.

d) Shoreland R-1 lots of record existing as of February 12, 1966 may maintain the following reduced setbacks from the OHWL under the following conditions but must comply with all other setbacks:

1) The setback for the principal structure and accessory structures including tennis courts, sport courts, swimming pools (including the apron of the pool), walls, retaining walls (unless permitted due to existing conditions of erosion) and any fence that obstructs lake views such as picket or privacy fence, may be determined by a line drawn from the closest shoreward corners of the two immediately adjacent principal structures, as long as there is a minimum setback of 35 feet for principal structures and accessory structures.
2) The setback for an unenclosed or uncovered attached deck or patio may be determined by a line drawn from the closest shoreward corners of the two immediately adjacent principal structures or any attached deck or patio to that principal structure, as long as there is a minimum setback of 25 feet.

If one of the adjacent lots is vacant, the closest shoreward corner of the principal structure on the nearest developed lot past the vacant lot will be substituted for the vacant lot.

Figure 25

e) In order to qualify for one of the above setback exceptions, the applicant must provide documentation acceptable to the city to verify adjacent and average setbacks.

10. Additional Standards for a Planned Unit Development.

The applicant for a planned unit development (PUD) that is wholly or partially in the shoreland district must meet the following requirements in addition to the requirements of section 300.22:

a) If the property is already fully developed under its current zoning status but is being redeveloped, the project must:

1) preserve the natural features on the site and comply with the city’s ordinances and standards designed to protect the natural environment, including regulation pertaining to steep slopes, trees, wetlands, and floodplains; and

2) provide open space that is at least twenty percent of the total project area. Open space is defined as land in its undeveloped state except that passive recreational uses such as trails or picnic areas may be included in the open space calculation;
b) If a property is undeveloped or could be further subdivided under its current zoning status, then 50 percent of the natural area must be preserved as designated by the city. This area must be protected by a conservation easement or restrictive covenants;

c) In the case of either (a) or (b), impervious cover within the PUD cannot exceed 40 percent. All impervious cover must also comply with this section.

11. Alteration of Shoreland.

The removal of natural vegetation within shore and bluff impact zones must be restricted to prevent erosion into public waters, to consume nutrients in the soil and to preserve shoreland aesthetics. Removal of natural vegetation, grading and filling in the shoreland district is subject to the following provisions:

a) intensive clearing, as defined in this ordinance, of natural vegetation within shore and bluff impact zones is prohibited;

b) in shore and bluff impact zones, limited clearing of trees and shrubs and cutting, pruning and trimming of trees is allowed to provide a view to the water from the principal structure, to control noxious or invasive vegetation, or to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented facilities, provided that:
   1) structures, vehicles, or other facilities are screened as viewed from the water, assuming summer, leaf-on conditions.
   2) existing shading of water surfaces is preserved along tributary creeks; and
   3) natural vegetation must be restored during and after all construction projects to retard surface runoff and soil erosion.

The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

c) any grading, filling or excavation in the shoreland district which will change or diminish the course, current or cross-section of a public water must be approved by the Minnesota Department of Natural Resources.

12. Administration.

The city must notify and supply the Minnesota Department of Natural Resources with plans and information as follows:

a) notices of public hearings for all variances, and conditional use permits in shoreland districts must be submitted at least 10 days prior to such hearings;

b) a copy of the final decision regarding variances or conditional use permits must be submitted within 10 days after a decision has been made;
c) all preliminary plats within the shoreland district must be submitted at least 10 days before the meeting;

d) all approved final plats must be submitted within 10 days after a decision has been made; and

e) when a variance, CUP or preliminary plat in the shoreland district is approved after the department of natural resources has formally recommended denial in the hearing record, the notification to the department of natural resources of the approval must also include the findings of the planning commission or city council which supported the approval.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective the day after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor
Attest:

Becky Koosman, Acting City Clerk

Action on this Ordinance:

Date of introduction: Feb. 11, 2019
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 meeting held on March 18, 2019.

Becky Koosman, Acting City Clerk

The stricken language is deleted; the underlined language is inserted.
Ordinance No. 2019-

An ordinance amending city code section 300.27, regarding retaining walls

The City Of Minnetonka Ordains:

Section 1. Section 300.27, Subd. 18 of the Minnetonka City Code, specific to retaining walls, is amended as follows:

Retaining walls exceeding five feet in height, including staged walls which cumulatively exceed five feet in height, must be constructed in accordance with plans prepared by a registered engineer or landscape architect. Retaining walls must be reviewed and constructed as required by the building code.

Section 2. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on March 18, 2019.

_____________________
Brad Wiersum, Mayor

Attest:

_____________________
Becky Koosman, Acting City Clerk

Action on this ordinance:

Date of introduction: Feb. 11, 2019
Date of adoption:
Motion for adoption:
Seconded by:

The stricken language is deleted; the single-underlined language is inserted.
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 March 18, 2019.

Becky Koosman, Acting City Clerk
Ordinance No. 2019-

An ordinance amending city code section 300.35, regarding traffic requirements in the Opus Overlay District

The City Of Minnetonka Ordains:

Section 1. Section 300.35, Subdivision 3(b) of the Minnetonka City Code, specific to trip generation, is amended as follows:

b) Trip generation:

1) Development limitations based on p.m. peak hour trip generation are established in subdivision 4 for each parcel of non-residential land in the Opus area district that contributes traffic to the Bren Road interchange. These development limitations have been developed by determining the maximum number of p.m. peak hour trips that can be accommodated at the interchange. That number of trips was then allocated proportionately on the basis of the maximum development that would be allowed under current zoning standards and the rate of trip distribution to the interchange for each traffic analysis district. The properties in traffic analysis district no. 4 were determined to have no trips to the interchange, so no trip generation limits are imposed for that district.

2) The trip generation numbers specified in subdivision 4 are the maximum numbers of p.m. peak hour trips that may be generated by non-residential properties to the Bren Road and TH169 interchange in traffic analysis districts no. 1, 2, and 3. To determine the maximum square footage of building space that is allowed for each parcel, the trip limitation number is divided by the p.m. peak hour rate for that use. The applicable rates are those specified in the Opus II area trip generation analysis, dated August 1, 2009, on file in the community development department. Substantial compliance with the trip generation number and resultant maximum square footage of buildable space is required. In determining trip generation and allowable building square footage, gross floor area of a building must be used, except that gross leasable area may be used when there is a substantial amount of common area within a building and when institute of traffic engineers data is based on gross leasable area.

The stricken language is deleted; the single-underlined language is inserted.
3) Uses existing on December 7, 2009 that generate greater p.m. peak hour trips or that have a greater building area than would be allowed by the trip generation number may continue to exist as non-conforming developments. These uses are subject to the restrictions contained in section 300.29; however, each of these uses is allowed to expand by no more than 10 percent of existing building area if measures are taken to keep the traffic generation at the rate existing on December 7, 2009. An expansion beyond that amount or a change of use is permitted only if there is substantial compliance with the trip generation limit.

4) Unused trips allocated by this ordinance to a parcel under subdivision 4 are not a property right that may be transferred at will to another property. Allocated trips may be transferred to another property in the overlay district only with the approval of the city council, which may deny the transfer if it is likely to have a negative impact on the public health, safety, or welfare.

Section 2. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting City Clerk

Action on this ordinance:

Date of introduction: Feb. 11, 2019
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

The stricken language is deleted; the single-underlined language is inserted.
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 March 18, 2019.

Becky Koosman, Acting City Clerk
Ordinance No. 2019-

An ordinance amending city code section 325.06, regarding signs in residential zoning districts.

The City Of Minnetonka Ordains:

Section 1. Table 325.5 in Section 325.06, Subd. 1 of the Minnetonka City Code, regarding signs in residential districts, is amended as follows:

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Max. Area</th>
<th>Max. Copy and Graphic Area</th>
<th>Max. Height</th>
<th>Illumination Type*</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permanent Wall Signs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any Residential use***</td>
<td>2 sq. ft.</td>
<td>2 sq. ft.</td>
<td>1 ft.</td>
<td>External only</td>
<td></td>
</tr>
<tr>
<td>Conditionally permitted principal use</td>
<td>50 sq. ft. or 10% of the wall in which the sign is located, whichever is less</td>
<td>50 sq. ft. or 10% of the wall in which the sign is located, whichever is less</td>
<td>2 ft.</td>
<td>Internal or External</td>
<td></td>
</tr>
<tr>
<td><strong>Permanent Freestanding Signs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low density Residential**</td>
<td>75 sq. ft. per entrance</td>
<td>30 sq. ft. per entrance</td>
<td>6 ft.</td>
<td>External</td>
<td>Must be located at primary entrance(s), two signs permitted per development</td>
</tr>
<tr>
<td>Medium/High density Residential</td>
<td>100 sq. ft. per entrance</td>
<td>36 sq. ft. per entrance</td>
<td>8 ft.</td>
<td>Internal or External</td>
<td>Must be located at primary entrance(s), two signs permitted per development</td>
</tr>
<tr>
<td>Conditionally Permitted Use****, except</td>
<td>75 sq. ft.</td>
<td>30 sq. ft.</td>
<td>8 ft.</td>
<td>Internal or External</td>
<td></td>
</tr>
</tbody>
</table>

The **stricken** language is deleted; the **single-underlined** language is inserted.
for public buildings and parks

<table>
<thead>
<tr>
<th></th>
<th>32 sq. ft.</th>
<th>32 sq. ft.</th>
<th>8 ft.</th>
<th>Internal or External</th>
<th>Hours of illumination: 6 am to 10 pm only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Building and Park</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Athletic Field, with structured seating for 2000 or fewer people</td>
<td>410 sq. ft. per sign face</td>
<td>410 sq. ft. per sign face</td>
<td>35 ft.</td>
<td>Internal only</td>
<td></td>
</tr>
<tr>
<td>Athletic Field, with structured seating for more than 2000 people</td>
<td>500 sq. ft. per sign face 1000 sq. ft. aggregate</td>
<td>500 sq. ft. per sign face 1000 sq. ft. aggregate</td>
<td>35 ft.</td>
<td>Internal only</td>
<td></td>
</tr>
</tbody>
</table>

* Internal illumination is not allowed when a sign faces low-density residential properties. External illumination may not include exposed light sources.

