Agenda
Minnetonka City Council
Regular Meeting, Monday, February 8, 2016
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Allendorf-Acomb-Wiersum-Bergstedt-Wagner-Ellingson-Schneider
4. Approval of Agenda
5. Approval of Minutes: January 25, 2016 regular 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: None
10. Consent Agenda - Items Requiring a Majority Vote:
   A. Competitive Franchise Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink
   B. Resolution for the 2016 Street Rehabilitation project for the Libb’s Lake area
   C. Resolution approving a Joint Powers Agreement with city of Hopkins for 4th Street North
   D. Items concerning a licensed day care facility at 10401 Bren Road East:
      1) A conditional use permit; and
      2) Final site and building plans
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances: None
13. Public Hearings:
   
   A. Resolution vacating public right-of-way at 5835 Louis Avenue
      
      Recommendation: Hold the public hearing and adopt the resolution (majority vote)
   
   B. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Urbank Coffee LLC (Dunn Bros Coffee), 14525 State Highway 7
      
      Recommendation: Open the public hearing and continue to March 14, 2016 (4 votes)
   
   C. On-sale liquor licenses for RS Sports Grill, 12501 Ridgedale Drive
      
      Recommendation: Open the public hearing and continue to March 14, 2016 (4 votes)
   
   D. Resolution vacating drainage and utility easements and approving preliminary and final plat for Wilson Ridge 5th Addition, 4329 Wilson Street
      
      Recommendation: Hold the public hearing and adopt the resolution approving the requests (majority vote)

14. Other Business:
   
   A. Concept Plan for Highview Villas, a residential development of properties at 4301 Highview Place and an adjacent, unaddressed parcel
      
      Recommendation: Discuss concept plan with the applicant. No formal action required.
   
   B. Concept plan review for Villa West at 16913 State Highway 7
      
      Recommendation: Discuss concept plan with the applicant. No formal action.
   
   C. Resolution supporting the DEED Job Creation Fund Application by Freudenberg North America LP
      
      Recommendation: Adopt the resolution

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

16. Adjournment
Minutes
Minnetonka City Council
Monday, January 25, 2016

1. Call to Order

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

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Dick Allendorf, Patty Acomb, Brad Wiersum, Tony Wagner, and Terry Schneider were present. Bob Ellingson was absent. Tim Bergstedt was excused.

4. Approval of Agenda

Wiersum moved, Allendorf seconded a motion to accept the agenda with an addendum to item 15A. All voted “yes.” Motion carried.

5. Approval of Minutes: January 4, 2016 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the January 4, 2016 regular council meeting, as presented. All voted “yes.” Motion carried.

Ellingson was present at 6:32 p.m.

6. Special Matters: None

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming meetings and events.

Allendorf noted the information about the city’s tree sale in the Minnetonka Memo was good but one thing that was missing was the price. Barone said residents could sign up online and the price would be included there.

Schneider reported at the January 11 study session, the council went into a closed session to evaluate Barone’s performance based on the city’s shared values. For each of the six shared values components the council determined Barone consistently met or exceeded expectations. In the area of management competency, the council rated Barone on leadership, management, mayor and
council support, fiscal management, community relations, and strategic planning. He said the council again determined Barone met or exceeded expectations in all those areas. The council approved the 2016 performance goals in the various areas.

Wagner reported there was a meeting the previous week of the Southwest Community Works Steering Committee. One agenda item was receiving and discussing the Southwest Corridor Housing Strategy document. This document would help set the stage for the city’s comprehensive plan discussion. He said there was also some discussion about the naming of the stations.

Schneider presented Community Development Director Julie Wischnack and City Planner Loren Gordon an Economic Development Association of Minnesota award the city received for the work in the redevelopment of the Ridgedale area.

8. Citizens Wishing to Discuss Matters not on the Agenda

Tristan Lundblad, 1801 Welland Avenue, said he wished to make comments about poor people in the city including himself. He pays over ten dollars a day in property taxes in order to live in the city. He lives in a single income home. His girlfriend stays at home to take care of their child. The couple have a one acre farm. He said he doesn’t have any debt other than his mortgage. He struggles to become part of the community and one thing that upsets him are the fees charged at the Williston Fitness Center. It costs $700 for a family. He can’t afford to pay that amount. He noted there are discounts for seniors. He said there are poor people who need discounts as well. There are scholarships for individual programs but not an overall scholarship for joining. He asked the council to remember a time in their life when they were poor and to keep that in mind when decisions are being made.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

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

   Allendorf moved, Acomb seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.
B. Ordinance regarding dangerous and potentially danger animals

Allendorf moved, Acomb seconded a motion to adopt ordinance 2016-03 regarding dangerous and potentially danger animals. All voted “yes.” Motion carried.

C. Agreement with Intermediate School District #287 for police liaison services for 2016

Allendorf moved, Acomb seconded a motion to approve the agreement and authorize the mayor and city manager to enter into an agreement with Intermediate School District #287 for police liaison services for 2016. All voted “yes.” Motion carried.

D. 2016 Pay Equity Implementation Report

Allendorf moved, Acomb seconded a motion to approve the Pay Equity Implementation Report and authorize staff to submit to the Pay Equity Office at Minnesota Management and Budget to comply with Minnesota State Statute. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances:

A. Ordinance amending City Code Section 300.02, regarding zoning ordinance definitions

Gordon gave the staff report.

Allendorf commended staff for the review work that was done.

Wagner said he thought the city allowed accessory apartments that were not necessarily in the same physical dwelling. Wischnack indicated that was not correct.

Wiersum said going through the definitions was informative.

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

B. Ordinance amending the City Code Section 300.37 regarding the lot width in the R1-A zoning district

Gordon gave the staff report.
Acomb asked if the widths were taken into consideration when the Seville project was approved. Gordon said he could not recall the specific number for Seville but the widths would have complied with the proposed ordinance.

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

13. Public Hearings:

A. Items related to the granting of a cable communications franchise

Assistant City Manager Perry Vetter gave the staff report.

Brian Grogan, an attorney with Moss and Barnett, said he was representing the Southwest Suburban Cable Commission.

Schneider closed the public hearing related to the qualifications that was opened May 18, 2015.

Grogan noted the city and the cable commission adopted a 10 year cable franchise with Comcast in the fall of 2012 following lengthy negotiations. It was that document that served as the foundation for the negotiations with CenturyLink. The goal was to get as close to identical agreement with CenturyLink as possible. This would allow the two companies to equally compete in the market. He said the federal cable act was designed to promote competition and not to impose undue economic burdens on the cable operators. He said in negotiating the proposed agreement the commission had the benefit of reviewing other metropolitan area cities that had gone through the same process.

Wagner said the city has had some issues with some of the utility partners with systems in the city’s right-of-way not being as responsive to non-service outage type activities. He said he spoke with Grogan about the issue last fall. In reviewing the proposed agreement, he noted he didn’t see any enhanced language to address the issue. He asked if the city at this stage had the ability to influence some customer service standards. Grogan said that the approach was to drive the company back to the city code rather than create a unique set of obligations that would apply only to the cable operator. He said there were provisions in the agreement that reference compliance with the city code, the pulling and payment of permits, and any conditions the city chooses to impose as part of granting the permit. This was done because the city has greater control in the city code to address the issues. If it was built into the franchise it would have
to be negotiated with the other party. He said the grantee in this case was Qwest Broadband Services, Inc. This company was the content provider. The company that owns all the wires in the streets in the city was Qwest Corporation. Qwest Corporation was not a party to the contract. He noted there was a guarantee obligation in the agreement that requires Qwest Broadband Services, Inc. to stand behind the performance of Qwest Corporation. If the city determines Qwest Corporation was failing to perform, then Qwest Broadband Services, Inc. has to stand behind the performance of Qwest Corporation or risk being in material violation of the franchise.

Wagner noted the city had major sewer and water construction projects going on and there were long delayed responses from some of the utilities providers in the right-of-way in terms of finishing up the work. He asked if the current city code allowed the city to enforce compliance as Grogan had suggested. He was concerned that he had not seen compliance through the city code. Barone said the city had a right-of-way ordinance that would be used for enforcement if needed. Part of the challenge last summer was some of the construction work was not in the right-of-way but instead involved the service line to the home. She said probably the most effective approach would be reviewing the right-of-way ordinance with the utility contractors prior to the new construction season to make sure they understood all the provisions. City Attorney Corrine Heine said she would research to what extent the city could regulate conduct outside of the right-of-way. Wagner said he was concerned given the issues last fall, that there was no escalation protocol in the agreement associated with the end service being delivered and how complaints are resolved.

Schneider said it would be a challenge to extend the city’s authority beyond the right-of-way. The strongest leverage might be the competition between the companies. If a customer doesn’t like the service being provided they now would have the option of changing to the other provider.

Barone noted there was a utility summit hosted by Hennepin County because the issue was not unique to Minnetonka. Staff also met with Comcast representatives recently to reiterate the issues and to see how the company’s customer service could be enhanced. She said in most cases the service was restored fairly quickly but the issue was the lines laying open in the yard or street for months. Wagner said many times the issue impacts people regardless if they were subscribers or not. He said there was an opportunity with this five year agreement and when the Comcast agreement comes up again to seek some enhanced resolution of customer complaints. He would ask the commission to consider some type of amendment to the agreement.
Acomb noted Grogan’s memo attached to the agreement included information about competitive equity between the two franchise agreements. She asked if one agreement were to change, if it would always require staying competitive with the other agreement. How would one company implement discounts for low income residents, seniors or those with disabilities if it wasn’t included in the original agreement? Grogan said it would be challenging. The state statute requires a level playing field in terms of franchise fees, Public Educational Governmental (PEG) access, and areas of service. The Comcast agreement contains a provision protecting them from the city granting a more favorable or less burdensome franchise. If the city were to offer a much more favorable franchise, Comcast could opt out of their contract and into the competitor’s franchise. He said in 2015 the Federal Communications Commission (FCC) essentially took what little rate regulation authority cities had and issued an order stating the all cities in the entire country were subject to effective competition. There is a pending legal challenge to the order. Acomb said because of the burden it seemed to her that made it much more important to include a provision in the original agreement. Grogan said the only previous regulation authority cities had was the ability to regulate the maximum permitted rate for basic service.

Barone noted the big picture issue was with two franchise agreements that were required to be substantially the same, if the city wanted to impose something new, it would be difficult if it wasn’t included in the original agreement. If renewal of the agreements occurred at different times it would be challenging to have any leverage to impose a change. Grogan said that was one of the reasons for the five year franchise term for this agreement. The Comcast franchise would expire around nine months later. This would allow the Southwest Suburban Cable Commission to renegotiate a potential change with both cable operators around the same time.

Wiersum said he was interested in the CenturyLink opportunity because he thought the competition would benefit residents. He asked if Grogan had any information from other cities and other parts of the country about what occurs with customer satisfaction and rates and other benefits when a second franchise enters a community. Grogan said the most objective information comes from FCC orders. He noted several phone companies have gotten into the cable business. What the FCC found was that the operators tend not to compete as much on price as one would hope. The operators understand that if they drive down to an at cost purchase price ultimately all systems would be doomed to fail. What they do compete with each other are services including faster speeds, more channel offerings, more interactive services, greater choice with wireless modems
and other things that benefit the customer without increasing the rate. The FCC found the competition adds a stabilizing effect on rates mitigating the annual increases. Wiersum said his concern was the same as Wagner’s. Customer service was a very challenging realm in both the cable and cell phone industries. Anything that could be done to emphasize the need for good customer service and satisfaction would be beneficial for residents.

Schneider asked for clarification about the build out provision. He assumed CenturyLink could not guarantee a customer would subscribe but could provide the ability for the customer to subscribe. Once the fiber was available at the residence this would meet the build out criteria. It really was a zero sum game if a customer chose to switch because most of the city was already wired. Grogan said in the CenturyLink agreement a living unit was either made a qualified living unit or it stayed a living unit. A qualified living unit would have sufficient speed to support Prism. He agreed with Schneider’s comments about a zero sum game. The city gets a franchise fee from every customer Comcast provides cable services to. If CenturyLink comes in and takes five to ten percent of Comcast’s customers, it wouldn’t necessarily change the amount of revenue but would simply shift who the revenue comes from. He noted the FCC report showed there was some evidence that as advertisements start playing in the community there might be an increase in the overall subscribership. The Southwest Suburban Cable Commission was not anticipating an increase in revenue.

Schneider said looking at the general trends and direction things are going, the days when AT&T had a monopoly were long gone. Every action he sees happening from the federal level basically was removing local authority and control and granting free competition and access. He didn’t envision that five or ten years from now the city would have more authority to make changes so hopefully allowing more competition would mean the customers would be the ones that demand better service and follow up. Technology advances might also mean eliminating the need for wires in the ground. He wouldn’t suggest spending a lot of time addressing the issue other than for all utilities in the right-of-ways.

Grogan said he agreed with most of Schneider’s observations but he would not be surprised if five years from now the city would still be assessing the parity between the franchises and what the next franchise would look like.

Wiersum said one of the unfortunate consequences with increased competition was an increase in the number of advertisements.
Schneider opened the public hearing about the resolution relating to findings and fact at 7:37 p.m.

Kirstin Sersland, director of local government affairs for CenturyLink, thanked the council for considering the resolution to welcome CenturyLink to the city to provide some competition.

Schneider closed the public hearing at 7:37 p.m.

Allendorf moved, Wiersum seconded a motion to adopt resolution 2016-007. All voted “yes.” Motion carried.

B. Consider Competitive Franchise Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink

Wiersum moved, Wagner seconded a motion to introduce the ordinance granting a cable television franchise to CenturyLink. All voted “yes.” Motion carried.

14. Other Business:

A. Discussion regarding use of city water towers

Wischnack and Barone gave the staff report.

Jay Littlejohn, an attorney representing Verizon Wireless, said the request was for a single antenna on top of one of the water towers. The rest of the antennas could be located down below. He said after conducting an analysis, the city’s communications consultant agreed that an antenna needed to go at the height of the top of the water tower. Verizon understood that down the road a higher priority user might need the top of the tower. The companies were used to dealing with these types of issues all the time and they are often addressed in master agreements. He said Verizon didn’t have any problem taking the risk of having to move the antenna in the future if the space was otherwise needed. The devices were pervasive and many people only have a cell phone and no wired phone. This meant the companies had to be more careful about where the antenna are located so people have good signals everywhere.

Ellingson asked why the preference was to be located at the top of the water tower rather than on a monopole. Littlejohn said Verizon’s experience was there were routinely objections from neighbors about having to look at additional structures when an existing structure was already there.
Allendorf asked if another provider had an existing monopole that Verizon could use. Littlejohn said in the area there were three competitors who were already on the water tower so they wouldn’t build a monopole. Allendorf asked why Verizon could not locate the antenna on the side of the water tower like its competitors had done. Littlejohn said the issue was the topography. There was a ridge to the south that the signal could not go over. Allendorf asked how the other three competitors were able to provide service that Verizon could not also provide. Littlejohn said he didn’t know how the other companies provide the service they provide but it was likely they had other sites that filled in from other directions.

Wiersum asked Littlejohn if the city were to allow Verizon to put an antenna on top of the water tower, if the antenna would have the capacity for colocation or would it be exclusive for Verizon. Littlejohn said it would only be a Verizon antenna. Each company has its own antenna. The companies collocate on each other’s’ towers. Wiersum said assuming Verizon got the advantage of being granted the location on the top of the water tower it would likely mean the city would get similar requests from the competitors. He asked if it was feasible that any structure Verizon put on top of the water tower could benefit its competitors as well. Littlejohn said Verizon was not asking to put a structure on the water tower, it would just mount an antenna on the existing rail. Wiersum said he was struggling with what made Verizon distinctive so it could not locate the antenna in the same area on the water tower as its competitors. Barone noted the city had received requests from the other vendors to locate an antenna on top of the water tower. Those requests were denied.