** Allowed only for single-family developments of at least 6 lots and two-family development with at least 12 dwelling units.

*** Sign permit not required.

**** Includes educational, religious, institutional, or nursing home uses.

Section 3. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting City Clerk

---

The stricken language is deleted; the single-underlined language is inserted.
Action on this ordinance:

Date of introduction: Feb. 11, 2019
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 March 18, 2019.

Becky Koosman, Acting City Clerk
Brief Description
Resolution approving OAKLAND ESTATES, a 4-lot subdivision at 1922 Oakland Rd

Recommendation
Adopt the resolution approving the request

Proposal
LakeWest Development, LLC has submitted an application to subdivide the property at 1922 Oakland Road into four lots. As proposed, the existing home would remain on the northerly lot and would continue to utilize the existing shared driveway to the north. Three new homes would be constructed to the south with access directly onto Oakland Rd.

Planning Commission Hearing
The planning commission considered the request on March 7, 2019. The staff report, various plans and documents describing the proposed project are attached. At that meeting, a public hearing was opened to take comment but no one appeared to speak.

Following the public hearing, the commission asked questions and discussed the proposal. The commission asked for more information on the functionality of dry wells and confirmed with staff that the proposal would meet the city’s tree ordinance.

Planning Commission Recommendation
On a 4-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes are attached.

Since Planning Commission Hearing
There have been no changes to the proposal or additional information received since the planning commission meeting.

Staff Recommendation
Recommend the city council adopt the attached resolution approving the request.

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

Originator: Ashley Cauley, Senior Planner
MINNETONKA PLANNING COMMISSION
March 7, 2019

Brief Description
Preliminary plat for OAKLAND ESTATES, a 4-lot subdivision at 1922 Oakland Rd

Recommendation
Recommend the city council approve the proposal

Existing Property Information

- **Size**: 2.4 acres
- **Buildings**: Currently improved with an existing home and several accessory buildings. Two buildings encroach onto city property.
- **Access**: Shared driveway access with property to the north.
- **Trees**: 73 high priority trees.
- **Floodplain**: Barely extends onto the property in the southwest corner.
- **Topography**: Existing home is built on high point of the property and topography then slopes downwards in all directions.

Proposal Information:

<table>
<thead>
<tr>
<th></th>
<th>Complies with ordinance</th>
<th>Included as condition for permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot standards</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Tree removal</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Stormwater</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Removal of encroachments</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Utilities</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Grading/erosion</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Easements</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Wetland / floodplain</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Recommendation:
Recommend the city council adopt the attached resolution approving the preliminary plat of OAKLAND ESTATES.
Introduction

The applicant, LakeWest Development, LLC has submitted an application to subdivide the subject property into four lots. The existing home would remain and three new homes would be constructed. The proposal requires approval of preliminary plat.

Proposal Summary

The following is intended to summarize the applicant’s proposal:

- **Existing Site Features**

  The property is approximately 2.4 acres in size and is currently improved with a single-family home, originally constructed in 1948, and several accessory structures. Two of the accessory structures encroach onto city-owned property to the west.

  The existing home was constructed on the property’s highest point and the property generally slopes downwards in all directions.

  Floodplain associated with the wetland barely extends onto the property in the southwest corner of the site.

  The subject property has 73 high priority trees and 94 significant trees.

  Following the approval of OAKLAND KNOLL to the north in 1989, a private driveway was created to provide access to the two northerly homes and the subject property.

- **Proposed Lots**

  The applicant is proposing to divide the property into four lots; the existing home would remain on one of the lots. The home would continue to utilize the existing drive to the north but all encroachments onto city property would be removed.

  The three new lots would meet all minimum area and dimension standards for lots within the R-1 zoning district.

- **Site Impacts**

  As proposed, grading would occur in order to construct new homes and driveways. Retaining walls would be incorporated onto the southern two lots to allow walkout basements. This grading would result in the removal of, or substantial impact to, 29-percent of the property’s high priority trees. While the proposal would comply with the
city’s tree protection ordinance, the applicant could reduce the amount of removal by reducing the amount of grading shown on Lot 1, the home with the existing lot.

Primary questions and 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 both the primary questions associated with the proposal and staff’s findings.

- Are the proposed lot sizes and configurations appropriate?

Yes. The proposed lots would meet all minimum size and dimensional standards as outlined by city code.

<table>
<thead>
<tr>
<th>Area</th>
<th>Width</th>
<th>Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Buildable</td>
</tr>
<tr>
<td>Required</td>
<td>22,000 sf</td>
<td>3,500 sf</td>
</tr>
<tr>
<td>Lot 1</td>
<td>22,090 sf</td>
<td>8,665 sf</td>
</tr>
<tr>
<td>Lot 2</td>
<td>25,730 sf</td>
<td>11,430 sf</td>
</tr>
<tr>
<td>Lot 3</td>
<td>30,840 sf</td>
<td>15,085 sf</td>
</tr>
<tr>
<td>Lot 4</td>
<td>25,530 sf</td>
<td>7,785 sf</td>
</tr>
</tbody>
</table>

* all measurements rounded to the nearest 5 ft.

- Is the proposed site impacts reasonable?

Yes. The proposed subdivision has been reviewed to ensure conformance with the city’s tree protection ordinance, which regulates tree removal and mitigation. Woodland preservation areas (WPA) have the highest level of protection during the subdivision of a property. During subdivision, no more than 25-percent of the WPA and 35-percent of the property’s high priority trees may be removed or impacted by the development. There are no WPAs on the site. However, there are 73 high priority trees and 94 significant trees. While the subdivision would result in the removal of a large number of trees, the subdivision would comply with the city’s tree protection ordinance.

<table>
<thead>
<tr>
<th>Trees</th>
<th>Existing</th>
<th>Number Removed</th>
<th>Percent Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-priority</td>
<td>73</td>
<td>21</td>
<td>29%</td>
</tr>
<tr>
<td>Significant</td>
<td>94</td>
<td>39</td>
<td>42%</td>
</tr>
<tr>
<td>Total</td>
<td>167</td>
<td>60</td>
<td>36%</td>
</tr>
</tbody>
</table>

Staff Recommendation

Recommend the city council adopt the resolution approving the preliminary plat of OAKLAND ESTATES.

Originator: Ashley Cauley, Senior Planner
Through: Susan Thomas, AICP, Assistant City Planner
Supporting Information

**Surrounding Land Uses**

Properties to the north, east, and south are single-family residential properties. The lot to the west is city-owned property. This property is encumbered by wetland and floodplain and is intended to serve as permanent green space used to mitigate freeway noise.

**Planning**

Guide Plan designation: low-density residential
Zoning: R-1

**Wetland and Floodplain**

There is a wetland complex with associated floodplain on the city owned property to the west. The building setbacks far exceed any wetland and floodplain setbacks that would encumber the properties.

**Grading**

In order to evaluate the impacts of anticipated grading, the city requires that all subdivision applications illustrate general home footprints and an associated grading plan. If a subdivision is approved, final grading plans for each of the homes must occur in substantial compliance with the general plan.

The general grading plan submitted illustrates that grading would occur to build the new homes and driveways, incorporate stormwater facilities, and install retaining walls.

As currently proposed, the garages on the southern two lots – Lots 3 and 4 – would be lower than the street. To ensure that water from the street does not run down the driveway and into the garage, the developer could create a “high point” in the driveway or grade the driveways such that water is diverted away from the garage.

**Stormwater**

Under the city’s stormwater rule, stormwater management is required when a property is divided into three or more lots. The management facility must control for runoff rate, volume and quality. The plans illustrate the use of dry wells on each lot to treat the stormwater. To ensure that these stormwater facilities would function and be sized appropriately, the following have been included as conditions of approval:

Prior to release of final plat:
- Submit supplemental engineering information for the stormwater facilities prior to the release of the final plat;
- Submit a plan illustrating an access path for maintenance of the facility; and
- Submit a stormwater maintenance agreement.

Prior to the issuance of a building permit for each home:
- Dedicate any necessary easements over the proposed stormwater facility.
Prior to release of the certificate of occupancy for the first home:
• Construct the stormwater facilities as approved or submit individual letters of credit or a cash escrow for 125-percent or 150-percent of an estimated cost to construct the stormwater facilities.

Natural Resources
Best management practices must be followed during the course of site preparation and construction activities. This would include 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.

Approval
The planning commission makes a recommendation to the city council, which has the final authority to approve or deny the request.

Pyramid of Discretion

Motion Options
The planning commission has the following options:

1. Concur with staff's recommendation. In this case, a motion should be made recommending the city council approve the proposal based on the findings outlined in the staff-drafted resolution.

2. Disagree with staff's recommendation. In this case, a motion should be made recommending the city council deny the proposal. The motion should include findings for denial.

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.

Neighborhood Comments
The city sent notices to 34 area property owners and received no comments to date.

Deadline for Decision
The applicant has waived the 120-day review period.
8. Public Hearings

A. Resolution approving the preliminary plat of Oakland Estates.

Chair Kirk introduced the proposal and called for the staff report.

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

Powers asked if current stormwater standards would be applied to the project. Cauley explained that the proposal must comply with the current water resources management plan. Building permits would also be reviewed for compliance with the water resources management requirements at that time.