Wagner asked what percentage of the useable space was already used on top of the water tower. Barone said in 2012 SCH did a study for the city that indicated there was room for one more antenna. Since that time the city has added a couple of its own antenna. Theoretically there might be space for another antenna. She said the bigger picture issue was having said no to the other vendors and also the space was a prime location because it was among the highest, if not the highest, locations in the entire county. There were security aspects as well. Wagner said his viewpoint might be different if the situation was the space used was at 50 percent as opposed to if there was no space left.

Allendorf said the city had a policy and the policy had been followed in the past. He preferred keeping the policy as is and to only allow the city to use the space rather than having to fight with somebody to remove an antenna because there was a higher priority or that there wasn’t space left. The unintended consequence was that the city may have to look at a request for a monopole that might be objectionable to some residents. Still, he
would much rather do that than letting Verizon have an antenna on top of the water tower and then later having them have to find another location.

Wiersum said he agreed with Allendorf. He was convinced that the space was tight on top of the water tower. He recalled another proposed monopole in the area and the company wanted to build the monopole even though there was space on the water tower for an additional antenna. The council denied the request for the monopole. He would prefer as few monopoles in the city as possible. However given the capacity of top of the water tower was used up and the public purpose of the top of the tower and existing policy, he thought tackling the issue of a new monopole if there was a true need, would be something the council would consider.

Schneider said the policy did not give providers the right to locate on the water tower. The policy says the city will follow the FCC requirements of not prohibiting companies to come in to provide cell phone coverage at the appropriate locations. If the company can demonstrate the need then the company has to consider the locations the city makes available. In this case he felt staff had the authority to deny the request because the space was needed for public safety reasons. This was an administrative level decision not a council level decision. This meant an alternative needed to be provided. He heard staff saying it would work with Verizon to find the best location for a monopole that could be eventually shared. He thought this was the right approach.

Wiersum said he agreed with Schneider and there was a clear public purpose for the city to do everything it could to facilitate quality cell coverage throughout the city.

B. Resolution supporting Metro Cities Policy 4-B - Regional Governance Structure

Barone gave the staff report.

Schneider said it was likely other cities would adopt a similar resolution if they hadn’t already done so. He said some of the proposed alternatives were really bad ideas.

Wiersum moved, Wagner seconded a motion to adopt resolution 2016-008 supporting Metro Cities Policy 4-B-Regional Governance Structure. All voted “yes.” Motion carried.
15. **Appointments and Reappointments:**

   A. **Appointments and reappointments to Minnetonka boards and commissions**

      Schneider moved, Wiersum seconded a motion to approve the 2016 appointments and reappointments to the Minnetonka boards and commissions with the addendum. All voted “yes.” Motion carried.

16. **Adjournment**

      Wiersum moved, Wagner seconded a motion to adjourn the meeting at 8:04. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk
City Council Agenda Item #10A  
Meeting of February 8, 2016

Brief Description:  Competitive Franchise Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink

Recommended Action:  Adopt the Ordinance

Background

The city of Minnetonka is a member of the Southwest Suburban Cable Commission (“SWCC”) along with the cities of Eden Prairie, Hopkins, Edina and Richfield (“Member Cities”). Each Member City has granted a non-exclusive cable television service franchise to Comcast Corporation within their city.

Qwest Broadband Services, Inc., d/b/a CenturyLink (“CenturyLink”) requested that the Member Cities consider the granting CenturyLink a cable television service franchise so CenturyLink can provide competing cable television services in each Member City, including Minnetonka. Pursuant to this request, staff initiated the necessary process for the city’s consideration of the grant of a competitive cable communications franchise.

The SWCC voted unanimously to recommend that its Member Cities approve the proposed CenturyLink franchise. The City of Edina and the City of Richfield have adopted a CenturyLink franchise. The remaining Member Cities have all approved first reading of ordinances granting a franchise to CenturyLink.

On January 25, 2016 a public hearing was held in Minnetonka, findings of fact were adopted by resolution and the ordinance pertaining to the CenturyLink franchise was introduced. Mr. Brian Grogan, legal counsel of the SWCC, gave a presentation and stood for questions. CenturyLink, with a negotiated agreement similar to the existing Comcast franchise agreement, would operate for an initial five year period. This timeframe would allow for a full review by the SWCC prior to its expiration and renewal request to better gauge the expected service performance and system build out requirements imposed on CenturyLink. This five year period would also align the CenturyLink franchise with the expiration date of the ten year Comcast franchise. By syncing the expiration date of the two franchises, the SWCC would enter negotiations in a more positive position.

In summary of the January 25th regular council meeting, the council discussed several items related to the franchise, which staff has expanded on.

a) CenturyLink, with a proposed franchise similar to Comcast, must construct, operate and maintain its system in compliance with city code. The current right-of-way (ROW) ordinance allows great control of work that is done in the ROW and on adjacent privately owned property as utility providers are required to
apply for and follow strict permit requirements. The city council has the authority to adopt changes to that ROW ordinance at its discretion, rather than negotiate specific performance standards into franchise agreements. The ability to refer franchise holders, and those that conduct work that do not have agreements with the city, to strictly follow city code is preferred as it provides the council with the greatest flexibility in reacting to changes that arise in ROW use. Utility provider performance and road rehabilitation have been issues of greater concern to the council, staff and affected residents as road rehabilitation plays a greater role in our community. Staff, along with Hennepin County, has initiated conversations with utility providers to better address these concerns. Staff anticipates that a complete review of the ROW ordinance will take place to ensure that staff and the council have the necessary resources to address ROW performance standards. Staff, also believes that the franchise agreement customer service obligations may be used in certain scenarios so that if ROW work is not being performed to expectations, an escalation process can be initiated by staff.

b) The regulation of rates is no longer permitted in competitive franchise agreements. As briefly discussed during the presentation for the ordinance introduction by Mr. Grogan, changes to the competitive franchise process no longer allow for rate controls. However, this does not preclude a franchise holder from providing rate or product incentives to subscribers in the realm of open competition. Currently, Comcast provides for certain product incentive offerings based on financial needs. In early discussion with CenturyLink, also have programs available for financial assistance based on state and federal criteria which result in reductions on certain telecommunications products, although not directly related to cable services.

c) CenturyLink has classified their build out scenario as trade secret under the Minnesota Data Practice Act. CenturyLink anticipates reaching required levels of subscription offerings and service coverage within the initial five year term of the franchise. This will be closely evaluated by the SWCC as the build-out obligations coincide with the five year term. Upon approval of the CenturyLink franchise, staff will closely monitor the implementation process for CenturyLink to understand their plans for Minnetonka and to better assist with resident expectations for service delivery as marketing efforts have increased across the Twin Cities Metro Area.

The city, as part of the SWCC, has assessed the legal, technical and financial qualifications of CenturyLink’s application and followed the many necessary procedural steps in the franchise process. CenturyLink has agreed to franchise terms similar to the existing franchise with Comcast. The SWCC has recommended that its Member Cities approve the CenturyLink franchise as it will provide Minnetonka residents with competitive cable service offerings.
Recommendation

Adopt the ordinance.

Submitted through:
   Geralyn R. Barone, City Manager

Originated by:
   Perry Vetter, Assistant City Manager
   Patty Latham, Information Technology Manager
City of Minnetonka, Minnesota

Ordinance Granting a Cable Television Franchise

to

Qwest Broadband Services, Inc. d/b/a CenturyLink

January 25, 2016

Prepared by:

BRIAN T. GROGAN, ESQ.
Moss & Barnett
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340
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ORDINANCE NO. _______

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK TO OPERATE AND MAINTAIN A CABLE SYSTEM AND PROVIDE CABLE SERVICES IN THE CITY OF MINNETONKA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM AND CABLE SERVICES.

RECITALS

The City of Minnetonka, Minnesota (“City”) pursuant to applicable federal and state law is authorized to grant one or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

Qwest Broadband Services, Inc., d/b/a CenturyLink (“Grantee”) seeks a competitive cable television franchise with the City.

Negotiations between Grantee and the City have been completed in accordance with the guidelines established by the City Code, Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. Section 546).

The City reviewed the legal, technical and financial qualifications of Grantee and, after a properly noticed public hearing, determined that it is in the best interest of the City and its residents to grant this competitive cable television franchise to Grantee.

NOW, THEREFORE, THE CITY OF MINNETONKA DOES ORDAIN that a franchise is hereby granted to Qwest Broadband Services, Inc. to operate and maintain a Cable System and provide Cable Services in the City upon the following terms and conditions:

SECTION 1
DEFINITIONS

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in applicable local, State or Federal law shall apply.

“Access Channels” means any channel or portion of a channel utilized for public, educational or governmental programming.

“Affiliate” shall mean any Person controlling, controlled by or under common control of Grantee.
“Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to Grantee by any governmental authority of competent jurisdiction.

“Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast and shall include the public, educational and governmental access channels. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(3).

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

“Cable Service” shall mean (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and, “other programming service” is information that a cable operator makes available to all Subscribers generally.

“Cable System” or “System” shall have the meaning specified for “Cable System” in the Cable Act. Unless otherwise specified, it shall in this document refer to the Cable System utilized by the Grantee in the City under this Franchise.

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation.

“City” shall mean the City of Minnetonka, a municipal corporation in the State of Minnesota.

“City Code” means the Municipal Code of the City of Minnetonka, Minnesota, as may be amended from time to time.

“Commission” means the Southwest Suburban Cable Communications Commission consisting of the cities of Edina, Eden Prairie, Hopkins, Minnetonka and Richfield, Minnesota.

“Connection” means the attachment of the Drop to the television set or Set Top Box of the Subscriber.

“Council” shall mean the governing body of the City.
“Day” unless otherwise specified shall mean a calendar day.

“Drop” shall mean the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.

“Effective Date” shall mean January 25, 2016.

“Expanded Basic Service” means all Subscriber services other than Basic Cable Service provided by the Grantee covered by a regular monthly charge, but not including optional programming offered on a pay-per-channel or pay-per-view basis.

“FCC” means the Federal Communications Commission, or a designated representative.

“Franchise” shall mean the right granted by this Ordinance and conditioned as set forth herein.

“Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

“Franchise Fee” shall mean the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Streets and rights of way, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).

“GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

“Grantee” means Qwest Broadband Services, Inc., d/b/a CenturyLink.

“Gross Revenues” means any and all compensation in whatever form, from any source, directly or indirectly earned by Grantee or any Affiliate of Grantee or any other Person who would constitute a cable operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Service within the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Cable Service, any expanded tiers of Cable Service, optional premium or digital services; pay-per-view services; Pay Services, installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of Set Top Boxes or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenue from Interactive Services to the extent they are considered Cable Services under Applicable Law;
revenue from the sale or carriage of other Cable Services, revenues from home shopping and other revenue-sharing arrangements. Copyright fees or other license fees paid by Grantee shall not be subtracted from Gross Revenues for purposes of calculating Franchise Fees. Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.

Gross Revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, state or other governmental unit, and collected by Grantee for such entity. The Franchise Fee is not such a tax. Gross Revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected. Gross Revenues shall not include payments for PEG Access capital support. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

“Interactive Services” are those services provided to Subscribers whereby the Subscriber either (a) both receives information consisting of either television or other signal and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose or (b) transmits signals to any other location for any purpose.

“Living Unit” means a distinct address as tracked in the QC network inventory, used by CenturyLink to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

“Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Stat. § 238, et. seq., as amended.

“Mosaic Channel” means a channel which displays miniaturized media screens and related information for a particular group of Channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of Access Channels on a single Channel screen and also provides for easy navigation to a chosen Access Channel.

“Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

“Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate
increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

“Pay Service” means programming (such as certain on-demand movie channels or pay-per-view programs) offered individually to Subscribers on a per-channel, per-program or per-event basis.

“PEG” means public, educational and governmental.

“Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

“QC” means Qwest Corporation, wholly owned subsidiary of CenturyLink, Inc. and an Affiliate of Grantee.

“Qualified Living Unit” means a Living Unit which meets the minimum technical qualifications defined by Grantee for the provision of Cable Service. A Living Unit receiving a minimum of 25Mbps downstream will generally be capable of receiving Cable Service subject to Grantee performing certain network grooming and conditioning.

“Set Top Box” means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all signals included in the Basic Cable Service tier delivered at designated converter dial locations.

“Street” shall mean the surface of and the space above and below any public Street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall, within its proper use and meaning in the sole opinion of City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable System.

“Subscriber” means a Person who lawfully receives Cable Service from Grantee.

“Wireline MVPD” means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.
SECTION 2
FRANCHISE

2.1 Grant of Franchise.

(a) The City hereby authorizes Grantee to occupy or use the City’s Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City’s legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

(b) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliated Entity of the Grantee involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the Cable System in the City, shall also comply with all obligations of this Franchise. However, the City and Grantee acknowledge that QC will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC’s installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the City; and 2) the operation of the Cable System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Grantee agree that to the extent QC violates any applicable federal, state, or local laws, rules, and regulations, the City shall first seek compliance directly from QC. In the event, the City cannot resolve these violations or disputes with QC, then the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC’s or any other Affiliate’s compliance with Applicable Laws, rules, and regulations, shall be deemed a material breach of this Franchise by Grantee.

2.2 Reservation of Authority. The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City’s police power. Grantee acknowledges that the City may modify its
regulatory policies by lawful exercise of the City’s police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

2.3 Franchise Term. This Franchise shall be in effect for a term of five (5) years from the date of acceptance by Grantee, unless terminated sooner as hereinafter provided. Six (6) months prior to the expiration of the initial five (5) year term, if City determines that Grantee is in compliance with all other material terms of this Franchise including the build out obligations set forth in this Franchise as required by Applicable Law, the City shall have the unilateral right to extend the Franchise for an additional term of no less than five (5) years and no more than ten (10) years.

2.4 Franchise Area. The Grantee is hereby authorized to provide Cable Services over a Cable System within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise. The parties acknowledge that Grantee is not the first entrant into the wireline video market in the City. The Grantee acknowledges that the City desires wireline competition throughout the entire City so all residents may receive the benefits of competitive Cable Services. Grantee aspires to provide Cable Service to all households within the City by the end of the five year (5) term of this Franchise. Grantee agrees that its deployment of Cable Service in the City will be geographically dispersed throughout the City, and shall be made available to diverse residential neighborhoods of the City without discrimination.

2.5 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.17. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. Section 238.08 and any other applicable federal level playing field requirements.

2.6 Build Out.

(a) Initial build out. No later than the second anniversary of the Effective Date of this Franchise, Grantee shall be capable of serving a minimum of fifteen percent (15%) of the City’s households with Cable Service; provided, however, Grantee will make its best efforts to complete such deployment within a shorter period of time. Grantee agrees that this initial minimum build-out commitment shall include a significant number of households below the median income in the City. City shall, upon written request of Grantee, provide detailed maps of such areas. Nothing in this Franchise shall restrict Grantee from serving additional households in the City with Cable Service.
(b) **Quarterly Meetings.** In order to permit the Commission to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, upon demand, promptly make available to the Commission maps and other documentation showing exactly where within the City the Grantee is currently providing Cable Service. Grantee shall meet with the Commission, not less than once quarterly, to demonstrate Grantee’s compliance with the provisions of this section concerning the deployment of Cable Services in the City including, by way of example, the provision of this section in which Grantee commits that a significant portion of its initial investment will be targeted to areas below the median income within the City, and the provisions of this section that prohibit discrimination in the deployment of Cable Services. In order to permit the Commission and the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, commencing April 15, 2016, and continuing throughout the term of this Franchise, meet quarterly with the Commission and make available to the Commission the following information:

(i) The total number of Living Units throughout the City;

(ii) The geographic area within the City where the Grantee is capable of delivering Cable Service through either a FTTH or FTTN method of service delivery which shall include sufficient detail to allow the City to determine the availability of Cable Services at commercially-zoned parcels;

(iii) The actual number of Qualified Living Units capable of receiving Cable Service from Grantee through FTTH and FTTN; and

(iv) A list of the public buildings and educational institutions capable of receiving Cable Service from the Grantee (see list attached hereto as Exhibit A).

(c) **Additional build out based on Market Success.** If, at any quarterly meeting, including any quarterly meeting prior to the second anniversary of the Effective Date of this Franchise as referenced in Section 2.6(a) herein, Grantee is actually serving twenty seven and one-half percent (27.5%) of the households capable of receiving Cable Service, then Grantee agrees the minimum build-out commitment shall increase to include all of the households then capable of receiving Cable Service plus an additional fifteen (15%) of the total households in the City, which Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Commission, Grantee shows that it is capable of serving sixty percent (60%) of the households in the City with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Grantee will agree to serve an additional fifteen percent (15%) of the total households in the City no later than two (2) years after that quarterly meeting (a total of seventy-five percent (75%) of the total households). This additional build-out based on market success shall continue until every household in the City is served.
(d) **Nondiscrimination.** Grantee shall provide Cable Service under non-discriminatory rates and reasonable terms and conditions to all Subscribers who reside in Living Units in any location where the Grantee is capable of providing Cable Service. Grantee shall not arbitrarily refuse to provide Cable Services to any Person or in any location where the Grantee is capable of providing Cable Service. Any Qualified Living Unit should also include Commercially-Zoned Parcels. “Commercially-Zoned Parcels” mean any Street address or municipally identified lot or parcel of real estate with a building. Grantee shall not deny Cable Services to any group of Subscribers or potential residential Subscribers based upon the income level of residents of the local area in which such group resides, nor shall Grantee base decisions about construction or maintenance of its Cable System or facilities based upon the income level of residents of the local area in which such group resides. Grantee shall provide such service at non-discriminatory monthly rates for residential Subscribers, consistent with Applicable Law. Grantee shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance and consistent with 47 U.S.C. Section 541(a)(3), or based upon race or ethnicity.

(e) **Standard Installation.** Grantee shall provide Cable Services at its standard installation within seven (7) days of a request by any Person in a Qualified Living Unit. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

(f) **Multiple Dwelling Units.** The Grantee shall offer the individual units of a multiple dwelling unit all Cable Services offered to other Dwelling Units in the City. Grantee shall, upon request, individually wire units upon request of the property owner or renter who has been given written authorization by the owner. Such offering is conditioned upon the Grantee having legal access to said unit and any payment (for Grantee’s reasonable costs of internal wiring) as applicable. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit.

2.7 **Periodic Public Review of Franchise.** Within sixty (60) Days of the third anniversary of the Effective Date of this Franchise or third annual anniversary of any extension of the Franchise term, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review. So long as Grantee receives reasonable notice, Grantee shall participate in the review process and shall fully cooperate. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.6 of this Franchise.
2.8 Transfer of Ownership.

(a) No sale, transfer, assignment or “fundamental corporate change”, as defined in Minn. Stat. § 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) City shall have thirty (30) Days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Grantee’s Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed in writing within thirty (30) Days of receipt of said request, or the request shall be deemed approved as a matter of law.

(c) If a public hearing is deemed necessary pursuant to (b) above, such hearing shall be commenced within thirty (30) Days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) Days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) Within thirty (30) Days after the closing of the public hearing, City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(e) The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

(f) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.8. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(g) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

(h) In the event of any proposed sale or assignment pursuant to paragraph (a) of this section, City shall have the right of first refusal of any bona fide offer to purchase only the Cable System. Bona fide offer, as used in this section, means an offer received by the Grantee which it intends to accept subject to City’s rights under this section. This written offer must be conveyed to City along with the Grantee’s written acceptance of the
offer contingent upon the rights of City provided for in this section. City shall be deemed to have waived its rights under this paragraph (h) in the following circumstances:

(i) If it does not indicate to Grantee in writing, within thirty (30) Days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or

(ii) It approves the assignment or sale of the Franchise as provided within this section.

(i) A transfer of the Franchise shall not include a transfer of ownership or other interest in Grantee to the parent of Grantee or to another Affiliate of Grantee; transfer of an interest in the Franchise or the rights held by Grantee under the Franchise to the parent of Grantee or to another Affiliate of Grantee; any action which is the result of a merger of the parent of Grantee; or any action which is the result of a merger of another Affiliate of Grantee. Nothing in this Section 2.8 (i) shall be read to serve as a waiver of Grantee’s obligation to obtain the City’s advance written consent to any proposed transfer that constitutes a change in the “controlling interest” of the Grantee as set forth in 2.8 (f) herein and Minn. Stat. Section 238.083.

2.9 **Expiration.** Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee’s rights under Section 626 of the Cable Act to:

(a) extend the Franchise, though nothing in this provision shall be construed to require such extension;

(b) renew the Franchise, in accordance with Applicable Laws;

(c) invite additional franchise applications or proposals;

(d) terminate the Franchise subject to any rights Grantee has under Section 626 of the Cable Act; or

(e) take such other action as the City deems appropriate.

2.10 **Right to Require Removal of Property.** At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee’s own expense all or any part of the Cable System, used exclusively to provide Cable Service, from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee.

2.11 **Continuity of Service Mandatory.** It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Grantee are honored. In the event that Grantee elects to overbuild, rebuild, modify, or sell the system, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, during the
lifetime of the Franchise. In the event of expiration, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

SECTION 3
OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 Use of Streets.

(a) Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing and subject to Section 2.1(b) herein, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code, including by way of example and not limitation, those requirements governing the placement of Grantee’s Cable System; and with other applicable City Codes, and will obtain and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.

(b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of, the Streets of City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City.

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and workmanlike manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

3.2 Construction or Alteration. Subject to Section 2.1(b) herein, Grantee shall in all cases comply with the City Code, City resolutions and City regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

3.3 Non-Interference. Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Streets. Grantee shall, where possible in the
case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.

3.4 Consistency with Designated Use. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under Applicable Laws.

3.5 Undergrounding. Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:

(a) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;

(b) Grantee is unable to get pole clearance;

(c) underground easements are obtained from developers of new residential areas; or

(d) utilities are overhead but residents prefer underground (service provided at cost).

If an ordinance is passed which involves placing underground certain utilities including Grantee’s cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for Drops from pedestals to Subscribers’ homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Maintenance and Restoration.

(a) Restoration. In case of disturbance of any Street, public way, paved area or public improvement by Grantee, Grantee shall, at its own cost and expense and in accordance with the requirements of Applicable Law, restore such Street, public way,
paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. All restoration occurring in private easements or on other private property shall be performed in accordance with the City Code. Grantee shall perform all restoration work within a reasonable time and with due regard to seasonal working conditions. If Grantee fails, neglects or refuses to make restorations as required under this section, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

(b) Maintenance. Grantee shall maintain all above ground improvements that it places on City right-of-way pursuant to the City Code and any permit issued by the City. In order to avoid interference with the City’s ability to maintain the right-of-way, Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision and by its failure property is damaged, Grantee shall be responsible for all damages caused thereby.

(c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City, Department of Public Works and consistent with the City Code and any permit issued by the City.

3.7 Work on Private Property. Grantee, with the consent of property owners, shall have the authority, pursuant to the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee.

3.8 Relocation.

(a) City Property. If, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

(b) Utilities and Other Franchisees. If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or
relocate such facilities to accommodate the construction, maintenance or repair of the requesting party’s facilities, or their more efficient use, or to “make ready” the requesting party’s facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, pursuant to City Code, and provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than forty-five (45) Days’ advance written notice to Grantee advising Grantee of the date or dates removal or relocation is to be undertaken; provided, that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

(d) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

(e) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

(f) Movement of Buildings. Grantee shall, upon request by any Person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) Days’ notice to the cable company to arrange for such temporary wire changes.
SECTION 4
REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System, used only to provide Cable Service, other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore to a condition as nearly as possible to its prior condition the Street or other public places in the City from which the System has been removed.

4.2 Abandonment of Cable System. In the event of Grantee’s abandonment of the Cable System, used only to provide Cable Service, City shall have the right to require Grantee to conform to the state right-of-way rules, Minn. Rules, Chapter 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment.

4.3 Removal after Abandonment or Termination. If Grantee has failed to commence removal of System, used only to provide Cable Service, or such part thereof as was designated by City, within thirty (30) days after written notice of City’s demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given, City shall have the right to apply funds secured by the letter of credit and performance bond toward removal and/or declare all right, title, and interest to the Cable System to be in City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

4.4 City Options for Failure to Remove Cable System. If Grantee has failed to complete such removal within the time given after written notice of the City’s demand for removal is given, the City shall have the right to exercise one of the following options:

(a) Declare all right, title and interest to the System, used only to provide Cable Service, to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or

(b) Declare the System abandoned and cause the System, if used only to provide Cable Service, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in this Franchise or from Grantee directly.

(c) Upon termination of service to any Subscriber, Grantee shall promptly remove all its facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable
such subscribers shall be responsible for any costs incurred by grantee in removing the facilities and equipment.

4.5 System Construction and Equipment Standards. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform, when applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC’s Rules and Regulations.

4.6 System Maps and Layout. To the extent not otherwise provided for in Section 2.6(b), Grantee, or an affiliate, shall maintain complete and accurate records, maps and diagrams of the location of all its facilities used to provide Cable Services and the Cable System maintained by QC in the Streets and make them available to the City upon request.

SECTION 5
SYSTEM DESIGN AND CAPACITY

5.1 Availability of Signals and Equipment.

(a) The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two (2) different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household ("FTTP"). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber further into the neighborhoods and using the existing copper infrastructure to increase broadband speeds ("FTTN"). Generally speaking, when Grantee deploys FTTN, households located within four thousand (4,000) cable feet of a remote terminal shall receive broadband speeds capable of providing Cable Service. In both the FTTP and FTTN footprint, a household receiving a minimum of 25 Mbps downstream will generally be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning.

(b) The Grantee shall comply with all FCC regulations regarding carriage of digital and HDTV transmissions.

(c) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 5.1 (a) and (b) throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

5.2 Free Cable Service to Public Buildings.

(a) As part of its support for PEG use of the System, the Grantee shall provide a free drop to the Subscriber network and free Basic Cable Service and Expanded Basic
Cable Service to all of the sites listed on Exhibit A attached hereto, and to such other public institutions as the City may reasonably request from time to time provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City’s sole discretion.

(b) The Grantee is only required to provide a single free drop to the Subscriber network, to a single outlet at a point within the location selected by that location. However, the location may extend the drop to multiple outlets and receive free Basic and Expanded Basic Cable Service at each outlet so long as such extension does not result in any violations of applicable leakage standards which the Grantee is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with the Grantee to do so. Grantee shall provide up to three (3) additional Set Top Boxes to each new location free of charge so that the services can be received and individually tuned by each receiver connected to the drop at a location. If an institution physically moves locations, such institution may move existing Set Top Boxes to the new locations with a free drop, and the moved Set Top Box will not count against the three (3) additional Set Top Boxes. Grantee will replace and maintain Set Top Boxes it provides or that it had provided as necessary so that locations may continue to view the free services Grantee is required to provide. Provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City’s sole discretion.

(c) Outlets of Basic and Expanded Basic Cable Service provided in accordance with this section may be used to distribute Cable Services throughout such buildings; provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. Grantee agrees that if any broadband service is required in order to receive the free service obligation set forth in this section, Grantee will provide such broadband service free of charge for the sole purpose of facilitating the provision of free Cable Service required by this section. Grantee agrees that it will not offset, deduct or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to connections or services to public facilities.

5.3 System Specifications.

(a) System Maintenance. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise.

(b) Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify
authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan (‘EAS Plan’). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee’s obligations beyond that which is required by the EAS Plan and Applicable Law.

(c) Standby Power. Grantee shall provide standby power generating capacity at the Cable System control center. Grantee shall maintain standby power system supplies, rated at least at two (2) hours’ duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

(d) Technical Standards. The technical standards used in the operation of the Cable System shall comply, at minimum, with the applicable technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform with the National Electrical Safety Code and all other Applicable Laws governing the construction of the Cable System.

5.4 Performance Testing. Grantee shall perform all applicable system tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests shall include, at a minimum:

(a) Initial proof of performance for any construction;

(b) Semi-annual compliance tests;

(c) Tests in response to Subscriber complaints;

(d) Tests requested by the City to demonstrate franchise compliance; and

(e) Written records of all system test results performed by or for Grantee shall be maintained, and shall be available for City inspection upon request.

5.5 Special Testing.

(a) Throughout the term of this Franchise, City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall
endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee’s expense by Grantee’s qualified engineer. The City shall have a right to participate in such testing by having an engineer of City’s choosing, and at City’s expense, observe and monitor said testing.

SECTION 6
PROGRAMMING AND SERVICES

6.1 Categories of Programming Service. Grantee shall provide video programming services in at least the following broad categories:

Local Broadcast (subject to federal carriage requirements)
Public Broadcast
News and Information
Sports
General Entertainment
Arts/Performance/Humanities
Science/Technology
Children/Family/Seniors
Foreign Language/Ethnic Programming
Public, Educational and Governmental Access Programming (to the extent required by the Franchise)
Movies
Leased Access

6.2 Changes in Programming Services. Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the City’s consent. Further, Grantee shall provide at least thirty (30) Days’ prior written notice to Subscribers and to the City of Grantee’s request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

6.3 Parental Control Device. Upon request by any Subscriber, Grantee shall make available for sale or lease a parental control or lockout device that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall
inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

6.4 **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of the conduct of the date of the tests.

6.5 **Annexation.** Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) Days written notification to Grantee of the annexation by City. Unless otherwise required by Applicable Laws, nothing herein shall require the Grantee to expand its Cable System to serve, or to offer Cable Service to any area annexed by the City if such area is then served by another Wireline MVPD franchised to provide multichannel video programming.

6.6 **Line Extension.** Grantee shall not have a line extension obligation until the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving facilities based Cable Service from both the Grantee and any other provider(s) of Cable Service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

6.7 **Nonvoice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

**SECTION 7**

**PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

7.1 **Number of PEG Access Channels.** Within one hundred eighty (180) days of the Effective Date, Grantee will make available three (3) PEG Access Channels.

7.2 **Digital and High Definition PEG Carriage Requirements.** While the parties recognize that while the primary signals of local broadcast stations are simulcast in standard definition ("SD") and high definition ("HD") formats, the Grantee’s obligation with respect to carriage of PEG in HD and SD formats shall be as follows:

(a) Grantee agrees to carry all PEG Access Channels in HD provided the entity originating the signal provides the Grantee an HD signal. Further, Grantee will downconvert any such signal to an SD format so that Subscribers who choose not to subscribe to an HD package may receive said signal in an SD format.

(b) Grantee is not required to convert a signal delivered in a lower quality format to a higher quality format. The City shall have no obligation to provide a signal to the Grantee in a HD format.

(c) All PEG Access Channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the
Subscriber receives. City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered via the Cable System at a receiver shall also be able to view the HD Access Channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Grantee is not agreeing to provide free HD equipment to Subscribers including complimentary municipal and educational accounts, or to modify its equipment or pricing policies in any manner. City acknowledges that not every Subscriber may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD-capable receiving device from Grantee or other equipment provider) or on every television in the home.

(d) The Grantee, upon request of the City, will provide technical assistance or diagnostic services to determine whether or not the problem with the PEG signals is the result of matters for which the Grantee is responsible, and if so the Grantee will take prompt corrective actions.

(e) The Grantee will provide any PEG Access Channels on the Basic Cable Service tier throughout the life of the Franchise, or if there is no Basic Cable Service tier, shall provide the PEG Access Channels to any Person who subscribes to any level of cable video programming service, and otherwise in accordance with Applicable Laws. To the extent technically feasible, Grantee shall, upon request from the City, provide City with quarterly viewership numbers for each of the PEG Access Channels carried on Grantee’s Cable System.

(f) Grantee shall facilitate carriage of PEG Access Channel program listings on its interactive programming guide, at no cost to the City provided that the City shall hold Grantee harmless should the City or PEG providers fail to provide correct or timely information to the interactive guide programmers.

(g) If Channels are selected through menu systems, the PEG Access Channels shall be displayed in the same manner as other Channels, and with equivalent information regarding the programming on the Channel. To the extent that any menu system is controlled by a third party, Grantee shall ensure that the Grantee will provide PEG listings on that menu system, if it is provided with the programming information by the City.

7.3 Control of PEG Channels. The control and administration of the Access Channels shall rest with the City and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City’s sole discretion.