Perry Ryan, representing Lake West Development, applicant, stated that:

- He thanked Cauley for her report and staff for their collaboration.
- A drywell is an underground detention center. For a project on Oakland Road, instead of having infiltration stations above ground, an underground trench system was used. The trench was lined with filter fabric. All of the roof drains were directed to the underground cavity to capture the majority of hard surface runoff.
- He was comfortable that the proposal would meet water resources management requirements.
- He met with Schwartz and would be happy to again to take measures to minimize tree loss.

Knight confirmed with Cauley that the property as a whole is used to calculate tree mitigation requirements.

Sewall asked if the site has buck thorn. The vegetation appears very dense. Schwartz noted that there are multiple trees with a diameter under eight inches located on the south end of the site so it appears wooded, but each tree would not be defined as significant because of their small size. There is also quite a bit of buck thorn.

Chair Kirk confirmed with Cauley that the entire site would need to meet stormwater management requirements. He was concerned that the root zones of adjacent trees would be impacted by the drywell on Lot Four. Cauley stated that protection of the adjacent root zones could be made a condition of approval in the resolution. The exact location of the drywells may change.

The public hearing was opened. No testimony was submitted and the hearing was closed.
Knight asked what would happen to the buildings encroaching on city property. Cauley stated that the buildings would have to be removed before the issuance of the first building permit. The plan includes the removal of the buildings.

Powers noted that the proposal meets all of the standards. He recognized the need to move forward. He supports staff’s recommendation.

Chair Kirk noted that a site with 2.4 acres in Minnetonka is highly valued. It makes sense to subdivide the property.

Sewall noted that the proposal would meet ordinance requirements including saving two thirds of the trees on the site. He supports staff’s recommendation.

Knight moved, second by Powers, to recommend that the city council adopt the attached resolution approving the preliminary plat of Oakland Estates.

Knight, Powers, Sewell, and Kirk voted yes. Hanson, Henry and Luke were absent. Motion carried.
Resolution No. 2019-

Resolution approving the preliminary plat of OAKLAND ESTATES, a 4-lot subdivision at 1922 Oakland Rd

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

Section 1. Background.

1.01 LakeWest Development, LLC has requested preliminary plat approval for OAKLAND ESTATES. (Project 18041.18a).

1.02 The property is located at 1922 Oakland Rd. It is legally described as follows:

(Per Warranty Deed recorded Aug. 9, 1973 as Document No. 4034834)

All that part of the Southwest ¼ of Section 3, Township 117, Range 22, described as follows:

Commencing 790 feet East of the Southwest corner of said section for a place of beginning; thence angle left 90 degrees, distant 375 feet; thence angle right 90 degrees, distance 176.4 feet to the Westerly line of County Road No. 74; thence Southeasterly on the Westerly line of said Section distant 487.4 feet to the place of beginning. ALSO an easement for ingress and egress described as follows: Commencing at the Southwest corner of said Section 3; thence East on the South line of said Section distant 790 feet; thence angle left 90 degrees distant 375 feet for place of beginning; thence continuing North distant 20 feet; thence angle right 90 degrees distant 177 feet to the Westerly line of County Road No. 74; thence Southerly on the Westerly line of said road distant 20.04 feet; thence West and parallel with the South line of said Section distant 176.4 feet to the place of beginning.

The covenants contained herein shall be construed as of Aug. 29, 1968.

Subject to any restrictions, reservations and easements of record, if any.

1.03 On March 7, 2019, 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. General Standards.

2.01 City Code §400.030 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution.

Section 3. Findings.

3.01 The proposed preliminary plat meets the design requirements as outlined in City Code §400.030.


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:
      1. A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
      2. Utility easements over existing or proposed public utilities, as determined by the city engineer.
      3. Drainage and utility easements over wetlands, floodplains, and stormwater management facilities, as determined by the city engineer. The 100-year elevation is 957.1.
   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.
      1. Title evidence that current within thirty days before release of the final plat.
   3) Submit a plan that illustrates an access path to the stormwater facilities.
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. Submit the following prior to release of the final plat for recording:
   
a) Two sets of mylars for city signatures.
   
b) An electronic CAD file of the plat in microstation or DXF.
   
c) Park dedication fee of $15,000.

4. Subject to staff approval, OAKLAND ESTATES, must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   
   - Site and utility plan dated Feb. 7, 2019.

   a) No grading or tree removal is allowed prior to the issuance of a building permit on each lot.
   
   b) If the garage is set lower than the street, water should be diverted to direct water away from the garage.
   
   c) Prior to the issuance of a building permit for the first home, submit the following:
      
      1) Evidence of filing the final plat at Hennepin County.
      
      2) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
      
      3) Proof of subdivision registration and transfer of NPDES permit.
   
   d) Prior to the issuance of a building permit for any home:
      
      1) Submit a stormwater management plans. Stormwater requirements apply to all lots, including the lot with the existing home. The final stormwater management plan must meet the of the city’s Water Resources Management Plan, Appendix A. Design. In addition, supplemental calculations, models, and documentation must be submitted detailing conformance with the city’s:
• Rate Control: maintain existing rates leaving the site for the 2-, 10-, and 100-year events.

• Volume: the storm chambers must capture 1” of the entire site’s impervious surface. Soil borings are required to verify infiltration rates.

• Water Quality: materials must be submitted (MIDS or p8 model) to demonstrate that 60% of the total phosphorus and 90% of the TSS are removed.
  a. Submit soil borings, HydroCAD and P8/MIDS models as required by the city engineer.
  b. Design emergency overflows to go to rear yard.
  c. Submit any necessary easements and maintenance agreements in a city approved format for review and approval by staff.

2) Submit a tree preservation plan for each lot. This plan must:
  a. Include the grading and tree preservation for each lot.
  b. Illustrate removal of the high priority trees per each lot must be consistent with the grading plan dated Feb. 7, 2019.
  c. Illustrate that no more than 25 high priority trees can be removed from the site.
  d. Reduce grading and construction limits to minimize tree loss and protect the large evergreens on Lots 3 and 4.
  e. Stormwater facilities, sewer and water services must be located to minimize impact to any significant or high-priority trees. No trees may be removed for installation of services.

3) Regarding the service for Lot 2, the existing water main to be tapped is SDR 9 8-inch HDPE DIPS. The contractor must submit shop drawings and qualifications to install electrofused tapping saddle. A stainless steel saddle or non-fused saddle will not be allowed.
4) Submit final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.

5) Submit evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

6) Submit a construction management plan. The plan must be in a city approved format and must outlined minimum site management practices and penalties for non-compliance.

7) Submit 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.

8) 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.

9) Submit all required hook-up fees.

10) Minimum floor elevation is 959.1.

e) Prior to issuance of the certificate of occupancy for the first home:

1) Construct or submit a financial guarantee in the amount of 125% of a bid cost or 150% of an engineer’s estimate to construct the stormwater facilities on each lot.

2) All encroachments must be removed from city property.

f) 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.

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

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

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

j) 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 March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting City Clerk
Brief Description: Drainage and utility easements within public properties

Recommended Action: Adopt the resolution

Background

The City of Minnetonka and Hennepin County have been working with Xcel Energy to bury overhead power along Minnetonka Boulevard, between Shady Oak Road and Guilliams Field. Due to the restricted right-of-way in this area to accommodate the roadway, Xcel Energy is unable to bury their facilities within the existing road right-of-way and has requested easements be established for this work. By establishing drainage and utility easements within city properties, the city is able to allow Xcel Energy to complete the overhead burial.

Additional easements are necessary at Guilliams Field (12101 Minnetonka Blvd.) and Mills Landing (12716 Minnetonka Blvd. and 12810 Minnetonka Blvd.) as illustrated in the attached easement exhibits. The city attorney has reviewed the easement documents.

Recommendation

Adopt the attached resolution declaring drainage and utility easements within public properties.

Submitted through:
  Geralyn Barone, City Manager
  Will Manchester, PE, Director of Engineering

Originated by:
  Phil Olson, PE, Assistant City Engineer
Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01 The City of Minnetonka holds fee title to certain properties located at 12101, 12716 and 12810 Minnetonka Blvd. (the “Properties”).

1.02 The Properties are currently used for park purposes.

1.03 The city council desires to establish public drainage and utility easements across portions of the Properties in order to facilitate the burial of public utilities within the easement areas.

Section 2. Council Action.

2.01 The mayor and city manager are authorized and directed to execute and record the attached Declaration of Drainage and Utility Easement.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting City Clerk
Drainage and utility easements on public properties

- **Easement Locations**
- **Parks**

This map is for illustrative purposes only.
DECLARATION OF PUBLIC DRAINAGE AND UTILITY EASEMENT

This Declaration of Public Drainage and Utility Easement (the “Declaration”) is made as of March 18, 2019, by CITY OF MINNETONKA, a Minnesota municipal corporation (“Declarant”).

WHEREAS, Declarant is the owner of certain real properties legally described on the attached Exhibit A (the “Properties”).

WHEREAS, Declarant desires to establish, grant and convey a public drainage and utility easement over portions of the Properties.

NOW, THEREFORE, in consideration of the foregoing, Declarant hereby declares that each of the Properties shall be held, transferred and used subject to the following easement:

1. Declaration of Drainage and Utility Easement. Subject to the provisions of this Declaration, Declarant hereby grants, conveys and establishes over, under and across those portions of the Properties legally described and depicted on the attached Exhibit B (the “Easement Areas”), a permanent easement for drainage and utility purposes (the “Easement”).

2. Scope of Easement. The Easement includes the right of the City, its contractors, employees, agents and assigns to:

   a) locate, construct, reconstruct, operate, maintain, inspect, alter and repair within the Easement Area storm sewer, sanitary sewer and water facilities, ground surface drainage ways, or other public facilities or improvements of any type that are not inconsistent with drainage and utility use; and

   b) cut, trim, or remove from the Easement Areas trees, shrubs, or other vegetation that in the City’s judgment unreasonably interfere with the City’s easement or facilities.

3. Construction and Binding Effect. This Declaration shall be binding upon the fee owner of each of the Properties and all other persons having or acquiring an interest in any of the Properties, and it shall inure to the benefit of the City of Minnetonka as owner of the easement interest.

4. Duration and Amendment. Except as otherwise specifically provided above, the Easement shall be effective upon the recording of this Declaration in the appropriate recording
office of Hennepin County and shall be perpetual unless modified by an amendment of this Declaration or terminated either by vacation proceedings conducted in accordance with applicable ordinance or by written termination of this Declaration. This Declaration may be amended or terminated only by the written approval of each of the then current owners of each of the Properties. An amendment or termination of this Declaration must be reduced to writing, signed by the approving parties and recorded in the same county recording office in which this Declaration is recorded.

5. No Termination or Merger of Estates. The easement created by this Declaration will not terminate or be deemed to have merged into any estate by virtue of the Declarant owning the fee title to any or all of the Properties. Any transfer of the fee title to any one or more of the Properties shall be deemed to be subject to the easement created by this Declaration unless a contrary intent is expressed in the deed of conveyance.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Easement as of the day and year first above written.

City of MINNETONKA

By ____________________________
  Brad Wiersum, Mayor

By ____________________________
  Geralyn Barone, City Manager

STATE OF MINNESOTA  )
                   ) ss.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____ day of ___________, 2019, by Brad Wiersum, the mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

________________________________________
Notary Public

STATE OF MINNESOTA  )
                   ) ss.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____ day of ___________, 2019, by Geralyn Barone, the city manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

________________________________________
Notary Public
EXHIBIT A

LEGAL DESCRIPTIONS OF PROPERTIES

12101 Minnetonka Blvd. (Abstract)
All that part of the East One-Half (E1/2) of the West One-Half (W1/2) of Section 14, Township 117, Range 22 lying southerly of County Road No. 5 (as said right of way is shown in Hennepin County Plat 71, Doc. No. 5086388) and northerly of the right-of-way of The Minneapolis & St. Louis Railway Company (now Hennepin County Regional Railroad Authority right of way, according to Doc. No. 5404251) except that party lying west of a line drawn parallel with and 489 feet, at right angles, west of the North and South Center Line of said Section 14.

12716 Minnetonka Blvd. (Torrens Cert. No. 756682)
That part of Lot 3, the Minnetonka Mill Company’s Subdivision Of Part Of Secs 14 & 15 T. 117 N R 22 W described as follows: Commencing at the West Quarter corner of said Section 14; thence North on the West line of said Section, 247.5 feet to a point in the bed of Minnehaha Creek; thence Northeasterly along said Creek bed at an angle of 60 degrees East of said Section line, 316.80 feet; thence South parallel with the West line of said Section to the center line of Minnetonka Boulevard; thence along the center line of said Boulevard to it intersection with the East and West Quarter line of said Section; thence West along said Quarter line to the place of beginning.

12810 Minnetonka Blvd. (Torrens Cert. No. 511365)
Lot 8, Block 1, CREEKWOOD
All in Hennepin County, Minnesota
EXHIBIT B

Sketches Depicting and Describing Easement Areas
A perpetual easement for utility purposes over, under and across the following described property:

All that part of the Easterly 489 feet of the Southeast Quarter of the Northwest Quarter of Section 14, Township 117, Range 22, lying South of County Road. No. 5 per Hennepin County and State Aid Highway No. 5 Plat 71.

All that part of the Easterly 489 feet of the Northeast Quarter of the Southwest Quarter of Section 14, Township 117, Range 22, lying North of the Hennepin County Regional Railroad Authority Property Map No. 1.

Said easement is described as follows:

The north 10.00 feet of the described property along County Road No. 5 and that part of the above described property which lies northeasterly of a line drawn from a point on the east line of said property distant 135.00 feet southerly of the northeast corner thereof to a point on the northerly line of said property distant 120.00 feet westerly of the northeast corner thereof.
A perpetual easement for utility purposes over, under and across the following described property:

Lot 8, Block 1, CREEKWOOD, according to the recorded plat thereof, Hennepin County, Minnesota.

Said easement is described as follows:

The westerly 20.00 feet and southerly 10.00 feet of said Lot 8, as measured at right angles to the westerly and southerly lines of said Lot 8.

Together with an easement over, under, and across that part of said Lot 8 which lies easterly of a line described as commencing at the southeast corner of said Lot 8; thence South 73 degrees 33 minutes 18 seconds West along the southerly line of said Lot 8 a distance of 10.00 feet to the point of beginning of said line to be described; thence North 07 degrees 50 minutes 55 seconds West a distance of 90.67 feet to a point hereinafter referred to as Point A and said line there terminating.

Together with a 10.00 foot easement over, under, and across that part of said Lot 8, the center line of said easement is described as beginning at said Point A; thence North 74 degrees 07 minutes 58 seconds East a distance of 26.85 feet to the east line of said Lot 8; thence South 74 degrees 07 minutes 58 seconds West along the last described course and its southwesterly extension a distance of 184.56 feet to the west line of said Lot 8 and said center line there terminating.

The side lines of said easement shall be prolonged or shortened to terminate at said east and west lines of Lot 8.

And

A perpetual easement for utility purposes over, under and across the following described property:

That part of Lot 3, the Minnetonka Mill Company's Subdivision of Secs. 14 and 15, Township 117, Range 22, according to the recorded plat thereof, Hennepin County, Minnesota, which lies northerly of Minnetonka Boulevard.

Said easement lies northerly and westerly of the following described line:

Commencing at the southeast corner of Lot 8, Block 1, CREEKWOOD, according to the recorded plat thereof, Hennepin County, Minnesota; thence North 00 degrees 10 minutes 10 seconds West, along the east line of said Lot 8, a distance of 6.54 feet to a point on the northerly right of way line of Minnetonka Boulevard and the point of beginning of the line to be described; thence North 72 degrees 39 minutes 51 seconds East along said northerly right of way line a distance of 26.29 feet; thence North 16 degrees 20 minutes 49 seconds West a distance of 76.59 feet to the east line of said Lot 8, and said line there terminating.

MINNESOTA 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 the State of Minnesota.

Dated this 30th day of November, 2018

Paul A. Thorp Minnesota License No. 13637
Found Iron Monument

Bearings are based on the Hennepin County Coordinate System (1986 adj.).
Brief Description: Resolutions for the Carlson Parkway project

Recommended Action: Adopt the resolutions

Background

Carlson Parkway, from Oakland Road to Twelve Oaks Center Drive, has been identified for improvements through the city’s pavement management program. Analysis of the road indicates that while the pavement surface needs rehabilitation, the pavement structure is in relatively good condition. A mill and overlay of the pavement with select areas of pavement replacement is therefore the recommended rehabilitation strategy as it provides a cost-effective way to improve the surface and extend the roadway life.

In coordination with the pavement rehabilitation, the project includes the replacement of three aging signal systems in partnership with MnDOT; one signal at Twelve Oaks Center Drive and two signals at Trunk Highway 12 (TH 12) controlling the ramps. The city owns the signal at Twelve Oaks Center Drive and MnDOT owns the two signals adjacent to TH 12. As a part of the state’s cost participation policy, the city is responsible for a portion of the cost to replace the MnDOT signals. These non-material MnDOT funds will eventually flow through the street fund.

In addition to the signal infrastructure replacement, the signal replacement will allow for the installation of flashing yellow arrows and pedestrian safety improvements at the crosswalk locations. Additionally, select areas of damaged sidewalk will be replaced to ensure compliance with ADA standards.

Estimated Project Costs and Funding

The total estimated construction cost, including engineering, administration and contingency is $1,830,000. The budget amount for the project is shown below and is included in the 2019 – 2023 CIP. The MnDOT cost participation is defined in the existing agreements as their funding portion being 40% of the signal work at the ramps on the north and south side of TH 12.

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Agreements

A cooperative construction agreement is needed with MnDOT for the signal system replacement on this project. The agreement defines cost participation for the construction project along with ongoing maintenance responsibilities of the city and state. The city attorney has reviewed the attached cooperative construction agreement.

Schedule

If the recommended actions are approved by council, staff is planning to open bids for the project on April 19 with intentions of council consideration to award the contract on June 3. Construction is expected to begin this summer and be complete by late fall.

Recommendation

1) Adopt the attached resolution accepting plans and specifications and authorizing the advertisement for bids for the Carlson Parkway project, Project No.18409.
2) Adopt the attached resolution approving the Cooperative Construction Agreement.

Submitted through:
Geralyn Barone, City Manager
Will Manchester, PE, Director of Engineering

Originated by:
Phil Olson, PE, Assistant City Engineer
Resolution No. 2019-

Resolution accepting plans and specifications and authorizing the advertisement for bids for the Carlson Parkway project.

Be It Resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. Pursuant to city council authorization, plans and specifications have been prepared by and/or under the direction of the city engineer who is a Licensed Professional Engineer in the State of Minnesota for the Carlson Parkway project.

1.02. The plans and specifications for the construction of the aforementioned project have been presented to the city council for approval.

Section 2. Council Action.

2.01. The plans and specifications, copies of which are on file in the engineering department, are hereby accepted upon the recommendation of the city engineer.