7.4 Transmission of Access Channels. Access Channels may be used for transmission of non-video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.
7.5 Access Channel Locations.

(a) Grantee shall provide the City’s government access channel in both HD and SD. The government access channel will be located on Channel 238 and shall at all times be located in the Channel neighborhood offering news/public affairs programming on Grantee’s Cable System channel lineup. The government access channel shall have video and audio signal strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite Channels carried by the Grantee on its Cable System.

(i) Grantee shall carry the remaining public and educational Channels (PE Channels) on Channel 26 in its Channel lineup as a means to provide ease of access by Subscribers to the group of PE Channels placed consecutively on Channel numbers significantly higher in the Channel lineup. This use of one (1) Channel to access the group of PE Channels required under this Franchise shall be referred to as a “Mosaic Channel.” The Mosaic Channel shall display the group of PE Channels on a single Channel screen and serve as a navigation tool for Subscribers. The Mosaic Channel shall allow Subscribers to navigate directly from Channel 26 to any of the PE Channels requested in a single operation without any intermediate steps to a chosen PE Channel in the group.

(ii) Grantee shall use Channel 26 as a Mosaic Channel to access the PE Channels required under this Franchise. The group of consecutive PE channels residing at higher Channel numbers will retain Channel names and identity for marketing purposes, unless approved by the City. Grantee shall not include any other programming or Channels on the Commission’s PE Mosaic Channel unless the City provides advance written consent.

(iii) When using the Mosaic Channel, Subscribers shall be directed to the requested PE Channel in an HD format if appropriate to the Subscriber’s level of service; otherwise, the Subscriber shall be directed to the SD PE Channel. The Mosaic Channel mechanism shall allow Subscribers to navigate directly from Channel 26 to the requested Commission Access Channels which shall be located on Channel numbers 8110 (educational access) and 8111 (public access).

(iv) Grantee shall consult with the City (or City’s designee) to determine the PE Channel information displayed on the Mosaic Channel. However, the information shall have video and audio signal strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite channels carried by the Grantee on its Cable System in a Mosaic format.

(v) The Mosaic Channel assigned for use by the City shall be used to navigate to the group of City PE Channels and will be placed near other PEG Mosaic Channels.
(vi) If through technology changes or innovation in the future, the Grantee discontinues the use of Mosaic presentations, then Grantee shall provide the PE Channels to Subscribers at equivalent visual and audio quality and equivalent functionality as Grantee delivers the highest quality broadcast stations and highest quality commercial cable/satellite channels on its Cable System with no degradation.

(b) The Grantee shall not charge for use of the PEG Access Channels, equipment, facilities or services.

(c) In no event shall any Access Channel reallocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee’s reasonable control. The Access Channels will be located within reasonable proximity to other commercial video or broadcast Channels, excluding pay-per-view programming offered by Grantee in the City.

(d) Grantee agrees not to encrypt the Access Channels differently than other commercial Channels available on the Cable System.

(e) In conjunction with any occurrence of any Access Channel(s) relocation, as may be permitted by this Franchise, Grantee shall provide a minimum of Nine Thousand Dollars ($9,000) of in-kind air time per event on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City’s, or its designees’, pre-produced thirty (30) second announcement explaining the change in location, or if Grantee does not have air time capabilities a mutually agreed equivalent shall be provided.

7.6 Navigation to Access Channels. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to Access Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

7.7 Ownership of Access Channels. Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, educational, or governmental use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

7.8 Noncommercial Use of PEG. Permitted noncommercial uses of the Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited,
non-profit, educational institutions which may, for example, offer telecourses over a Access Channel.

7.9 **Dedicated Fiber Return Lines.**

(a) Grantee shall provide and maintain, free of charge with no transport costs or other fees or costs imposed, a direct fiber connection and necessary equipment to transmit PEG programming from the City Hall control room racks to the Grantee headend (“PEG Origination Connection”).

(b) In addition to the PEG Origination Connection, the Grantee shall, free of charge, construct a direct connection and necessary equipment to the programming origination site located at Edina City Hall where PEG programming is originated by the Commission.

(c) Grantee shall at all times provide and maintain, free of charge, a drop to the Cable System, required Set-Top Box and free Basic Cable Service and Expanded Basic Service to the City Hall and the location from which PEG programming is originated (currently the playback facility at the Edina City Hall), to allow these facilities to view (live) the downstream PEG programming Channels on Grantee’s Cable System so they can monitor the PEG signals and make certain that PEG programming is being properly received (picture and sound) by Subscribers.

7.10 **Interconnection.** To the extent technically feasible and permitted under Applicable Laws, Grantee will allow necessary interconnection with any newly constructed City and school fiber for noncommercial programming to be promoted and administered by the City as allowed under Applicable Laws and at no additional cost to the City or schools. This may be accomplished through a patch panel or other similar facility and each party will be responsible for the fiber on their respective sides of the demarcation point. Grantee reserves its right to review on a case-by-case basis the technical feasibility of the proposed interconnection. Based on this review Grantee may condition the interconnection on the reasonable reimbursement of Grantee’s incremental costs, with no markup for profit, to recoup Grantee’s construction costs only. In no event will Grantee impose any type of recurring fee for said interconnection.

7.11 **Ancillary Equipment.** Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee’s fiber paths or Cable System, whether referred to switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the demarcation point and the City or school is responsible for all other production/playback equipment.

7.12 **Future Fiber Return Lines for PEG.** At such time that the City determines:

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 10); or
(b) that the City desires to establish or change a location from which PEG programming is originated; or

(c) that the City desires to upgrade the Connection to Grantee from an existing signal point of origination,

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. Grantee agrees to submit a cost estimate to implement the City’s plan within a reasonable period of time but not later than September 1st in the year preceding the request for any costs exceeding Twenty-five Thousand and No/100 Dollars ($25,000). The cost estimate will be on a time and materials basis with no additional markup. After an agreement to reimburse Grantee for Grantee’s out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said return fiber.

7.13 Access Channel Carriage.

(a) Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the City’s designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any Access Channel, except by oral or written permission from the City, with the exception of emergency alert signals.

(b) The City may request and Grantee shall provide an additional Access Channel when the cumulative time on all the existing Access Channels combined meets the following standard: whenever one of the Access Channels in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose, the Grantee has six (6) months in which to provide a new, Access Channel for the same purpose; provided that, the provision of the additional Channel or Channels does not require the Cable System to install Converters.

(c) The VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated Access Channels.

(d) Subject to the terms of this Franchise, the City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.

(e) The Grantee shall monitor the Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of Access Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming. Grantee shall carry all components of the standard definition of Access Channel including, but not
limited to, closed captioning, stereo audio and other elements associated with the programming.

7.14 Access Channel Support.

(a) Upon the Effective Date of this Franchise, Grantee shall collect and remit to the City Sixty cents (60¢) per Subscriber per month in support of PEG capital (“PEG Fee”).

(b) On August 1, 2017, the City, at its discretion, and upon ninety (90) Days advance written notice to Grantee, may require Grantee to increase the PEG Fee to Sixty-five cents (65¢) per Subscriber per month for the remaining term of the Franchise. The PEG Fee shall be used by City in its sole discretion to fund PEG access capital expenditures. In no event shall the PEG Fee be assessed in an amount different from that imposed upon the incumbent cable provider. In the event the incumbent cable provider agrees to a higher or lower PEG Fee, Grantee will increase or decrease its PEG Fee upon ninety (90) Days written notice from the City.

(c) The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 16.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

(d) Any PEG Fee amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the Day the payment was due plus two percent (2%), whichever is greater.

7.15 PEG Technical Quality.

(a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of Access Channels that results in a material degradation of signal quality or impairment of viewer reception of Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.
(b) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

7.16 **Access Channel Promotion.** Grantee shall allow the City to print and mail a post card for promoting a designated entity’s service or generally promoting community programming to households in the City subscribing to Grantee’s Cable Service at a cost to the City not to exceed Grantee’s out of pocket cost, no less frequently than twice per year, or at such time as a Access Channel is moved or relocated, upon the written request of the City. The post card shall be designed by the City and shall conform to the Grantee’s standards and policies for size and weight. Any post card denigrating the Grantee, its service or its programming is not permitted. The City agrees to pay Grantee in advance for the actual cost of such post card.

7.17 **Change in Technology.** In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels, Grantee shall, at its own expense and free of charge to City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

7.18 **Relocation of Grantee’s Headend.** In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee’s cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

7.19 **Regional Channel Six.** Grantee shall make available Regional Channel Six as long as it is required to do so by the State of Minnesota.

7.20 **Government Access Channel Functionality.** Grantee agrees to provide the capability such that the City, from its City Hall, can switch its government Access Channel in the following ways:

- Insert live Council meetings from City Hall;
- Replay government access programming from City Hall; and
- Transmit character generated programming.
- Schedule for Grantee to replay City-provided tapes in pre-arranged time slot on the government Access Channel; and
Switch to other available programming where the City has legal authority.

7.21 Compliance with Minnesota Statutes Chapter 238. In addition to the requirements contained in this Section 7 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minn. Stat. 238.084.

SECTION 8
REGULATORY PROVISIONS.

8.1 Intent. The City shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

8.2 Delegation of Authority to Regulate. The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. This may include but shall not be limited to the Commission or other entity as City may determine in its sole discretion. Any existing delegation in place at the time of the grant of this Franchise shall remain intact unless expressly modified by City.

8.3 Areas of Administrative Authority. In addition to any other regulatory authority granted to the City by law or franchise, the City shall have administrative authority in the following areas:

(a) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility.

(b) Coordinating the operation of Access Channels.

(c) Formulating and recommending long-range cable communications policy for the Franchise Area.

(d) Disbursing and utilizing Franchise revenues paid to the City.

(e) Administering the regulation of rates, to the extent permitted by Applicable Law.

(f) All other regulatory authority permitted under Applicable Law.

The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee’s operations under the Franchise to the extent allowed by Applicable Law.

8.4 Regulation of Rates and Charges.

(a) Right to Regulate. The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.
(b) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days’ notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(c) Rate Discrimination Prohibited. Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or (except as allowed by Applicable Law) neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nevertheless, Grantee shall be permitted to establish (1) discounted rates and charges for providing Cable Service to low-income, handicapped, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

SECTION 9
BOND.

9.1 Performance Bond. Upon the Effective Date of this Franchise and at all times thereafter Grantee shall maintain with City a bond in the sum of One Hundred Thousand Dollars ($100,000.00) in such form and with such sureties as shall be acceptable to City, conditioned upon the faithful performance by Grantee of this Franchise and the acceptance hereof given by City and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys’ fees and costs (with interest at two percent (2%) in excess of the then prime rate), up to the full amount of the bond, and which bond shall further guarantee payment by Grantee of all claims and liens against City or any public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System. The City shall provide Grantee reasonable advanced notice of not less than ten (10) Days prior to any draw by the City on the performance bond required under this Section 9.

9.2 Rights. The rights reserved by City with respect to the bond are in addition to all other rights the City may have under this Franchise or any other law.

9.3 Reduction of Bond Amount. City may, in its sole discretion, reduce the amount of the bond.

SECTION 10
SECURITY FUND

10.1 Security Fund. If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then
Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of Twenty Thousand and No/100 Dollars ($20,000.00). In no event shall Grantee fail to post a Twenty Thousand and No/100 Dollar ($20,000.00) letter of credit within thirty (30) days receipt of a notice of franchise violation pursuant to this Section 10.1. Failure to post said letter of credit shall constitute a separate material violation of this Franchise, unless the breach is cured within such thirty (30) Day period or longer period allowed under the Franchise. The letter of credit shall serve as a common security fund for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. The security may be terminated by the Grantee upon the resolution of the alleged noncompliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established in those circumstances where Grantee disputes the allegation that it is not in compliance, and maintained for the duration of the dispute. If Grantee fails to establish the security fund as required, the City may take whatever action is appropriate to require the establishment of that fund and may recover its costs, reasonable attorneys’ fees, and an additional penalty of Two Thousand Dollars ($2,000) in that action.

10.2 Withdrawal of Funds. Provision shall be made to permit the City to withdraw funds from the security fund. Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose.

10.3 Restoration of Funds. Within ten (10) Days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to 10.4 of this section, Grantee shall deposit a sum of money sufficient to restore such security fund to the required amount.

10.4 Liquidated Damages. In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the security fund the following liquidated damages:

(a) For failure to provide data, documents, reports or information or to cooperate with City during an application process or System review, the liquidated damage shall be One Hundred Dollars ($100.00) per Day for each Day, or part thereof, such failure occurs or continues.

(b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Paragraph 10.4, the liquidated damage shall be One Hundred Fifty Dollars ($150.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) For failure to test, analyze and report on the performance of the System following a request by City, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.
(d) Forty-five Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Two Hundred Dollars ($200.00) per Day for each Day, or part thereof, such failure occurs or continues.

(e) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the Access Channels the liquidated damage shall be One Hundred Fifty ($150.00) per Day for each Day, or part thereof, such failure occurs or continues.

10.5 Each Violation a Separate Violation. Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed.

10.6 Maximum 120 Days. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of one hundred twenty (120) Days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

10.7 Withdrawal of Funds to Pay Taxes. If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) Days notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then withdraw such funds from the security fund. Payments are not Franchise Fees as defined in Section 16 of this Franchise.

10.8 Procedure for Draw on Security Fund. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation before the City may require Grantee to make payment of damages, and further to enforce payment of damages through the security fund. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

(a) City shall hear Grantee’s dispute at the next regularly scheduled or specially scheduled Council meeting. Grantee shall have the right to speak and introduce evidence. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

(b) If after hearing the dispute, the claim is upheld by the City, then Grantee shall have thirty (30) Days within which to remedy the violation before the City may require payment of all liquidated damages due it.
10.9 **Time for Correction of Violation.** The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to collect the alleged violation is of such a nature or character as to require more than thirty (30) Days within which to perform provided Grantee commences corrective action within fifteen (15) Days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

10.10 **Grantee’s Right to Pay Prior to Security Fund Draw.** Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to promptly remit payment to the City, the City may resort to a draw from the security fund in accordance with the terms of this Section 10 of the Franchise.

10.11 **Failure to so Replenish Security Fund.** If any security fund is not so replaced, City may draw on said security fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid for by Grantee pursuant hereto, including attorneys’ fees incurred by the City in so performing and paying. The failure to so replace any security fund may also, at the option of City, be deemed a default by Grantee under this Franchise. The drawing on the security fund by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

10.12 **Collection of Funds Not Exclusive Remedy.** The collection by City of any damages or monies from the security fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the security fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this section, however, should the City elect to impose liquidated damages that remedy shall remain the City’s exclusive remedy for the one hundred twenty (120) Day period set forth in Section 10.6.

**SECTION 11**

**DEFAULT**

11.1 **Basis for Default.** City shall give written notice of default to Grantee if City, in its sole discretion, determines that Grantee has:

(a) Violated any material provision of this Franchise or the acceptance hereto or any rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;

(b) Attempted to evade any provision of this Franchise or the acceptance hereof;

(c) Practiced any fraud or deceit upon City or Subscribers; or

(d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise.
11.2 Default Procedure. If Grantee fails to cure such default within thirty (30) Days after the giving of such notice (or if such default is of such a character as to require more than thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City’s sole opinion, to cure such default as soon as possible), then, and in any event, such default shall be a substantial breach and City may elect to terminate the Franchise. The City may place the issue of revocation and termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:

(a) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the default.

(b) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.

(c) If, after notice is given and an opportunity to cure, at Grantee’s option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days provided no opportunity for compliance need be granted for fraud or misrepresentation.