2.02. The city clerk shall prepare and cause to be inserted in the official newspaper and in Finance & Commerce an advertisement for bids for the making of such improvements under such approved plans and specifications. The advertisement shall specify the work to be done, shall state that bids will be opened online at 10 a.m., local time, on April 19, 2019, and that no bids will be considered unless submitted through the online bidding website and accompanied by a bid security in the amount of five (5) percent of the amount of the total bid and in accordance with the instructions on the bidding website.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, Acting 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 March 18, 2019.

_____________________________
Becky Koosman, Acting City Clerk
RESOLUTION NO. 2019-
Resolution Authorizing Construction Cooperative Agreement No. 1032816 with the Minnesota Department of Transportation for the Carlson Parkway Project

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

Section 1. Background.
1.01. The city of Minnetonka has received Cooperative Construction Agreement No. 1032816 as it pertains to the Carlson Parkway Project.

Section 2. Council Action.
2.01. The city council of the City of Minnetonka determines that it is in the best interest of the city to enter into a Cooperative Construction Agreement with the Minnesota Department of Transportation, a copy of which was presented to the council at its meeting on March 18, 2019, for the following purposes:

To provide for payment by the State to City of the State's share of the costs of the sidewalk, ADA improvements, signal construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 12 on Carlson Parkway from Oakland Road to Twelve Oaks Center Drive within the corporate limits of the City of Minnetonka under State Project No. 2714-144 (T.H. 12=010).

2.02 The mayor and city manager are authorized to execute this Agreement and any amendments to the Agreement.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

________________________________________________________________________________________

Brad Wiersum, Mayor

________________________________________________________________________________________

ATTEST:

________________________________________________________________________________________

Becky Koosman, Acting 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 March 18, 2019.

______________________________
Becky Koosman, Acting City Clerk
Carlson Parkway

- Street Mill and Overlay
- Signal Replacement

This map is for illustrative purposes only.
## 2019 Street Rehabilitation Funding Summary

<table>
<thead>
<tr>
<th>Funding Sources</th>
<th>2019 CIP¹</th>
<th>2019 Mill and Overlay</th>
<th>Estimated Funding</th>
<th>Carlson Parkway</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Improvement Fund - Local Street Rehab</td>
<td>$2,600,000</td>
<td>$695,000</td>
<td>$1,400,000</td>
<td>$505,000</td>
<td></td>
</tr>
<tr>
<td>Storm Sewer Fund</td>
<td>$100,000</td>
<td>$25,000</td>
<td>$50,000</td>
<td>$25,000</td>
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<tr>
<td>Utility Fund</td>
<td>$150,000</td>
<td>$50,000</td>
<td>$50,000</td>
<td>$50,000</td>
<td></td>
</tr>
<tr>
<td>Electric Franchise Fund</td>
<td>-</td>
<td>-</td>
<td>$50,000</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td>$2,850,000</td>
<td>$770,000</td>
<td>$1,500,000</td>
<td>$580,000</td>
<td></td>
</tr>
</tbody>
</table>

¹ The 2019 Reconstruction Project is included on a separate CIP page.
September 14, 2016

Will Manchester, City Engineer  
City of Minnetonka  
14600 Minnetonka Blvd.  
Minnetonka, MN  55345  
wmanchester@eminnetonka.com  952-939-8232

Dear Will Manchester:

Subject: S.P. 2714-144 Cost Participation Request for Traffic Signal Replacement Project

Location: T.H. 12 @ Carlson Parkway (N. & S. Ramps)  
In Hennepin County, Minnetonka, MN

The Minnesota Department of Transportation (Metro District) is in the process of scoping a signal replacement project at the intersections of T.H. 12 at Carlson Parkway Interchange - North & South ramp signals. The bid opening date for the project is currently scheduled for October 26, 2018.

In order to proceed with this signal replacement project, the Department of Transportation needs concurrence from the participating agency regarding project support, and cost participation.

Please review the project and cost sharing information outlined below and provide a written response regarding participating in the cost of the project (Email is sufficient), on behalf of your agency by October 15, 2016.

Project Description:

Signal replacements with associated ADA improvements. The new signals will meet current design standards. Replacement is due to the signals nearing the end of their life cycle. The signals were installed in 1986 and will be 32 years old in 2018. This date could possibly be moved to early 2019 if that helps the City with cost participation.
MNDOT Signal Replacement/ Preservation Background:

Each year, MNDOT allocates funding for signal preservation projects. This dedicated funding, along with local cost participation, allows MNDOT to replace approximately 10 signal systems each year beyond those signals that are included with roadway construction projects. MNDOT attempts to spread out the Signal Replacement Projects throughout the metro area, so that one City or County doesn't have a large cost participation burden in any given year.

This steady, proactive approach allows MNDOT to replace some of the oldest signals each year so that we don't reach the point where all of the signals are old, where the signal maintenance & costs become an issue, or the structural components begin to fail. This steady approach also eliminates design and funding peaks & valleys. The useful service life of existing signal systems is approximately 30 years. We are anticipating that the new signal systems, with galvanized steel poles and PVC conduits, will have an extended useful service life.

Benefits of new signal systems include upgrades to current MNDOT operational, signal design, and ADA, standards. New signals will incorporate appropriate technology for signal phasing (FYA), APS, countdown pedestrian indications, detection, LED indications and luminaires, EVP, interconnect, battery-back-up ready systems, striping, signing, etc.

Cost Participation: The signal replacement costs for this project will be state and locally funded. The cost percentages below are based on the percentage of legs controlled by each roadway authority per current MNDOT cost participation policy.

<table>
<thead>
<tr>
<th>Signal Location</th>
<th>Estimated Cost</th>
<th>Cost Share</th>
<th>MN/DOT</th>
<th>City of Minnetonka</th>
</tr>
</thead>
<tbody>
<tr>
<td>T.H. 12 at Carlson Parkway interchange - North ramps</td>
<td>$300,000</td>
<td>5 Legs - (2) MN/DOT, (3) Minnetonka</td>
<td>$120,000</td>
<td>$180,000</td>
</tr>
<tr>
<td>T.H. 12 at Carlson Parkway interchange - South ramps</td>
<td>$300,000</td>
<td>5 Legs - (2) MN/DOT, (3) Minnetonka</td>
<td>$120,000</td>
<td>$180,000</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td></td>
<td>$240,000</td>
<td>$360,000</td>
</tr>
</tbody>
</table>

MNDOT assumes the cost responsibilities for design. The amounts above include all project construction costs.

Please set aside the correct amount when developing your local TIP (Transportation Improvement Program). Be sure to consider if your agency is eligible for, and intend to use, state aid funds toward all or part of your costs.

Please contact me with any questions or comments you may have.
This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of Minnetonka acting through its City Council ("City").

Recitals

1. The City will perform bituminous surfacing, ADA improvements, signal construction and other associated construction upon, along and adjacent to Trunk Highway No. 12 on Carlson Parkway from Oakland Road to Twelve Oaks Center Drive according to City-prepared plans, specifications and special provisions designated by the State as State Aid Project No. 142-152-009 and as State Project No. 2714-144 (T.H. 12=010) ("Project"); and

2. The City requests the State participate in the costs of the sidewalk, ADA improvements and signal construction and the State is willing to participate in the costs of said construction and associated construction engineering; and

3. Since a portion of the Project is on the National Highway System Right-Of-Way, the State will perform oversight engineering of that portion of the Project in connection with the construction as required by the Stewardship Plan between the FHWA and the State, dated May 2015, to ensure that the Federal Highway program is delivered consistent with applicable laws, regulations, and policies and any construction activity undertaken on or affecting the Trunk Highway system is designed and constructed in accordance with the laws and rules of the State of Minnesota and policies of the Department of Transportation; and

4. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

Agreement

1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits

1.1. Effective Date. This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.

1.2. Expiration Date. This Agreement will expire when all obligations have been satisfactorily fulfilled.

1.3. Survival of Terms. All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 2.4. State Ownership of Improvements; 5. Maintenance by the City; 11. Liability; Worker Compensation Claims; Insurance; 13. State Audits; 14. Government Data Practices; 15. Governing Law; Jurisdiction; Venue; and 17. Force Majeure. The terms and conditions set

Payable Lump Sum on Low Bid (Cooperative Agreements)
forth in Article 6. Signal Systems and EVP Systems Operation and Maintenance will survive the expiration of this Agreement, but may be terminated by another Agreement between the parties.

1.4. **Plans, Specifications, Special Provisions.** State-Aid approved City plans, specifications and special provisions designated by the State as State Aid Project No. 142-152-009 and as State Project No. 2714-144 (T.H. 12=010) are on file in the office of the City's Engineer and incorporated into this Agreement by reference ("Project Plans").

1.5. **Exhibits.** Preliminary Schedule "I" is attached and incorporated into this Agreement.

2. **Right-of-Way Use**

2.1. **Limited Right to Occupy.** The State grants to the City (and its contractors and consultants) the right to occupy Trunk Highway Right-of-Way as necessary to perform the work described in the Project Plans. This right is limited to the purpose of constructing the project, and administering such construction, and may be revoked by the State at any time, with or without cause. Cause for revoking this right of occupancy includes, but is not limited to, breaching the terms of this or any other agreement (relevant to this project) with the State, failing to provide adequate traffic control or other safety measures, failing to perform the construction properly and in a timely manner, and failing to observe applicable environmental laws or terms of applicable permits. The State will have no liability to the City (or its contractors or consultants) for revoking this right of occupancy.

2.2. **State Access; Suspension of Work; Remedial Measures.** The State's District Engineer or assigned representative retains the right to enter and inspect the Trunk Highway Right-of-Way (including the construction being performed on such right-of-way) at any time and without notice to the City or its contractor. If the State determines (in its sole discretion) that the construction is not being performed in a proper or timely manner, or that environmental laws (or the terms of permits) are not being complied with, or that traffic control or other necessary safety measures are not being properly implemented, then the State may direct the City (and its contractor) to take such remedial measures as the State deems necessary. The State may require the City (and its contractors and consultants) to suspend their operations until suitable remedial action plans are approved and implemented. The State will have no liability to the City (or its contractors or consultants) for exercising its rights under this provision.