11.3 Mediation. If the Grantee and City are unable to resolve a dispute through informal negotiations during the period of thirty (30) Days following the submission of the claim giving rise to the dispute by one (1) party to the other, then unless that claim has been waived as provided in the Franchise, such claim may be subject to mediation if jointly agreed upon by both parties. Unless the Grantee and City mutually agree otherwise, such mediation shall be in accordance with the rules of the American Arbitration Association currently in effect at the time of the mediation. A party seeking mediation shall file a request for mediation with the other party to the Franchise and with the American Arbitration Association. The request may be made simultaneously with the filing of a complaint, but, in such event, mediation shall proceed in advance of legal proceedings only if the other party agrees to participate in mediation. Mutually agreed upon Mediation shall stay other enforcement remedies of the parties for a period of ninety (90) days from the date of filing, unless stayed for a longer period by agreement of the Grantee and City. The Grantee and City shall each pay one-half of the mediator’s fee and any filing fees. The mediation shall be held in the City unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. Nothing herein shall serve to modify or in any way delay the franchise enforcement process set forth in Section 10 of this Franchise.

11.4 Failure to Enforce. Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City’s failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee’s conduct.
11.5 Compliance with the Laws.

(a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.

(b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

SECTION 12
FORECLOSURE AND RECEIVERSHIP

12.1 Foreclosure. Upon the foreclosure or other judicial sale of the Cable System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

12.2 Receivership. The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

(a) Within one hundred twenty (120) Days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the
premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

SECTION 13
REPORTING REQUIREMENTS

13.1 **Quarterly Reports.** Within forty-five (45) calendar days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment a report showing the basis for computation of such fees prepared by an officer, or designee of Grantee showing the basis for the computation of the Franchise Fees paid during that period in a form and substance substantially equivalent to Exhibit B attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of “Gross Revenues” at Section 1 of this Franchise.

13.2 **Monitoring and Compliance Reports.** Upon request, but no more than once a year, Grantee shall provide a written report of any and all applicable FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, Grantee shall provide City with copies of reports of the semi-annual test and compliance procedures applicable to Grantee and established by this Franchise no later than thirty (30) Days after the completion of each series of tests.

13.3 **Reports.** Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City, at the times and in the form prescribed that Grantee is technically capable of producing, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee’s need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

13.4 **Communications with Regulatory Agencies.**

(a) Upon written request, Grantee shall submit to City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee’s Cable System within the Franchise Area. Grantee shall submit such documents to City no later than thirty (30) Days after receipt of City’s request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating Grantee’s Cable System within the Franchise Area, Grantee shall make such documents available to City upon City’s written request.

(b) In addition, Grantee and its Affiliates shall within ten (10) Days of any communication to or from any judicial or regulatory agency regarding any alleged or
actual violation of this Franchise, City regulation or other requirement relating to the System, use its best efforts to provide the City a copy of the communication, whether specifically requested by the City to do so or not.

SECTION 14
CUSTOMER SERVICE POLICIES

14.1 **Response to Customers and Cooperation with City.** Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City’s interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

14.2 **Definition of “Complaint.”** For the purposes of Section 14, with the exception of Subsection 14.5, a “complaint” shall mean any communication to Grantee or to the City by a Subscriber or a Person who has requested Cable Service; a Person expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise.

14.3 **Customer Service Agreement and Written Information.** Grantee shall provide to Subscribers a comprehensive service agreement and information in writing for use in establishing Subscriber service. Written information shall, at a minimum, contain the following information:

(a) Services to be provided and rates for such services.

(b) Billing procedures.

(c) Service termination procedure.

(d) Change in service notifications.

(e) Liability specifications.

(f) Set Top Boxes/Subscriber terminal equipment policy.

(g) How complaints are handled including Grantee’s procedure for investigation and resolution of Subscriber complaints.

(h) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements.

(i) A copy of the written information shall be provided to each Subscriber at the time of initial Connection and any subsequent reconnection.
14.4 **Reporting Complaints.**

(a) The requirements of this Section 14.4 shall be subject to federal law regarding Subscriber privacy. Grantee shall maintain all Subscriber data available for City inspection. Subscriber data shall include the date, name, address, telephone number of Subscriber complaints as well as the subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by Grantee or the Subscriber. The data shall be maintained in a way that allows for simplified access of the data by the City.

(b) Subject to federal law and upon reasonable request by the City, Grantee shall, within a reasonable amount of time, provide City with such Subscriber data for its review.

14.5 **Customer Service Standards.** The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC’s rules and regulations, as amended. Grantee shall, upon request, which request shall include the reason for the request (such as complaints received or other reasonable evidence of concern), provide City with information which shall describe in detail Grantee’s compliance with each and every term and provision of this Section 14.5. Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. To the extent that this Franchise imposes requirements greater than those established by the FCC, Grantee reserves whatever rights it may have to recover the costs associated with compliance in any manner consistent with Applicable Law.

14.6 **Local Office.** During the term of the Franchise the Grantee shall comply with one of the following requirements:

(a) Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

(b) Grantee shall maintain convenient local Subscriber service and bill payment locations for the purpose of receiving Subscriber payments or equipment returns. Unless otherwise requested by the Subscriber, Grantee shall deliver replacement equipment directly to the Subscriber at no cost to the Subscriber. The Grantee shall maintain a business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billings disputes and similar matters. The office must be reachable by a local, toll-free telephone call, and Grantee shall provide the City with the name, address and telephone number of an office that will act as the Grantee’s agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. At a minimum Grantee shall also provide the following:

(i) Subscribers can remit payments at multiple third party commercial locations within the City (such as grocery stores or the Western Union).
(ii) Grantee will provide a service technician to any Qualified Living Unit in the City, free of charge to the Subscriber, where necessary to install, replace or troubleshoot equipment issues.

(iii) Subscribers shall be able to return and receive equipment, free of charge, via national overnight courier service (such as Fed Ex or UPS) if a service technician is not required to visit the Subscriber’s Qualified Living Unit.

(iv) In the event Grantee provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers in the City served by cable operators franchised by the City, the Grantee shall then be required to also comply with the requirements of Section 14.6 (a) above.

14.7 Cable System office hours and telephone availability.

(a) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) Days a week.

(i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business Day.

(b) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

14.8 Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
(a) Standard Installations will be performed within seven (7) business days after an order has been placed. “Standard” Installations are those to a Qualified Living Unit.

(b) Excluding conditions beyond the control of Grantee, Grantee will begin working on “Service Interruptions” promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business Day after notification of the Service problem.

(c) The “appointment window” alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(d) Grantee may not cancel an appointment with a customer after the close of business on the business Day prior to the scheduled appointment.

(e) If Grantee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

14.9 Communications between Grantee and Subscribers.

(a) Refunds. Refund checks will be issued promptly, but no later than either:

   (i) The customer’s next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or

   (ii) The return of the equipment supplied by Grantee if Cable Service is terminated.

(b) Credits. Credits for Cable Service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.

14.10 Billing.

(a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.
14.11 **Subscriber Information.** Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(a) Products and Services offered;

(b) Prices and options for programming services and conditions of subscription to programming and other services;

(c) Installation and Service maintenance policies;

(d) Instructions on how to use the Cable Service;

(e) Channel positions of programming carried on the System; and

(f) Billing and complaint procedures, including the address and telephone number of the City’s cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 14.11.

14.12 **Notice or Rate Programming Change.** In addition to the requirement of this Section 14.12 regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change. If required by Applicable Law, such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

14.13 **Subscriber Contracts.** Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee’s current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

14.14 **Refund Policy.** If a Subscriber’s Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by
the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

14.15 **Late Fees.** Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee’s compliance with all Applicable Laws to the maximum extent legally permissible.

14.16 **Disputes.** All Subscribers and members of the general public may direct complaints, regarding Grantee’s Service or performance to the chief administrative officer of the City or the chief administrative officer’s designee, which may be a board or Commission of the City.

14.17 **Customer Bills.** Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 14.10, above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

14.18 **Failure to Resolve Complaints.** Grantee must investigate and act upon any service complaint promptly and in no event later than twenty-four (24) hours after the problem becomes known. Grantee must address, and if feasible, resolve service complaints within three (3) calendar days.

14.19 **Maintain a Complaint Phone Line.** Grantee shall maintain a local or toll-free telephone Subscriber complaint line, available to its Subscribers twenty-four (24) hours per Day, seven (7) Days a week.

14.20 **Notification of Complaint Procedure.** Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.3, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, where possible Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.21 **Subscriber Privacy.**

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed
one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(b) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee’s business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(c) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.

14.22 Grantee Identification. Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 15
SUBSCRIBER PRACTICES

15.1 Subscriber Rates. There shall be no charge for disconnection of any installation or outlet. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber’s service outlet, provided, however, that such disconnection shall not be effected until after the later of: (i) forty-five (45) Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber’s Cable Service.

15.2 Refunds to Subscribers shall be made or determined in the following manner:

(a) If Grantee fails, upon request by a Subscriber, to provide any service then being offered, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee’s responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability.
(b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

(c) If any Subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate amount of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by Grantee.

SECTION 16
COMPENSATION AND FINANCIAL PROVISIONS.

16.1 Franchise Fees. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling enacted by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of a given quarter. In accordance with Section 16 of this Franchise, Grantee shall file with the City a Franchise Fee payment worksheet, attached as Exhibit B, signed by an authorized representative of Grantee, which identifies Gross Revenues earned by Grantee during the period for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

(b) Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period, unless otherwise required by Applicable Law.

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the dates specified herein shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

(d) In no event shall the Grantee be required to pay a Franchise Fee percentage in excess of that paid by incumbent cable provider.
16.2 **Auditing and Financial Records.** Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of not less than twenty (20) Days to the Grantee, may review such of the Grantee’s books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee’s compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than thirty (30) Days after the notice unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of six (6) years, pursuant to Minnesota Statutes Section 541.05. The Grantee shall not deny the City access to any of the Grantee’s records on the basis that the Grantee’s records are under the control of any parent corporation, Affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee’s local offices or at one of Grantee’s offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

16.3 **Review of Record Keeping Methodology.** Grantee agrees to meet with representative of the City upon request to review its methodology of record-keeping, financial reporting, computing Franchise Fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records related to the Franchise.

16.4 **Audit of Records.** The City or its authorized agent may at any time and at the City’s own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees paid to the City. Grantee shall cooperate fully in the conduct of such audit and shall produce all necessary records related to the provision of Cable Services regardless of which corporate entity controls such records. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire reasonable cost of the audit within thirty (30) days of the completion and acceptance of the audit by the City.

16.5 **Records to be reviewed.** The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of the Franchise.
16.6 **Indemnification by Grantee.**

(a) Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee’s or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee’s invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee’s failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the City, its officers, or its employees from participating in the defense of any litigation by their own counsel at such parties’ expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the City, its officers, or its employees.

(b) Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in a form acceptable to the City attached hereto as Exhibit C, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys’ fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City or that this Franchise does not satisfy the requirements of Applicable Law(s).

16.7 **Grantee Insurance.** Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than “A-” that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee’s vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars ($3,000,000). The liability policy shall include:

(a) The policy shall provide coverage on an “occurrence” basis.
(b) The policy shall cover personal injury as well as bodily injury.

(c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.

(d) Broad form property damage liability shall be afforded.

(e) City shall be named as an additional insured on the policy.

(f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee’s operations under this Franchise and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.

(g) Standard form of cross-liability shall be afforded.

(h) An endorsement stating that the policy shall not be canceled without thirty (30) Days notice of such cancellation given to City

(i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.

(j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City’s right to enforce the terms of Grantee’s obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee’s insurance coverage.

SECTION 17
MISCELLANEOUS PROVISIONS.

17.1 Posting and Publication. Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee’s filing of acceptance of this Franchise.

17.2 Guarantee of Performance. Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a five (5) year
17.3 **Entire Agreement.** This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and is intended to comply with all requirements set forth therein.

17.4 **Consent.** Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

17.5 **Franchise Acceptance.** No later than forty-five (45) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, and evidence of insurance, all as provided in this Franchise. The City’s “Notice of Intent to Consider an Application for a Franchise” (“Notice”) provided, consistent with Minn. Stat. 238.081 subd. 8, that applicants would be required to reimburse the City for all necessary costs of processing a cable communications franchise. Grantee submitted an application fee with its application to the City. The Notice further provided that any unused portion of the application fee would be returned and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Grantee shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of Minnetonka, Minnesota for all additional fees and costs incurred by the City. Within thirty (30) days of City Council approval, the City shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by the City Council. In the event Grantee fails to accept this Franchise, or fails to provide the required documents and payments, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

17.6 **Amendment of Franchise.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 2.7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City’s exercise of its police powers.

17.7 **Notice.** Any notification that requires a response or action from a party to this Franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties’ rights under this Franchise, shall be made in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:
To the City:   City Manager, City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345

Courtesy Copy to:  Southwest Suburban Cable Commission  
c/o Moss & Barnett (BTG)  
150 South Fifth Street, Suite 1200  
Minneapolis, MN 55402

To the Grantee:  CenturyLink  
Attn: Public Policy  
1801 California Street, 10th Floor  
Denver, Colorado 80202

Courtesy Copy to:  Qwest Broadband Services, Inc.  
Attn: Public Policy  
200 South Fifth Street, 21st Floor  
Minneapolis, MN 55402

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the Person of record as specified above.

17.8 **Force Majeure.** In the event that either party is prevented or delayed in the performance of any of its obligations, under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

17.9 **Work of Contractors and Subcontractors.** Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee’s responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee’s behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.
17.10 Abandonment of System. Grantee may not abandon the System or any portion thereof used exclusively for Cable Services, without having first given three (3) months written notice to City and conforming to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. To the extent required by Minn. Stat. §238.084 Subd. 1 (w), Grantee shall compensate City for damages resulting from the abandonment.

17.11 Removal After Abandonment. In the event of Grantee’s abandonment of the System used exclusively for Cable Services, City shall have the right to require Grantee to conform to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City’s demand for removal consistent with City Code and Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given City shall have the right to apply funds secured by the performance bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

17.12 Governing Law. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

17.13 Nonenforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

17.14 Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

17.15 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

17.16 Survival of Terms. Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Streets for the purpose of providing Cable Service. However, Grantee’s obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

17.17 Competitive Equity. If any other Wireline MVPD enters into any agreement with the City to provide multi channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide multi channel video programming or its equivalent to Subscribers
in the City under the same agreement as applicable to the new MVPD. Within one hundred twenty (120) Days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the new Wireline MVPD.

Passed and adopted this _____ day of __________________ 201__.

ATTEST

CITY OF MINNETONKA, MINNESOTA

By: ___________________________  By: ___________________________
Its: City Clerk  Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK

Date: ___________________________  By: ___________________________
Its: ___________________________

SWORN TO BEFORE ME this ___ day of __________, 201__.

__________________________

NOTARY PUBLIC
### Exhibit A
Free Cable Service to Public Buildings

<table>
<thead>
<tr>
<th></th>
<th>Building Name</th>
<th>Address</th>
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<tbody>
<tr>
<td>1.</td>
<td>WORKS, PUBLIC</td>
<td>11522 MINNETONKA BLVD</td>
</tr>
<tr>
<td>2.</td>
<td>MIDDLE SCHOOL, WAYZATA EAST</td>
<td>12001 RIDGEMOUNT AVE W</td>
</tr>
<tr>
<td>3.</td>
<td>LIBRARY, RIDGEDALE</td>
<td>12601 RIDGEDALE DR</td>
</tr>
<tr>
<td>4.</td>
<td>FIRE STATION, MINNETONKA</td>
<td>1815 HOPKINS XRD</td>
</tr>
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<td>5.</td>
<td>SCHOOL, OMEGON</td>
<td>2000 HOPKINS XRD</td>
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<tr>
<td>6.</td>
<td>ELEM SCHOOL, TANGLEN</td>
<td>10901 HILLSIDE LN W</td>
</tr>
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<td>7.</td>
<td>SENIOR HIGH, HOPKINS</td>
<td>2400 LINDBERGH DR</td>
</tr>
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<td>8.</td>
<td>JUNIOR HIGH, HOPKINS</td>
<td>10700 CEDAR LAKE RD</td>
</tr>
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<td>9.</td>
<td>JUNIOR HIGH, HOPKINS WEST</td>
<td>3830 BAKER RD</td>
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<td>10.</td>
<td>FIRE STATION, MINNETONKA</td>
<td>5700 ROWLAND RD</td>
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<td>11.</td>
<td>WAREHOUSE, MINNETONKA</td>
<td>5700 HANUS RD</td>
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<tr>
<td>12.</td>
<td>FIRE STATION, MINNETONKA</td>
<td>14550 MINNETONKA BLVD</td>
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<td>13.</td>
<td>CITY HALL, MINNETONKA</td>
<td>14600 MINNETONKA BLVD</td>
</tr>
<tr>
<td>14.</td>
<td>POLICE DEPT, MINNETONKA</td>
<td>14600 MINNETONKA BLVD</td>
</tr>
<tr>
<td>15.</td>
<td>JUNIOR HIGH, MINNETONKA</td>
<td>17000 LAKE STREET EXT</td>
</tr>
<tr>
<td>16.</td>
<td>ELEM, GLEN LAKE</td>
<td>4801 WOODRIDGE RD</td>
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<tr>
<td>17.</td>
<td>HIGH SCHOOL, MINNETONKA</td>
<td>18301 HIGHWAY 7</td>
</tr>
<tr>
<td>18.</td>
<td>IMMACULATE OF, MARY</td>
<td>13505 EXCELSIOR BLVD</td>
</tr>
<tr>
<td>19.</td>
<td>ACTIVITY CENTER, GLEN L</td>
<td>14350 EXCELSIOR BLVD</td>
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<td>20.</td>
<td>ELEME, CLEAR SPRINGS</td>
<td>5701 COUNTY RD 101</td>
</tr>
<tr>
<td>21.</td>
<td>FIRE STATION, MINNETONKA</td>
<td>17125 EXCELSIOR BLVD</td>
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<td>23.</td>
<td>ELEM SCHOOL, SCENIC HEIGHTS</td>
<td>5650 SCENIC HEIGHTS DR</td>
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<td>24.</td>
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<td>28.</td>
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<td>14509 MINNETONKA DR</td>
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<td>2000 HOPKINS XRD STE CMCL</td>
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<td>CENTER, PAGEL</td>
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<td>33.</td>
<td>CENTER, TECHNOLOGY</td>
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## Exhibit B

**Franchise Fee Payment Worksheet**

**TRADE SECRET – CONFIDENTIAL**

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<td>Pay-per-view</td>
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<tr>
<td>Franchise Fee Revenue</td>
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<td>Advertising Revenue</td>
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<td>Home Shopping Revenue</td>
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<td>Inside Wiring</td>
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<td>Other Revenue</td>
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Fee Factor: 5%
Exhibit C
Indemnity Agreement

INDEMNITY AGREEMENT made this ____ day of _____________________, 20__, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called “CenturyLink,” and the City of Minnetonka, a Minnesota Municipal Corporation, party of the second part, hereinafter called “City.”

WITNESSETH:

WHEREAS, the City of Minnetonka has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of Minnetonka; and

WHEREAS, the City has required, as a condition of its award of a cable communications franchise, that it be indemnified with respect to all claims and actions arising from the award of said franchise,

NOW THEREFORE, in consideration of the foregoing promises and the mutual promises contained in this agreement and in consideration of entering into a cable television franchise agreement and other good and valuable consideration, receipt of which is hereby acknowledged, CenturyLink hereby agrees, at its sole cost and expense, to fully indemnify, defend and hold harmless the City, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages, cost or expense (including, but not limited to, court and appeal costs and reasonable attorneys’ fees and disbursements assumed or incurred by the City in connection therewith) arising out of the actions of the City in granting a franchise to CenturyLink. This includes any claims by another franchised cable operator against the City that the terms and conditions of the CenturyLink franchise are less burdensome than another franchise granted by the City or that the CenturyLink Franchise does not satisfy the requirements of applicable federal, state, or local law(s). The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are the result of a change in applicable law, the order of a court or administrative agency, or are caused by the acts of CenturyLink.

The City shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink’s expense then CenturyLink shall not be liable for any attorneys’ fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the Minnesota Rules of Professional Conduct, between the City and the counsel selected by CenturyLink to represent the City, CenturyLink shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink. Provided, however, that in the event that such separate representation is or becomes necessary,
and City desires to hire counsel or any other outside experts or consultants and desires CenturyLink to pay those expenses, then City shall be required to obtain CenturyLink’s consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

The provisions of this agreement shall not be construed to constitute an amendment of the cable communications franchise ordinance or any portion thereof, but shall be in addition to and independent of any other similar provisions contained in the cable communications franchise ordinance or any other agreement of the parties hereto. The provisions of this agreement shall not be dependent or conditioned upon the validity of the cable communications franchise ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the parties hereto even if the cable communications franchise ordinance or the grant of the franchise is declared null and void in a legal or administrative proceeding.

It is the purpose of this agreement to provide maximum indemnification to City under the terms set out herein and, in the event of a dispute as to the meaning of this Indemnity Agreement, it shall be construed, to the greatest extent permitted by law, to provide for the indemnification of the City by CenturyLink. This agreement shall be a binding obligation of and shall inure to the benefit of, the parties hereto and their successor's and assigns, if any.

QWEST BROADBAND SERVICES, INC.

Dated: ___________ _____, 20__

By: ________________________________

Its: ________________________________

STATE OF LOUISIANA )
) SS
)

The foregoing instrument was acknowledged before me this _____ day of _____ 20__, by ________________________________, the ________________________________ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

______________________________
Notary Public
Commission Expires ________________

CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its ________________________________
Acomb asked if the widths were taken into consideration when the Seville project was approved. Gordon said he could not recall the specific number for Seville but the widths would have complied with the proposed ordinance.

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

13. **Public Hearings:**

   A. **Items related to the granting of a cable communications franchise**

   Assistant City Manager Perry Vetter gave the staff report.

   Brian Grogan, an attorney with Moss and Barnett, said he was representing the Southwest Suburban Cable Commission.

   Schneider closed the public hearing related to the qualifications that was opened May 18, 2015.

   Grogan noted the city and the cable commission adopted a 10 year cable franchise with Comcast in the fall of 2012 following lengthy negotiations. It was that document that served as the foundation for the negotiations with CenturyLink. The goal was to get as close to identical agreement with CenturyLink as possible. This would allow the two companies to equally compete in the market. He said the federal cable act was designed to promote competition and not to impose undue economic burdens on the cable operators. He said in negotiating the proposed agreement the commission had the benefit of reviewing other metropolitan area cities that had gone through the same process.

   Wagner said the city has had some issues with some of the utility partners with systems in the city’s right-of-way not being as responsive to non-service outage type activities. He said he spoke with Grogan about the issue last fall. In reviewing the proposed agreement, he noted he didn’t see any enhanced language to address the issue. He asked if the city at this stage had the ability to influence some customer service standards. Grogan said that the approach was to drive the company back to the city code rather than create a unique set of obligations that would apply only to the cable operator. He said there were provisions in the agreement that reference compliance with the city code, the pulling and payment of permits, and any conditions the city chooses to impose as part of granting the permit. This was done because the city has greater control in the city code to address the issues. If it was built into the franchise it would have
to be negotiated with the other party. He said the grantee in this case was Qwest Broadband Services, Inc. This company was the content provider. The company that owns all the wires in the streets in the city was Qwest Corporation. Qwest Corporation was not a party to the contract. He noted there was a guarantee obligation in the agreement that requires Qwest Broadband Services, Inc. to stand behind the performance of Qwest Corporation. If the city determines Qwest Corporation was failing to perform, then Qwest Broadband Services, Inc. has to stand behind the performance of Qwest Corporation or risk being in material violation of the franchise.

Wagner noted the city had major sewer and water construction projects going on and there were long delayed responses from some of the utilities providers in the right-of-way in terms of finishing up the work. He asked if the current city code allowed the city to enforce compliance as Grogan had suggested. He was concerned that he had not seen compliance through the city code. Barone said the city had a right-of-way ordinance that would be used for enforcement if needed. Part of the challenge last summer was some of the construction work was not in the right-of-way but instead involved the service line to the home. She said probably the most effective approach would be reviewing the right-of-way ordinance with the utility contractors prior to the new construction season to make sure they understood all the provisions. City Attorney Corrine Heine said she would research to what extent the city could regulate conduct outside of the right-of-way. Wagner said he was concerned given the issues last fall, that there was no escalation protocol in the agreement associated with the end service being delivered and how complaints are resolved.

Schneider said it would be a challenge to extend the city’s authority beyond the right-of-way. The strongest leverage might be the competition between the companies. If a customer doesn’t like the service being provided they now would have the option of changing to the other provider.

Barone noted there was a utility summit hosted by Hennepin County because the issue was not unique to Minnetonka. Staff also met with Comcast representatives recently to reiterate the issues and to see how the company’s customer service could be enhanced. She said in most cases the service was restored fairly quickly but the issue was the lines laying open in the yard or street for months. Wagner said many times the issue impacts people regardless if they were subscribers or not. He said there was an opportunity with this five year agreement and when the Comcast agreement comes up again to seek some enhanced resolution of customer complaints. He would ask the commission to consider some type of amendment to the agreement.
Acomb noted Grogan’s memo attached to the agreement included information about competitive equity between the two franchise agreements. She asked if one agreement were to change, if it would always require staying competitive with the other agreement. How would one company implement discounts for low income residents, seniors or those with disabilities if it wasn’t included in the original agreement? Grogan said it would be challenging. The state statute requires a level playing field in terms of franchise fees, Public Educational Governmental (PEG) access, and areas of service. The Comcast agreement contains a provision protecting them from the city granting a more favorable or less burdensome franchise. If the city were to offer a much more favorable franchise, Comcast could opt out of their contract and into the competitor’s franchise. He said in 2015 the Federal Communications Commission (FCC) essentially took what little rate regulation authority cities had and issued an order stating the all cities in the entire country were subject to effective competition. There is a pending legal challenge to the order. Acomb said because of the burden it seemed to her that made it much more important to include a provision in the original agreement. Grogan said the only previous regulation authority cities had was the ability to regulate the maximum permitted rate for basic service.

Barone noted the big picture issue was with two franchise agreements that were required to be substantially the same, if the city wanted to impose something new, it would be difficult if it wasn’t included in the original agreement. If renewal of the agreements occurred at different times it would be challenging to have any leverage to impose a change. Grogan said that was one of the reasons for the five year franchise term for this agreement. The Comcast franchise would expire around nine months later. This would allow the Southwest Suburban Cable Commission to renegotiate a potential change with both cable operators around the same time.

Wiersum said he was interested in the CenturyLink opportunity because he thought the competition would benefit residents. He asked if Grogan had any information from other cities and other parts of the country about what occurs with customer satisfaction and rates and other benefits when a second franchise enters a community. Grogan said the most objective information comes from FCC orders. He noted several phone companies have gotten into the cable business. What the FCC found was that the operators tend not to compete as much on price as one would hope. The operators understand that if they drive down to an at cost purchase price ultimately all systems would be doomed to fail. What they do compete with each other on were services including faster speeds, more channel offerings, more interactive services, greater choice with wireless modems
and other things that benefit the customer without increasing the rate. The FCC found the competition adds a stabilizing effect on rates mitigating the annual increases. Wiersum said his concern was the same as Wagner’s. Customer service was a very challenging realm in both the cable and cell phone industries. Anything that could be done to emphasize the need for good customer service and satisfaction would be beneficial for residents.

Schneider asked for clarification about the build out provision. He assumed CenturyLink could not guarantee a customer would subscribe but could provide the ability for the customer to subscribe. Once the fiber was available at the residence this would meet the build out criteria. It really was a zero sum game if a customer chose to switch because most of the city was already wired. Grogan said in the CenturyLink agreement a living unit was either made a qualified living unit or it stayed a living unit. A qualified living unit would have sufficient speed to support Prism. He agreed with Schneider’s comments about a zero sum game. The city gets a franchise fee from every customer Comcast provides cable services to. If CenturyLink comes in and takes five to ten percent of Comcast’s customers, it wouldn’t necessarily change the amount of revenue but would simply shift who the revenue comes from. He noted the FCC report showed there was some evidence that as advertisements start playing in the community there might be an increase in the overall subscribership. The Southwest Suburban Cable Commission was not anticipating an increase in revenue.

Schneider said looking at the general trends and direction things are going, the days when AT&T had a monopoly were long gone. Every action he sees happening from the federal level basically was removing local authority and control and granting free competition and access. He didn’t envision that five or ten years from now the city would have more authority to make changes so hopefully allowing more competition would mean the customers would be the ones that demand better service and follow up. Technology advances might also mean eliminating the need for wires in the ground. He wouldn’t suggest spending a lot of time addressing the issue other than for all utilities in the right-of-ways.

Grogan said he agreed with most of Schneider’s observations but he would not be surprised if five years from now the city would still be assessing the parity between the franchises and what the next franchise would look like.

Wiersum said one of the unfortunate consequences with increased competition was an increase in the number of advertisements.
Schneider opened the public hearing about the resolution relating to findings and fact at 7:37 p.m.

Kirstin Sersland, director of local government affairs for CenturyLink, thanked the council for considering the resolution to welcome CenturyLink to the city to provide some competition.

Schneider closed the public hearing at 7:37 p.m.

Allendorf moved, Wiersum seconded a motion to adopt resolution 2016-007. All voted “yes.” Motion carried.

B. Consider Competitive Franchise Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink

Wiersum moved, Wagner seconded a motion to introduce the ordinance granting a cable television franchise to CenturyLink. All voted “yes.” Motion carried.

14. Other Business:

A. Discussion regarding use of city water towers

Wischnack and Barone gave the staff report.

Jay Littlejohn, an attorney representing Verizon Wireless, said the request was for a single antenna on top of one of the water towers. The rest of the antennas could be located down below. He said after conducting an analysis, the city’s communications consultant agreed that an antenna needed to go at the height of the top of the water tower. Verizon understood that down the road a higher priority user might need the top of the tower. The companies were used to dealing with these types of issues all the time and they are often addressed in master agreements. He said Verizon didn’t have any problem taking the risk of having to move the antenna in the future if the space was otherwise needed. The devices were pervasive and many people only have a cell phone and no wired phone. This meant the companies had to be more careful about where the antenna are located so people have good signals everywhere.

Ellingson asked why the preference was to be located at the top of the water tower rather than on a monopole. Littlejohn said Verizon’s experience was there were routinely objections from neighbors about having to look at additional structures when an existing structure was already there.
Brief Description: Resolution for the 2016 Street Rehabilitation project for the Libb’s Lake area

Recommended Action: Adopt the resolution

Background

On October 12, 2015, the city council adopted a resolution authorizing the preparation of plans and specifications for the 2016 street rehabilitation project in the Libb’s Lake area. The following streets are included in the project:

Full Reconstruction (Libb’s Lake South)
- Woodlawn Avenue
- Prospect Place
- Shores Boulevard
- Larchmore Avenue
- Highland Avenue
- Lake Shore Boulevard
- Gray’s Bay Boulevard (South of Gray’s Bay/Libb’s Lake Bridge)
- Cottage Grove Avenue
- Edgewood Avenue
- Park Lane

Mill and Overlay (Libb’s Lake North)
- Fairchild Avenue
- Tonka Trail
- Tonkaha Drive
- Meadowbrook Lane
- Gray’s Bay Boulevard (North of Gray’s Bay/Libb’s Lake Bridge)

Proposed Improvements

Libb’s Lake Area North
The Libb’s Lake North area is proposed for a 2-inch mill and overlay. The watermain, sanitary sewer, and street subbase are in good condition so roadway reconstruction will be completed in the future when utility replacements are warranted. Public Works crews will complete the milling portion of this work in order to profile detailed minor street corrections.
**Libb’s Lake Area South**

The Libb’s Lake South area is proposed for a full watermain replacement, isolated sanitary sewer repairs, sanitary sewer forcemain replacement and lining, and full street reconstruction with concrete curb and gutter and storm sewer improvements.

The existing streets within this area range in width from 18 to 28 feet. The city’s standard street section is 26 feet wide with concrete curb and gutter. Due to narrow street corridors and impacts to natural features and in-place landscaping, the project is proposing to match all existing street widths.

During design of the full public watermain system replacement, staff found the existing hydrant locations did not meet typical standard spacing. As a result, 15 new fire hydrants were recommended by the city’s Fire Chief to improve fire protection coverage in the area, and are included in the project.