2.3. **Traffic Control; Worker Safety.** While the City (and its contractors and consultants) are occupying the State's Right-of-Way, they must comply with the approved traffic control plan, and with applicable provisions of the Work Zone Field Handbook (http://www.dot.state.mn.us/trafficeng/workzone/index.html). All City, contractor, and consultant personnel occupying the State's Right-of-Way must be provided with required reflective clothing and hats.

2.4. **State Ownership of Improvements.** The State will retain ownership of its Trunk Highway Right-of-Way, including any improvements made to such right-of-way under this Agreement, unless otherwise noted. The warranties and guarantees made by the City's contractor with respect to such improvements (if any) will flow to the State. The City will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the City's consultants, and contractor (including its sureties) for non-performance of contract work, for design errors and omissions, and for defects in materials and workmanship. Upon request of the State, the City will undertake such actions as are reasonably necessary to transfer or assign contract rights to the State and to permit subrogation by the State with respect to claims against the City's consultants and contractors.

3. **Contract Award and Construction**

3.1. **Bids and Award.** The City will receive bids and award a construction contract to the lowest responsible bidder (or best value proposer), subject to concurrence by the State in that award, according to the Project Plans. The contract construction will be performed according to the Project Plans.
3.2. **Bid Documents Furnished by the City.** The City will, within 7 days of opening bids for the construction contract, submit to the State's State Aid Agreements Engineer a copy of the low bid and an abstract of all bids together with the City's request for concurrence by the State in the award of the construction contract. The City will not award the construction contract until the State advises the City in writing of its concurrence.

3.3. **Rejection of Bids.** The City may reject and the State may require the City to reject any or all bids for the construction contract. The party rejecting or requiring the rejection of bids must provide the other party written notice of that rejection or requirement for rejection no later than 30 days after opening bids. Upon the rejection of all bids, a party may request, in writing, that the bidding process be repeated. Upon the other party's written approval of such request, the City will repeat the bidding process in a reasonable period of time, without cost or expense to the State.

3.4. **Direction, Supervision and Inspection of Construction.**

   A. The contract construction will be under the direction of the City and under the supervision of a registered professional engineer; however, the State participation construction covered under this Agreement will be open to inspection by the State District Engineer's authorized representatives. The City will give the State Aid Agreements Engineer at Roseville five days notice of its intention to start the contract construction.

   B. Responsibility for the control of materials for the contract construction will be on the City and its contractor and will be carried out according to Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction".

3.5. **Performance of Oversight Engineering.**

   A. The State will perform oversight engineering on that portion of the Project involving the State's Trunk Highway Right-Of-Way as required by the FHWA Stewardship Agreement pertaining to work by local agencies on the National Highway System.

   B. Oversight engineering will consist of the following items which impact the National Highway System.

      i. Review, approve and provide concurrence of all change orders that pertain to the work on the Interstate Right-of-Way.

      ii. Review of documented inspection and materials testing.

      iii. Periodic construction inspections.

      iv. Review traffic control.

      v. Periodically attend weekly meetings.

      vi. Review contractor's schedules.


      viii. Any other oversight engineering duties required by the Federal Highway Administration, and/or the State.

3.6. **Completion of Construction.** The City will cause the contract construction to be started and completed according to the time schedule in the construction contract special provisions. The completion date for the contract construction may be extended, by an exchange of letters between the appropriate City official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.

3.7. **Plan Changes.** All changes in the Project Plans and all addenda, change orders, supplemental agreements and work orders entered into by the City and its contractor for contract construction must be approved in writing by the State District Engineer's authorized representative.

Payable Lump Sum on Low Bid (Cooperative Agreements)
3.8. **Compliance with Laws, Ordinances, Regulations.** The City will comply and cause its contractor to comply with all Federal, State and Local laws, and all applicable ordinances and regulations. With respect only to that portion of work performed on the State's Trunk Highway Right-of-Way, the City will not require the contractor to follow local ordinances or to obtain local permits.

3.9. **Construction Documents Furnished by the City.** The City will keep records and accounts that enable it to provide the State, when requested, with the following:

A. Copies of the City contractor's invoice(s) covering all contract construction.

B. Copies of the endorsed and canceled City warrant(s) or check(s) paying for final contract construction, or computer documentation of the warrant(s) issued, certified by an appropriate City official that final construction contract payment has been made.

C. Copies of all construction contract change orders, supplemental agreements and work orders.

D. A certification form, provided by the State, signed by the City's Engineer in charge of the contract construction attesting to the following:
   i. Satisfactory performance and completion of all contract construction according to the Project Plans.
   ii. Acceptance and approval of all materials furnished for the contract construction relative to compliance of those materials to the State's current "Standard Specifications for Construction".
   iii. Full payment by the City to its contractor for all contract construction.

E. Copies, certified by the City's Engineer, of material sampling reports and of material testing results for the materials furnished for the contract construction.

F. A copy of the "as built" plan sent to the State Aid Agreements Engineer.

4. **Right-of-Way; Easements; Permits**

4.1. The City will obtain all rights-of-way, easements, construction permits and any other permits and sanctions that may be required in connection with the local and trunk highway portions of the contract construction. Before payment by the State, the City will furnish the State with certified copies of the documents for rights-of-way and easements, construction permits and other permits and sanctions required for State participation construction covered under this Agreement.

4.2. The City will convey to the State by quit claim deed, all newly acquired rights needed for the continuing operation and maintenance of the Trunk Highway, if any, upon completion of the Project, at no cost or expense to the State.

4.3. The City will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings and depiction of utilities affected by the contract construction.

5. **Maintenance by the City**

Upon completion of the Project, the City will provide the following without cost or expense to the State:

5.1. **Carlson Parkway.** Maintenance of Carlson Parkway. Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing and seal coating and any other maintenance activities according to accepted City maintenance practices.

5.2. **Sidewalks.** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, cross street pedestrian crosswalk markings, vegetation control of boulevards (if any) and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.
The State will maintain crosswalk markings on the Trunk Highway at ramps which intersect with City roads.

5.3. **Additional Drainage.** Neither party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party.

6. **Signal Systems and EVP Systems Operation and Maintenance**

Operation and maintenance responsibilities will be as follows for the Signal Systems and EVP Systems along Carlson Parkway: at Oakland Road and the T.H. 12 south ramps (Signal System "A"), at Deer Creek Parkway and the T.H. 12 westbound ramp (Signal System "B"), and at Twelve Oaks Center Drive and Lakeshore Parkway (Signal System "C") and for the Interconnect on Carlson Parkway from Oakland Road to Twelve Oaks Center Drive.

6.1. **City Responsibilities.**

A. **Power.** The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pads or poles and will pay all monthly electrical service expenses necessary to operate the Signal Systems, EVP Systems, and Interconnect.

B. **Minor Signal System Maintenance.** The City will provide for the following, without cost to the State.

i. Maintain the signal pole mounted LED luminaires, including replacing the luminaires when necessary. The LED luminaire must be replaced when it fails or when light levels drop below recommended AASHTO levels for the installation.

ii. Replace the Signal Systems LED indications. Replacing LED indications consists of replacing each LED indication when it reaches end of life per the MnDOT Traffic Engineering Manual or fails or no longer meets Institute of Traffic Engineers (ITE) standards for light output.

iii. Clean the Signal Systems controller cabinet and service cabinet exteriors.

iv. Clean the Signal Systems and luminaire mast arm extensions.

v. Paint and maintain the Oakland Road, Twelve Oaks Center Drive, Lakeshore Parkway, Deer Creek Parkway and Carlson Parkway pedestrian crosswalk markings.

vi. Reimburse the State for the costs associated with battery replacement for the battery back-up system which includes battery purchase, installation and disposal.

6.2. **State Responsibilities.**

A. **Interconnect; Timing; Other Maintenance.** The State will maintain the Interconnect and signing, and perform all other Signal System, APS, and signal pole luminaire circuit maintenance without cost to the City. All Signal System timing will be determined by the State, and no changes will be made without the State's approval.

B. **Battery Backup Replacement Batteries.** Perform all tasks associated with battery replacement for the battery back-up system which includes battery purchase, installation and disposal and invoice the City 100% of the costs associated with this work. The State will maintain the remainder of the battery back-up system at its cost and expense.

C. **EVP Systems Operation.** The EVP Systems will be installed, operated, maintained, and removed according to the following conditions and requirements:

i. All maintenance of the EVP Systems must be done by State forces.

ii. Emitter units may be installed only on authorized emergency vehicles, as defined in Minnesota Statutes § 169.011, Subdivision 3. Authorized emergency vehicles may use emitter units only when
responding to an emergency. The City will provide the State's District Engineer or their designated representative a list of all vehicles with emitter units, if requested by the State.

iii. Malfunction of the EVP Systems must be reported to the State immediately.

iv. In the event the EVP Systems or its components are, in the opinion of the State, being misused or the conditions set forth in Paragraph ii. above are violated, and such misuse or violation continues after the City receives written notice from the State, the State may remove the EVP System(s). Upon removal of the EVP Systems pursuant to this Paragraph, all of its parts and components become the property of the State.

v. All timing of the EVP Systems will be determined by the State.

6.3. **Right-of-Way Access.** Each party authorizes the other party to enter upon their respective public right-of-way to perform the maintenance activities described in this Agreement.