Proposed storm sewer improvements will provide additional surface drains where needed, and new pipe to improve conveyance of storm water. New storm water quality structures are proposed to filter storm water before entering adjacent wetlands and lakes.

**Lake Shore Boulevard**

The eastern portion of Lake Shore Boulevard adjacent to Libb’s Lake has experienced localized flooding for many years during large rain events. Staff further analyzed several potential options to alleviate localized flooding during these events, ranging from the installation of a lift station to the total take of private property to create a drainage pond. Being the localized flooding impacts do not create flooding to homes, staff could not justify these potential improvement options due to the substantial costs associated with them, however determined the best solution would be to add storm sewer features on the upstream and outer edges of the sub-watershed to reduce the amount of storm water runoff to this area. While the drainage issue will not be a perfect solution, the proposed will improve the existing conditions.

During final design, one of the property owners at the low point of Lake Shore Boulevard approached the city about purchasing their property for the construction of a stormwater pond. Staff is continuing to gather information about the costs and benefits that purchasing the property will provide, and if it is determined to be a cost effective solution to further improve the localized flooding conditions, staff will bring this item forward in the future for Council consideration as a stand-alone stormwater pond construction project. Construction of this pond will also apply to the city’s mandated phosphorus load reduction requirement from the Minnehaha Creek Watershed District. Dependent on actual bids received, funding for this work is likely available from storm water funds previously budgeted for this project.
Metropolitan Council Environmental Services
In collaboration with the Metropolitan Council Environmental Services (MCES), the replacement of a MCES manhole on Woodlawn Avenue is included in the city project. The MCES will complete a sanitary sewer lining project in this same area in 2017 and replacement of this manhole now will eliminate the need to dig into the city’s new road following this year’s reconstruction. MCES will fund this work and they are currently drafting an agreement for the manhole replacement to be reviewed by the city.

City Fiber Optic Line
Conduit for a future fiber connection will be added on Lake Shore Drive and Gray’s Bay Boulevard as a part of the project. The conduit will extend from Minnetonka Boulevard to the east side of Gray’s Bay Marina providing a future connection to both the marina and one of the city’s sanitary sewer lift stations.

Gray’s Bay/Libb’s Lake Bridge
The Gray’s Bay/Libb’s Lake Bridge was found to be structurally adequate and repairs or replacement are not justified at this time. Staff recommends that the bridge be replaced in the future at the time state bridge bonds are available or the condition necessitates its replacement. The bridge will continue to be reviewed on a 2-year cycle as a part of the city’s bridge inspection program.

Public Input and Project Issues

Informational meetings were held on October 1, 2015 for both the north and south Libb’s Lake areas. Staff presented the concept layout that incorporated the proposed street, storm sewer, and utility work. Residents were generally supportive of the project; many were well aware of the issues with the water main and were appreciative that the city will be replacing water main in areas to improve service reliability. Staff also discussed speed hump removal on Gray’s Bay Boulevard, tree loss and property impacts, project communications, and multiple ways to stay informed.

Since the October 12, 2015 council meeting, staff has continued to discuss and meet individually with residents regarding specific questions and concerns primarily focused on:

1. Tree loss/Property impacts/Retaining walls
2. Neighborhood character
3. Speed humps

The following is a summary of how staff has worked to address these issues.

Tree loss/Property impacts/Retaining walls
Many trees along the roadway will need to be removed for watermain or storm sewer installation. Staff has worked hard to reduce the number of trees affected, however the
existing watermain and storm sewer are located within feet of large trees in many areas throughout the entire project. The trees must be removed for safety purposes during, and following construction. Staff will again review tree removal limits in the field prior to construction in an effort to further reduce the number of trees proposed for removal.

The project will impact a significant amount of private landscaping and many private retaining walls located within the public right-of-way. Property owners will have the opportunity to move these items prior to construction. If the items are not moved prior to construction, the contractor will remove the landscaping and retaining wall blocks as part of the project. Retaining walls will only be replaced if the yards are too steep for grading within the right-of-way. Landscaping will not be replaced. This is the similar practice used on previous years’ reconstruction projects.

Roadways and driveways will be reconstructed to meet the city’s driveway ordinance. Approximately 78 driveways in the neighborhood have been identified as out of compliance. Generally, the maximum driveway width in the right-of-way for a two car garage is 20 feet and a three car garage is 30 feet. Most of the 78 driveways are 5 to 10 feet wider than allowed. However, there are several that are greater than 20 feet beyond the allowed width. These corrections are proposed to be made during the project and these residents will be notified prior to the change taking place.

**Speed Humps/Traffic Calming**

As previously discussed, the four existing speed humps on Gray’s Bay Boulevard between County Road 101 and the Gray’s Bay Dam will not be replaced with the project. In lieu of the speed humps, council requested that staff further review options for traffic calming on Gray’s Bay Boulevard. Below is a list of the items considered along with the decision staff made about their inclusion in the project.

- Lane striping to narrow drive lane – Not selected due to resident comments about how striping will change the feel of the neighborhood. Staff feels this would be an effective speed reduction method; however, due to feedback from the neighborhood, staff is not recommending at this time.
- Evaluation of speed limit signage – The signage spacing was evaluated and an additional speed sign was added.
- Meander roadway to eliminate straightaways – Not selected due to limited right of way and additional property and natural resource impacts.
- Additional street signage – Signage to eliminate cut-through traffic was reviewed, and staff is proposing signage at the marina on Gray’s Bay Boulevard stating “No Marina Traffic Beyond This Point.” to help reduce cut-through vehicles.
- Additional police enforcement – Selected as best alternative and most effective way to reduce speeds in this area.
Construction Coordination

Engineering staff has been working with the city’s new Communications Manager to create a communication plan to make certain construction information is easily accessible for residents. The plan will be presented to council at an upcoming meeting this spring prior to construction.

Estimated Project Costs and Funding

The total estimated construction cost, including engineering, administration, and contingency is $10,250,000. The budget amount for the project is shown below and is included in the 2016 – 2020 Capital Improvements Program (CIP). The attached “2016 Street Rehabilitation Funding Summary” provides a recap of estimated costs and funding sources for the current 2016 Minnetonka street and utility improvement projects. Balances in the Street Improvement Fund will accommodate current estimated total costs for the accumulation of projects scheduled in 2016. The CIP will need to be amended when contracts are awarded as more accurate estimates are known.

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<td>Easement Acquisition</td>
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<td>Utility Fund</td>
<td>$3,980,000</td>
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<tr>
<td>Storm Water Fund</td>
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<td><strong>$11,680,000</strong></td>
<td><strong>$10,250,000</strong></td>
<td><strong>$10,250,000</strong></td>
</tr>
</tbody>
</table>

Schedule

If the recommended actions are approved by council, staff is planning to open bids on March 1 with intentions of having council award the contract for this project on March 14. Construction will likely begin in late April or early May.

Recommendation

Adopt the attached resolution accepting plans and specifications and authorizing the advertisement for bids for the 2016 Street Rehabilitation Project No. 16401.
Submitted through:
   Geralyn Barone, City Manager
   Will Manchester, P.E., Director of Engineer

Originated by:
   Phil Olson, P.E., Engineering Project Manager
RESOLUTION NO. 2016

RESOLUTION ACCEPTING PLANS AND SPECIFICATIONS
AND AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR THE
2016 STREET REHABILITATION PROJECT, LIBB’S LAKE AREA

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 on October 12, 2015, 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 2016 Street Rehabilitation Project, Libb’s Lake area.

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 and read aloud at 10:00 a.m., local time, on March 1, 2016, in the Council Chambers at the Minnetonka city hall, and that no bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier’s check, bid bond or certified check made payable to the city clerk for five (5) percent of the amount of the bid.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 8, 2016.

Terry Schneider, Mayor

ATTEST:

_________________________________
David E. Maeda, City Clerk
ACTION ON THIS RESOLUTION:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on February 8, 2016.

__________________________________
David E. Maeda, City Clerk
### 2016 Street Rehabilitation Funding Summary

<table>
<thead>
<tr>
<th>Funding Sources</th>
<th>2016 CIP</th>
<th>2015 Carryover</th>
<th>Libb’s Lake Area</th>
<th>4th Street</th>
<th>Oakland Road</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Improvement Fund</td>
<td>$4,000,000</td>
<td>$300,000</td>
<td>$4,000,000</td>
<td>$63,000</td>
<td>$815,000</td>
<td>$(578,000)</td>
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<td>$-</td>
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<tr>
<td>Storm Sewer Fund</td>
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<td>MCES</td>
<td>$200,000</td>
<td>$-</td>
<td>$200,000</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td>$11,680,000</td>
<td>$1,000,000</td>
<td>$10,250,000</td>
<td>$63,000</td>
<td>$1,845,000</td>
<td>$522,000</td>
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</table>

1 Estimated Project Savings from 2015 Pavement Rehabilitation Project.
2 Based on the current estimate, the Capital Improvements Program (CIP) will likely need to be amended at the time of bid award to reflect additional funds needed for the street portion of the work.
2016 Rehabilitation Program

- Full Reconstruction Area
- Mill and Overlay Area

This map is for illustrative purposes only.
City Council Agenda Item #10  
Meeting of February 8, 2016

**Brief Description:** Resolution approving a Joint Powers Agreement with the city of Hopkins for 4th Street North

**Recommended Action:** Adopt the resolution

**Background**

The city of Hopkins reconstruction plan for 2016 includes a number of streets between Main Street and Trunk Highway 7 from 17th Avenue North to 21st Avenue North. The project area includes 4th Street North, which constitutes the city border between Minnetonka and Hopkins following the centerline of the street. The street has become deteriorated and is in need of repair. Both staffs believe the project is necessary and agree the city of Hopkins should take the lead on 4th Street North since their construction efforts were already scheduled in the area.

One Minnetonka property, a senior living facility located at 11400 4th Street North, is adjacent to the project area. Staff met with the facility’s management, which is supportive of the project, recognizing the need for the improvements.

The attached agreement, which has been approved by the city attorney, provides for this work to be done with the city of Hopkins taking the lead on the project, and Minnetonka agreeing to reimburse Hopkins for all work within Minnetonka. Combining 4th Street North with Hopkins’s other project will reduce mobilization costs and unit prices due to economies of scale. A similar agreement was used with the city of Hopkins for the 2015 Mill and Overlay Project.

**Estimated Project Cost and Funding**

<table>
<thead>
<tr>
<th></th>
<th>Proposed Funding</th>
<th>Expense</th>
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</thead>
<tbody>
<tr>
<td>Construction Costs w/Contingencies</td>
<td></td>
<td>$4,757,000</td>
</tr>
<tr>
<td>City of Minnetonka</td>
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</tr>
<tr>
<td>Street Improvement Fund</td>
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<td>$63,000</td>
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<tr>
<td>City of Hopkins</td>
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<td>$4,694,000</td>
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<tr>
<td><strong>Total Budget</strong></td>
<td><strong>$4,757,000</strong></td>
<td><strong>$4,757,000</strong></td>
</tr>
</tbody>
</table>

The total estimated cost for this project, including construction, engineering, and contingency is $4,757,000, with Minnetonka’s share being $63,000. The attached “2016
Street Rehabilitation Funding Summary" provides a recap of estimated costs and funding sources for the current 2016 Minnetonka street and utility improvement projects. Balances in the Street Improvement Fund will accommodate current estimated total costs for the accumulation of projects scheduled in 2016. The CIP will need to be amended when contracts for the larger projects are awarded as more accurate estimates are known.

Schedule

If the recommended action is approved by council, construction of the overall project is expected to begin in May, with the Minnetonka portion to begin in July, and completion by October 2016.

Recommendation

Adopt the attached resolution approving the Joint Powers agreement with the city of Hopkins for 4th Street North, included in the city of Hopkins 2016 Street and Utility Improvement Project.

Submitted through:
   Geralyn Barone, City Manager
   Will Manchester, P.E., Director of Engineering

Originated by:
   Jeremy Koenen, P.E., Assistant City Engineer
BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. It is recommended that the city of Minnetonka and the city of Hopkins enter into an agreement for the reconstruction of 4th Street North from 19th Avenue North to 21st Avenue North, in the City of Minnetonka.

1.02. The City Council of the city of Minnetonka deems it proper and in the public interest to enter into an agreement with the City of Hopkins for the 2016 Street and Utility Improvement Project.

Section 2. Council Action.

2.01. The Mayor and City Manager are hereby authorized and directed to execute an agreement with the city of Hopkins for the 2016 Street Improvement Project for 4th Street North, in the City of Minnetonka.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 8, 2016.

____________________________
Terry Schneider, Mayor

ATTEST:

____________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on February 8, 2016.

________________________________________
David E. Maeda, City Clerk
This map is for illustrative purposes only.
### 2016 Street Rehabilitation Funding Summary

<table>
<thead>
<tr>
<th>Funding Sources</th>
<th>2016 CIP</th>
<th>2015 Carryover ¹</th>
<th>Libb's Lake Area</th>
<th>4th Street</th>
<th>MCES</th>
<th>Oakland Road ²</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Improvement Fund</td>
<td>$ 4,000,000</td>
<td>$ 300,000</td>
<td>$ 4,000,000</td>
<td>$ 63,000</td>
<td></td>
<td>$ 815,000</td>
<td>$(578,000)</td>
</tr>
<tr>
<td>Local Street Preservation Fund</td>
<td>$ 1,000,000</td>
<td>$ -</td>
<td>$ 1,000,000</td>
<td>$ -</td>
<td></td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>Storm Sewer Fund</td>
<td>$ 2,500,000</td>
<td>$ 450,000</td>
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<td>$ 165,000</td>
<td>$ 685,000</td>
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<tr>
<td>Utility Fund</td>
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<tr>
<td>MCES</td>
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<td>$ 200,000</td>
<td>$ -</td>
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<td>$ -</td>
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<tr>
<td><strong>Total Project Cost</strong></td>
<td>$ 11,680,000</td>
<td>$ 1,000,000</td>
<td>$ 10,250,000</td>
<td>$ 63,000</td>
<td>$ 1,845,000</td>
<td>$ 522,000</td>
<td></td>
</tr>
</tbody>
</table>

¹ Estimated Project Savings from 2015 Pavement Rehabilitation Project.
² Based on the current estimate, the Capital Improvements Program (CIP) will likely need to be amended at the time of bid award to reflect additional funds needed for the street portion of the work.
JOINT POWERS AGREEMENT
BETWEEN THE CITY OF MINNETONKA AND THE
CITY OF HOPKINS
2016 STREET AND UTILITY IMPROVEMENTS

THIS AGREEMENT is entered into between the CITY OF HOPKINS, a
Minnesota municipal corporation (hereinafter referred to as "Hopkins") and the CITY OF
MINNETONKA, a Minnesota municipal corporation (hereinafter referred to as
"Minnetonka"), with the parties collectively hereinafter referred to as the "Cities".

WHEREAS, the Cities desire to implement the design and construction of the 2016
Street and Utility Improvements in the cities (the “Project”); and

WHEREAS, Minn. Stat. § 471.59 authorizes two or more governmental units to
enter into agreements to jointly or cooperatively exercise any power common to the
contracting parties or any similar power; and

WHEREAS, Hopkins has prepared plans and specifications dated December 30,
2015.

NOW, THEREFORE, in consideration of their mutual covenants the parties
agree as follows:

1. PLANS AND SPECIFICATIONS. Hopkins will prepare plans and
specifications for the Project consistent with Hopkins and Minnetonka design standards
for those parts of the Project located within their respective corporate boundaries.

2. BIDDING. Hopkins will advertise for bids for the construction of the
Project in accordance with Minnesota Law and will provide Minnetonka with an analysis
of the bids received. Hopkins must obtain Minnetonka’s concurrence with the award of
the bid to a contractor. Hopkins shall not enter into the contract with the approved bidder
or proceed with the Project until Minnetonka’s approval and concurrence with the award
of the bid and contract has been established by resolution approved by the Minnetonka
City Council.