7. **Basis of State Cost**

7.1. **Schedule "I".** The Preliminary Schedule "I" includes all anticipated State participation construction items and the construction engineering cost share covered under this Agreement.

7.2. **State Participation Construction.** The State will participate in the following at the percentages indicated. The construction includes the State's proportionate share of item costs for as built, mobilization, traffic control and alternate pedestrian route.

A. 100 Percent will be the State's rate of cost participation in all of the sidewalk construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".

B. 40 Percent will be the State's rate of cost participation in Signal System "A" and Signal System "B" construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".

7.3. **Construction Engineering Costs.** The State will pay a construction engineering charge equal to 8 percent of the total State participation construction covered under this Agreement.

7.4. **State Furnished Materials.** The State will furnish a Cabinet/Controller Type R (TS2) with fiber and camera, and Video Detection for Signal Systems "A" and "B" and a Cabinet/Controller Type R (TS2) with fiber and Video Detection for Signal System "C" ("State Furnished Materials"), according to the Project Plans, to operate the traffic control signal systems covered under this Agreement. The City's lump sum share for State Furnished Materials is $126,366.67. The State's lump sum share for State Furnished Materials is $46,964.55 and is considered a part of the State's total lump sum cost. The City cost share for State Furnished Materials will be deducted from the State's total lump sum construction cost share as shown in the Schedule "I".

8. **State Cost and Payment by the State**

8.1. **State Cost.** $155,051.42 is the State's estimated share of the costs of the contract construction less State Furnished Materials cost which includes the 8 percent construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices, and may include any credits or lump sum costs. Upon review of the construction contract bid documents described in Article 3.2., the State will decide whether to concur in the City's award of the construction contract and, if so, prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.
8.2. **Conditions of Payment.** The State will pay the City the full and complete lump sum amount as shown in the Revised Schedule "I", after the following conditions have been met:

A. Encumbrance by the State of the State's full and complete State funded lump sum cost share as shown in the Revised Schedule "I".

B. Approval by the State's Land Management Director at St. Paul of certified documentation, submitted by the City, for all right-of-way and easement acquisitions required for the contract construction.

C. Execution of this Agreement and transmittal to the City, including a letter advising of the State's concurrence in the award of the construction contract.

D. The State's receipt of a written request from the City for the advancement of funds. The request will include certification by the City that all necessary parties have executed the construction contract.

8.3. **Limitations of State Payment; No State Payment to Contractor.** The State's participation in the contract construction is limited to the lump sum amount shown in Article 8.1, and the State's participation will not change except by a mutually agreed written amendment to this Agreement. The State's payment obligation extends only to the City. The City's contractor is not intended to be and will not be deemed to be a third party beneficiary of this Agreement. The City's contractor will have no right to receive payment from the State. The State will have no responsibility for claims asserted against the City by the City's contractor.

9. **Authorized Representatives**

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

9.1. The State's Authorized Representative will be:

Name, Title: Malaki Ruranika, Cooperative Agreements Engineer (or successor)
Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
Telephone: (651) 366-4634
E-Mail: malaki.ruranika@state.mn.us

9.2. The City's Authorized Representative will be:

Name, Title: Will Manchester, Director of Engineering (or successor)
Address: 14600 Minnetonka Boulevard, Minnetonka, MN 55345
Telephone: (952) 939-8232
E-Mail: wmanchester@eminnetonka.com

10. **Assignment; Amendments; Waiver; Contract Complete**

10.1. **Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

10.2. **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

10.3. **Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

10.4. **Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.
11. Liability; Worker Compensation Claims; Insurance

11.1. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City. Notwithstanding the foregoing, the City will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).

11.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

11.3. The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

12. Nondiscrimination

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

13. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.


The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City or the State.

15. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

16. Termination; Suspension

16.1. By Mutual Agreement. This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

16.2. Termination for Insufficient Funding. The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the City. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.
16.3. Suspension. In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

17. Force Majeure

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

[The remainder of this page has been intentionally left blank]
STATE ENCUMBRANCE VERIFICATION
Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: ____________________________________________

Date: ____________________________________________

SWIFT Purchase Order: ____________________________

CITY OF MINNETONKA

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

By: ____________________________________________

Title: ____________________________________________

Date: ____________________________________________

By: ____________________________________________

Title: ____________________________________________

Date: ____________________________________________

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: ________________________________
(District Engineer)

Date: ________________________________

Approved:

By: ________________________________
(State Design Engineer)

Date: ________________________________

COMMISSIONER OF ADMINISTRATION

By: ________________________________
(With Delegated Authority)

Date: ________________________________

Payable Lump Sum on Low Bid (Cooperative Agreements)
## STATE COST PARTICIPATION

<table>
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<tr>
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<th>Amount</th>
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<td>(1) <strong>Encumbered Amount</strong></td>
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(1) Amount of advance payment as described in Article 8 of the Agreement (estimated amount)
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<th>UNIT PRICE</th>
<th>COST (1)</th>
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TOTAL $260,572.30

(1) 100% STATE $260,572.30
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Data is considered Non-public prior to project award.
Brief Description: Resolution approving providing park credits for RIDGEDALE CENTER TENTH ADDITION

Recommendation: Adopt the resolution

Background

On June 4, 2018, the city council approved preliminary and final plats for Ridgedale Center Tenth Addition. The city council further refined the park dedication language on Aug. 27, 2018, by adopting another resolution. The plat was part of the Ridgedale Active Adult Apartments project which Trammell Crow is seeking to redevelop. The apartment project would occupy a portion of the existing property at 12610 Ridgedale Drive, currently owned by J. C. Penney Properties. The plat also contained a 1.31 acre park to be improved at a future date.

The park land exceeded the city's minimum park dedication requirements by approximately $250,000 of land value. Trammell Crow sought credit for that additional value by requesting credit for potential future development. The city council approved Resolution 2018-108 which provided a park dedication credit for Ridgedale Center Tenth Addition as follows:

- J. C. Penney - $205,000 or the equivalent of 41 housing units.
- General Growth Properties (now owned by Brookfield Companies) - $45,000 or the equivalent of 9 housing units.

Request

J. C. Penney has requested to assign the park dedication credits for its property to the Brookfield Companies property. As requested, Brookfield Companies would have a park dedication credit of $250,000 or the equivalent of 50 housing units to be applied to park dedication requirements for the property relating to the original land dedication.

The request is allowed by city code and appropriate. The assignment maintains the original park land credit.

Staff Recommendation

Staff recommends that the city council adopt the resolution replacing Resolution No. 2018-108 and approving the assignment of park dedication credits, associated with the Ridgedale Center Tenth Addition plat.

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

Originator: Loren Gordon, AICP, City Planner
Location Map
Project: Ridgedale Active Adult Apts
Address: 12421 Wayzata Blvd
Ridgedale Center Mall context showing Ridgedale Active Adult Apartments and Park
Ridgedale Drive Development
Minnetonka, Minnesota
Project # 160573022  03/09/2018

Ridgedale Drive Development
Minnetonka, Minnesota
Project # 160573022
0' 20' 40' 80'
Ridgedale Drive Development
Minnetonka, Minnesota

R I D G E D A L E  D R I V E
MULTIFAMILY BUILDING
6 STORY
+/-274,812SF
J C P E N N Y  F I R E S T O N E  F A R G O
ADDITIONAL PARKING
MODIFIED PARKING
EXISTING PARKING
AMENITY DECK
FUTURE PARK
ADDITIONAL PARKING
W E L L S  F A R G O
F I R E S T O N E
J C P E N N Y
Resolution No. 2018-108

Resolution approving providing park credits for RIDGEDALE CENTER TENTH ADDITION

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

Section 1. Background.

1.01 On June 4, 2018, the Minnetonka City Council approved the preliminary and final plat approval for RIDGEDALE CENTER TENTH ADDITION in association with the Ridgedale Active Adult Apartment project proposed by Trammell Crow.

1.02 The property is located at 12421 Wayzata Blvd.

1.03 The approved plat provided 1.31 acres of land in Lot 4 for purposes of park dedication requirements associated with the project.

1.04 The park dedication exceeded the city’s minimum park dedication requirements by approximately 23 percent.

1.05 Trammell Crow is requesting that the city provide credit in the form of “banked” value that could be used for future development.

Section 2. General Standards.

2.01 City Code §400.040 outlines park dedication requirements for residential subdivisions.

2.02 City Code §400.040 Subd. 3. states “the city may, at its discretion, credit park dedication. Consideration may be given to previous park dedication for a parcel or to subdivision that would result in development or redevelopment that achieves a recognized public purpose.”

Section 3. Findings.

3.01 The credit of park land is allowed by city code and is appropriate.

4.01 A park dedication credit for RIDGEDALE CENTER TENTH ADDITION is approved for the following parcels included within the park, shown as lot 4:

a) J. C. Penney - $205,000 or the equivalent of 41 housing units.

b) General Growth Properties - $45,000 or the equivalent of 9 housing units.

The park dedication credit may be applied to park dedication requirement applicable to the specific development properties in the city by these entities or their assigns.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Aug. 27, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption: Ellingson
Seconded by: Schack
Voted in favor of: Ellingson, Acomb, Happe, Schack, Calvert, Bergstedt, Wiersum
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 Aug. 27, 2018.

______________________________
David E. Maeda, City Clerk
Resolution 2018-104 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.

B. Resolution approving a conditional use permit for an adult day care facility within an existing tenant space at 11581 K-Tel Drive

Ellingson moved, Schack seconded a motion to adopt resolution 2018-105 approving the conditional use permit for a daycare facility at 11581 K-Tel Drive. All voted “yes.” Motion carried.

C. Ordinance and resolution amending the existing master development plan and approving final site and buildings for a two-phase parking ramp at 12501 Whitewater Drive

Ellingson moved, Schack seconded a motion to adopt ordinance 2018-11 amending the existing master development plan and approving final site and buildings for a two-phase parking ramp at 12501 Whitewater; and resolution 2018-106 amending the existing master development plan and approving final site and buildings for a two-phase parking ramp at 12501 Whitewater Drive. All voted “yes.” Motion carried.

D. Ordinance regarding senior citizens advisory board members terms

Ellingson moved, Schack seconded a motion to adopt ordinance 2018-12 regarding senior citizens advisory board members terms. All voted “yes.” Motion carried.

E. Resolution designating a new Acting Mayor and Alternate Acting Mayor

Ellingson moved, Schack seconded a motion to adopt resolution 2018-107 designating Councilmember Tim Bergstedt as Acting Mayor and Councilmember Patty Acomb as Alternate Acting Mayor for the remainder of year 2018. All voted “yes.” Motion carried.

F. Resolution approving providing park credits for RIDGEDALE CENTER TENTH ADDITION

Ellingson moved, Schack seconded a motion to adopt resolution 2018-108 documenting the credit, associated with the Ridgedale Center Tenth Addition plat. All voted “yes.” Motion carried.
Resolution No. 2019-

Resolution replacing Resolution No. 2018-108 and assigning park dedication credits associated with RIDGEDALE CENTER TENTH ADDITION to Brookfield Companies

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

Section 1. Background.

1.01 On June 4, 2018, the Minnetonka City Council approved the preliminary and final plat approval for RIDGEDALE CENTER TENTH ADDITION in association with the Ridgedale Active Adult Apartment project proposed by Trammell Crow.

1.02 The property is located at 12421 Wayzata Blvd.

1.03 The approved plat provided 1.31 acres of land in Lot 4 for purposes of park dedication requirements associated with the project.

1.04 The park dedication exceeded the city’s minimum park dedication requirements by approximately 23 percent. The credits were granted to two properties in the following amounts and equivalencies:

   a) J. C. Penney property - $205,000 or the equivalent of 41 housing units.

   b) General Growth Properties (now Brookfield Companies) property - $45,000 or the equivalent of 9 housing units.

1.06 On Aug. 27, 2018, the city council adopted Resolution 2018-108 approving park dedication credits for RIDGEDALE CENTER TENTH ADDITION.

1.07 J. C. Penney has requested to assign the park dedication credits for its property to the Brookfield Companies property.

Section 2. Findings.

2.01 The credit of park land is allowed by city code and is appropriate.

2.02 The assignment maintains the original park land credit value.
Section 3. Council Action.

3.01 A park dedication credit of $250,000 or the equivalent of 50 housing units is approved for the following property:

That part of Tract A, Registered Land Survey No. 1826, except that part embraced within Lot 2, Block 1, Ridgedale Center Seventh Addition, Hennepin County, which is to be platted as Lot 3, Block 1, Ridgedale Center 10th Addition.

The park dedication credit may be applied to park dedication requirements applicable to the property described above.

3.02 This resolution supersedes and replaces Resolution 2018-108.

Adopted by the City Council of the City of Minnetonka, Minnesota, on March 18, 2019.

Brad Wiersum, Mayor

Attest:

Becky Koosman, Acting 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 March 18, 2019.

__________________________
Becky Koosman, Acting City Clerk
Brief Description: Appointment of representatives to various advisory boards, commissions and committees

Recommended Action: Approve the appointment

Background

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

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

Recommendation

Approve the following appointment:

- Will Manchester as the Minnetonka City Council’s appointed representative to the Suburban Rate Authority.

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

Originated by:
  Perry Vetter, Assistant City Manager
# City of Minnetonka 2019 Council Representatives/Staff Participant or Contact

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<tr>
<th>Committee</th>
<th>Council Representative</th>
<th>Staff Participant/Contact</th>
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<tr>
<td>LMC Improving Fiscal Futures Committee</td>
<td>Brad Wiersum</td>
<td>**Geralyn Barone, **a Merrill King</td>
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<td>LMC Improving Service Delivery Committee</td>
<td>Deb Calvert</td>
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<td>LMC HR &amp; Data Practices Committee</td>
<td>None</td>
<td>**Corrine Heine; **a Jason Branstrom</td>
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<td>LMC Board</td>
<td>Brad Wiersum</td>
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<td><em>Metro Cities Legislative Contact</em></td>
<td>Brad Wiersum</td>
<td>**Geralyn Barone</td>
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<td>Metro Cities Municipal Revenue &amp; Tax Committee</td>
<td>None</td>
<td>Merrill King</td>
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<td>Metro Cities Metropolitan Agencies Committee</td>
<td>Deb Calvert</td>
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<tr>
<td>Metro Cities Transportation &amp; Gen. Gov’t Committee</td>
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<td>Geralyn Barone</td>
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<tr>
<td>Metro Cities Housing &amp; Econ. Develop. Committee</td>
<td>Rebecca Schack</td>
<td>Julie Wischnack</td>
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<td>Brad Wiersum</td>
<td>**Geralyn Barone</td>
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<td>NLC Energy, Environment, &amp; Natural Resources Steering Committee</td>
<td>Deb Calvert</td>
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<td>*Mike Fruen &amp; Bill Monk *<em>a</em></td>
<td>Will Manchester</td>
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<td>**Julie Wischnack</td>
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<td>Brian Kirk &amp; Shriajoy Abry</td>
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<td>Southwest LRT Business Advisory Committee</td>
<td>Dave Pellner &amp; Dan Duffy (Twinwest)</td>
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<td><em>I-494 Joint Powers Organization</em></td>
<td>Rebecca Schack &amp; **a Brad Wiersum</td>
<td>**Julie Wischnack</td>
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<td>Lake Minnetonka Area Mayors Group</td>
<td>Brad Wiersum</td>
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<td>Lake Minnetonka Conservation District</td>
<td>Nicole Stone</td>
<td>Geralyn Barone</td>
</tr>
<tr>
<td>Minnehaha Creek Watershed District</td>
<td>Bill Becker; **a Vacant</td>
<td>Will Manchester</td>
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<tr>
<td>Nine Mile Creek Watershed District</td>
<td>Grace Sheely</td>
<td>Will Manchester</td>
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<td>Regional Council of Mayors</td>
<td>Brad Wiersum</td>
<td>Geralyn Barone</td>
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<td>Riley/Purgatory Creek Watershed District</td>
<td>None</td>
<td>Will Manchester</td>
</tr>
<tr>
<td><em>Southwest Suburban Cable Commission</em></td>
<td>Deb Calvert &amp; **a Robert Ellingson</td>
<td>**Patty Latham</td>
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<tr>
<td><em>Suburban Rate Authority</em></td>
<td>None</td>
<td>**Will Manchester; **a Perry Vetter</td>
</tr>
<tr>
<td>Active Living Hennepin Communities</td>
<td>None</td>
<td>**Kelly O’Dea</td>
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<tr>
<td><strong>MINNETONKA AREA ORGANIZATIONS</strong></td>
<td></td>
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<tr>
<td>*Bennett Family Park Board</td>
<td>None</td>
<td>**Darin Ellingson</td>
</tr>
<tr>
<td>Caring Youth Awards Committee</td>
<td>**a Brad Wiersum &amp; **a Deb Calvert</td>
<td>Kari Spreeman</td>
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<tr>
<td>Charter Commission</td>
<td>Brad Wiersum</td>
<td>*Corrine Heine</td>
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<tr>
<td>*Economic Development Advisory Comm (EDAC)</td>
<td>Deb Calvert &amp; **a Tim Bergstedt</td>
<td>*Alisha Gray &amp; **a Julie Wischnack</td>
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<tr>
<td>Glen Lake Golf Course Operating Committee</td>
<td>None</td>
<td>**Kelly O’Dea</td>
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<tr>
<td>Hopkins SD Schools/Cities</td>
<td>Brad Wiersum</td>
<td>Geralyn Barone</td>
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<td>Hopkins SD Hopkins One Voice</td>
<td>None</td>
<td>Andy Gardner</td>
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<tr>
<td>Hopkins Schools &amp; Communities in Partnership</td>
<td>Rebecca Schack</td>
<td>Alisha Gray</td>
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<td>Hopkins Community Ed Advisory Council</td>
<td>None</td>
<td>Kelly O’Dea</td>
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<tr>
<td>Juvenile Diversion (Northern Star Council)</td>
<td>None</td>
<td>Scott Boerboom</td>
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<td>Minnetonka Family Collaborative (SD #276)</td>
<td>Deb Calvert</td>
<td>Alisha Gray</td>
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<td>Minnetonka Fire Fighters Relief Association</td>
<td>Brad Wiersum</td>
<td>John Vance &amp; Merrill King</td>
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<td>*Minnetonka SD Community Ed Advisory Council</td>
<td>None</td>
<td>**Sara Woeste</td>
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<td>Minnetonka SD Schools/Cities</td>
<td>Brad Wiersum</td>
<td>Geralyn Barone</td>
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<td>Minnetonka SD Tonka Cares</td>
<td>None</td>
<td>Vacant</td>
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<td>*Music Association of Minnetonka (MAM)</td>
<td>None</td>
<td>**Kelly O’Dea</td>
</tr>
<tr>
<td>SW Twin Cities Beyond the Yellow Ribbon</td>
<td>None</td>
<td>Kari Spreeman</td>
</tr>
<tr>
<td>*West Hennepin Affordable Housing Land Trust</td>
<td>Brad Wiersum</td>
<td>Julie Wischnack &amp; Alisha Gray</td>
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<tr>
<td>*Wayzata Schools Cmty Collaboration Council</td>
<td>None</td>
<td>**Alisha Gray</td>
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Revised: March 18, 2019 Regular Meeting