3. CONTRACT AWARD. Hopkins shall prepare contract documents and
enter into a contract with the approved bidder.

4. COST ALLOCATION. Relevant project costs shall be paid 100% by each
party for the portion of the project located within its corporate boundaries. Project costs
are: engineering, inspection, testing, construction costs and other costs payable under the
contract entered into by Hopkins with the approved bidder.

5. **OWNERSHIP.** Each party shall own the portion of the Project located within its corporate boundaries.

6. **PAYMENT.** Hopkins will act as the paying agent for all payments to the Contractor. Payments will be made as the Project work progresses and when certified by the Hopkins Engineer. Hopkins, in turn, will bill Minnetonka for its share of the project costs. Upon presentation of such an itemized bill, Minnetonka shall reimburse Hopkins for its share of the costs incurred in accordance with this agreement within 30 days from the presentation of the claim. If any portion of an itemized bill is questioned by Minnetonka, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.

7. **CHANGE ORDERS AND SUPPLEMENTAL AGREEMENTS.** Any change orders or supplemental agreements that affect the project cost payable by Minnetonka and any changes to the plans must be approved by Minnetonka prior to execution of work.

8. **RULES AND REGULATIONS.** Hopkins shall abide by Minnesota Department of Transportation standard specifications, rules and contract administration procedures.

9. **INDEMNIFICATION.** Hopkins agrees to defend, indemnify, and hold harmless Minnetonka against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of Hopkins and/or those of Hopkins employees or agents. Minnetonka agrees to defend, indemnify, and hold harmless Hopkins against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement for which Minnetonka is responsible, including future operation and maintenance of facilities owned by Minnetonka and caused by or resulting from negligent acts or omissions of Minnetonka and/or those of Minnetonka employees or agents. A party’s agreement and obligation to defend, indemnify and hold the other party harmless shall not apply to any claims, liability, loss, damage or expense resulting from the acts or omissions of the contractor that is awarded the contract for the Project or any of the contractor’s employees, subcontractors, independent contractors or agents. Under no circumstances, however, shall a party be required to pay on behalf of itself and the other party any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for both parties may not be added together to determine the maximum amount of liability for either party. The intent of this
paragraph is to impose on each party a limited duty to defend and indemnify each other subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among the parties and to permit liability claims against both parties from a single occurrence to be defended by a single attorney.

10. **WAIVER.** Any and all persons engaged in the work to be performed by Hopkins shall not be considered employees of Minnetonka for any purpose, including Worker’s Compensation, or any and all claims that may or might arise out of said employment context on behalf of said employees while so engaged. Any and all claims made by any third party as a consequence of any act or omission on the part of said Hopkins employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of Minnetonka. A reciprocal disclaimer and waiver shall also apply: Hopkins shall not be responsible under the Worker’s Compensation Act or any claims that might arise out of said employment context for any employees of Minnetonka.

11. **AUDITS.** Pursuant to Minnesota Statutes § 16C.05, Subd. 5, any books, records, documents, and accounting procedures and practices of Hopkins and Minnetonka relevant to the Agreement are subject to examination by Hopkins, Minnetonka, and either the Legislative Auditor or the State Auditor as appropriate. Hopkins and Minnetonka agree to maintain these records for a period of six years from the date of performance of all services covered under this agreement.

12. **INTEGRATION.** The entire and integrated agreement of the parties contained in this Agreement shall supersede all prior negotiations, representations, or agreements between Hopkins and Minnetonka regarding the Project; whether written or oral.

13. **NOTICES.** Any notice, request or other communication that may be required under this Agreement, including payment requests under Paragraph 6, shall be delivered by first class United States mail or by facsimile transmission to Hopkins and Minnetonka at the following addresses and facsimile numbers:

- **If to Hopkins**
  
  City of Hopkins  
  1010 First Street South  
  Hopkins, MN 55343  
  Attention: Nate Stanley, City Engineer  
  Facsimile: 952-935-1834

- **If to Minnetonka**
  
  City of Minnetonka  
  14600 Minnetonka Boulevard  
  Minnetonka, MN 55345  
  Attention: Will Manchester, City Engineer
Facsimile: 952-939-8344

Notices that are mailed shall be deemed to have been delivered one business day after being deposited with the United States Postal Service. Notices that are delivered by facsimile shall be deemed to have been delivered upon confirmation of facsimile transmission.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized officials.

CITY OF MINNETONKA

BY: __________________________
    Terry Schneider, Mayor

AND __________________________
    Geralyn Barone, City Manager

CITY OF HOPKINS

BY: __________________________
    Molly Cummings, Mayor

AND __________________________
    Mike Morrison, City Manager
City Council Agenda Item #10D
Meeting of February 8, 2016

**Brief Description**

Items concerning a licensed daycare facility at 10401 Bren Road East:

1) A conditional use permit; and
2) Final site and building plans

**Recommendation**

Adopt the resolution approving the request

**Proposal**

Yellow Brick Road Early Childcare Center Inc. currently operates a childcare center in Plymouth. Yellow Brick Road, represented by Kristy Couture, is proposing to open a second location at 10401 Bren Road East. To accommodate the daycare, a significant amount of interior remodeling is proposed. Additionally, a portion of an existing parking lot would be converted to accommodate a fenced-in play area. The proposal requires a conditional use permit and approval of site and building plans.

**Planning Commission Hearing**

The planning commission considered the request on January 21, 2016. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1-A16. At the meeting, a public hearing was opened to take comment but no one appeared to speak. Following the public hearing, the commission asked staff and the applicant to comment on safety concerns related to the proposed daycare’s proximity to the future light rail.

**Planning Commission Recommendation**

On a 5-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes may be found on page A26.

**Since Planning Commission Hearing**

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

**Staff Recommendation**

Adopt the resolution on pages A18–A25, approving the request.
Meeting of February 8, 2016
Subject: Yellow Brick Road Daycare, 10401 Bren Road East

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

Originator: Ashley Cauley, Senior Planner
MINNETONKA PLANNING COMMISSION
January 7, 2015

Brief Description
Items concerning a licensed day care facility at 10401 Bren Road East:

1) Conditional use permit; and
2) Final site and building plans

Recommendation
Recommend the city council approve the requests.

Introduction

Yellow Brick Road Early Childcare Center Inc. currently operates a childcare center in Plymouth. Yellow Brick Road, represented by Kristy Couture, is proposing to open a second location in the existing building at 10401 Bren Road East. At full capacity, the facility would be licensed for up to 135 students. Typical hours of operation would be from 6 a.m. to 6 p.m. Monday through Friday. (See the “Supporting Information” section of this report for more information.)

To accommodate the daycare, the applicant is proposing a significant amount of interior remodeling. No external modifications are proposed for the building at this time. The applicant submitted a site plan which converts a portion of the parking lot into a fenced-in play area. The proposal requires a conditional use permit and site and building plan approval. (See plans on pages A1-A7.)

Staff Analysis

A land use 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 daycare facility and staff’s findings.

1. Is the use generally reasonable?

Yes, the conditional use permit request is appropriate and would meet the standards outlined in city code. While the city’s industrial district does not contain any provisions for schools, daycares, institutions or gathering spaces, the ordinance does allow – as conditionally permitted uses – public buildings and “other uses similar to those permitted in this section, as determined by the city.”

On several occasions, the city has reviewed daycares and schools under this “other uses similar to” provision. The city has found that daycares and schools
operate similarly to public buildings in which large groups of people gather at specified times for a specified purpose.

The only conditional use permit standard required by ordinance for public buildings is that the proposal must receive site and building plan approval. The proposal would meet all of the required standards for site and building plan approval. The standards and staff’s findings are outlined in the “Supporting Information” section of this report.

2. Would the specific proposal be appropriate for the site?

Yes, the proposed facility would be appropriate for the site. The subject property is in a mixed use area of residential, industrial and commercial land uses.

Traffic and transportation

Properties within the Opus Overlay District are allocated a maximum number of p.m. peak hour trips to avoid overloading the Bren Road and TH 169 interchange. The allocated number is not the number of trips at the driveway. Rather the maximum allocation is based on the zoning, land use and number of trips anticipated to use the interchange based on its proximity to the interchange. By ordinance, the subject property is allocated a maximum of three p.m. peak hour trips. At the request of the applicant, the city secured WSB & Associates to review the proposal for potential impacts of the proposal within the Opus area.

In addition to the review of the Institute of Traffic Engineers (ITE), WSB studied traffic patterns at the existing Yellow Brick Road site in Plymouth and the impact of the upcoming SWLRT on the proposal. The study found that the proposed daycare would generate seven p.m. peak hour trips to the interchange. This is four additional trips to the interchange than what is allocated for the property. As such, a trip generation fee is required to “purchase” the additional trips. More information can be found in the “Supporting Information” section of this report. (See pages A9-A16 for the full traffic study.)

Upcoming LRT

It is anticipated that construction of the Southwest Light Rail Transit (SWLRT) will begin in 2017. The design plans are still being formally developed. However, from the Opus Station the LRT line would generally run directly south to County Road 62. As shown on the current plans, the line would be located just to the west of the building on the subject property. (See pages A8.)

To accommodate the impact of the SLWRT on the Opus area, several road reconfigurations are proposed as city road projects. As proposed, Bren Road would be split into dual two way traffic, Yellow Circle Drive would be converted into a cul-de-sac and the traffic direction on Red Circle Drive would be reversed. It
should be noted, that these configurations would only occur if the SWLRT is implemented. The image below is intended to illustrate these reconfigurations.

The proposal would not negatively impact the implementation of the SWLRT or the reversal of Red Circle Drive. However, as noted in the traffic study prepared by WSB & Associates, the implementation of the SWLRT and the reversal of Red Circle Drive would reduce the number of trips generated to the interchange.

**Summary Comments**

Staff finds that the proposal would be an appropriate use of the site and would not have significant impacts on the surrounding area. Staff also finds that the proposal would not negatively impact upcoming improvements, including the road reconfigurations and light rail transit.

**Staff Recommendation**

Recommend that the city council adopt the resolution on pages A18-A25. This resolution approves a conditional use permit and site and building plans for a licensed day care facility at 10401 Bren Road East.
Meeting of January 21, 2016
Subject: Yellow Brick Road Daycare, 10401 Bren Road East

Originator: Ashley Cauley, Senior Planner
Through: Susan Thomas, AICP, Principal Planner
Meeting of January 21, 2016
Subject: Yellow Brick Road Daycare, 10401 Bren Road East

Supporting Information

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<th>Project No.</th>
<th>15035.15a</th>
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<td>Property</td>
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<tr>
<td>Applicant</td>
<td>Kristy Couture, on behalf of Yellow Brick Road Child Care, Inc.</td>
</tr>
<tr>
<td>Surrounding Land Uses</td>
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<tr>
<td>Northerly:</td>
<td>office building, zoned B-2, guided for mixed use</td>
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<tr>
<td>Easterly:</td>
<td>Distribution warehouse, zoned I-1, guided for mixed use</td>
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<td>Southerly:</td>
<td>Office buildings, zoned I-1, guided for mixed use</td>
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<td>Westerly:</td>
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</tr>
</tbody>
</table>

Site Features

The subject property is 1.2 acres in size and is improved with a surface parking lot and a 13,500 square foot warehouse. The property currently has access to Bren Road East via a shared access to the north and Yellow Circle Drive to the east. A 42-inch storm pipe and a paved pedestrian trail, that connects into the Opus pedestrian trail system, spans the south property line. The northern portion of the property is relatively flat. However, to accommodate the existing pedestrian tunnel, the property has some topography changes on the southern part of the property and the trail sits “lower” than the existing building. (See existing conditions survey on page A3.)

Proposed Daycare Use

At full capacity, the daycare would serve up to 135 children, ages birth to five years, and would employ up to 29 employees. Typical hours of operation would be from 6:00 a.m. to 6:00 p.m. Monday through Friday. Occasionally, the space may be used during the evening and weekends for parent educational classes, conferences and programs.

The interior of the existing building would be remodeled to accommodate administrative offices, lounge areas, conference rooms and daycare rooms. (See narrative and plans on pages A2-A7.)

Parking Lot and Outdoor play area

Generally, city code parking requirements are based on land use and the size of the building in which that land use is occurring. However, this is not the case for daycare uses. Rather, city code parking requirements are related to the amount of users rather than the size of the occupied space.
By ordinance, one parking space must be provided for every six children based on the licensed capacity of the facility. As proposed, the facility would require 23 parking stalls.

The existing parking lot has 40 parking spaces. Three of which are proposed to be removed to accommodate the outdoor play area. Included as a condition of approval, the play area must be relocated outside of existing easements. This relocation will likely require the removal of additional parking stalls. Staff believes the removal of additional stalls will still allow for the required minimum of 23 parking spaces. Nonetheless, staff has included a condition of approval requiring that a minimum of 23 stalls be available on the property.

Traffic Generation

To avoid overloading the Bren Road and TH 169 interchange, all non-residential parcels within the Opus District are subject to trip generation requirements. Following the construction of the Bren Road Interchange, each property was allocated a maximum number of p.m. peak hour trips based on the property's development potential and current zoning standards. It is important to note that this number is not the number of trips at the property driveway, but rather the number of trips calculated to use the interchange. By ordinance, the subject property is allocated three p.m. peak hour trips. This assumes that 20 percent of the trips to and from the property will use the interchange.

By ordinance, a site redevelopment which would increase the amount of trips generated to the interchange is required to pay a trip generation fee. Generally, the city reviews trip generation rates provided by the Institute of Traffic Engineers (ITE). By the ITE, the trip would generate a total of 22 p.m. peak hour trips.

At the request of the applicant the city secured WSB & Associates to perform a traffic study. The full study can be found on pages A9-A16. In summary, the study found:

- Using ITE rates, and the assumption that 20 percent of the trips would use the interchange, the proposal would result in 22 p.m. peak hour trips. This is 19 trips over the properties allocation.

- Trip counts observed at the existing facility in Plymouth resulted in a lower trip generation than expected, reducing the number of trips from 22 to 17, which is 14 trips over the allocation.
Using information gathered from Sunrise Montessori School, north of Bren Road East, it estimated that 20 percent of the students enrolled in the school have parents or guardians who live or work in the Opus area. This reduces the number of trips from 17 to 14, which is 11 trips over the allocation.

The implementation of SWLRT and the reversal of Red Circle Drive will further reduce the number of trips anticipated to use the interchange from 20 percent to 10 percent. This reduces the number of trips to the interchange from 14 to 7 trips, which is 4 trips over the allocation.

Ultimately, the study found that the proposal would generate an additional four trips to the interchange and would require a trip generation fee to “purchase” more trips. This allocation assumes the implementation of the SWLRT and the reversal of Red Circle Drive. In the event that neither occur, the applicant would be responsible to “purchase” the additional seven trips. This has been added as a condition of approval.

CUP Standards

The proposal would meet the general conditional use permit standards as outlined in City Code §300.16 Subd.2:

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

   Finding: A public building is a conditionally-permitted use within the industrial district. The city has conditionally allowed daycares as a use similar to a public building under the “other uses similar to” section of this ordinance.

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

   Finding: The site is part of the Opus 2 development, which is guided for mixed use. The larger development includes industrial, commercial, office, and residential land uses.

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 the city’s building, engineering, planning, natural resource and fire staff. Included as a condition of approval, the outdoor play area
must be relocated or reconfigured out of the existing drainage and utility easement at which time the proposal would not have any undue adverse impacts on existing or proposed services and facilities, including proposed SWLRT improvements.

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

   **Finding:** The proposal is consistent with the city’s water resources management plan. No significant changes are proposed to the property at this time.

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

   **Finding:** The majority of the performance standards outlined in the zoning ordinance are related to development and construction. The proposal is for the use of an existing building with minimal impacts to the site and exterior building. As such, a majority of the standards are not applicable.

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

   **Finding:** Staff does not believe that the proposal would have an undue adverse impact on the public’s health, safety or welfare.

**Specific CUP Standards and Site and Building Plan Standards**

City Code §300.21 Subd. 6(e) requires that public buildings must meet site and building plan standards as outlined in City Code §300.27. As the applicant is also requesting site and building plan approval, staff has included the standards and findings for both below:

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

   **Finding:** The proposal has been reviewed by the city’s building, engineering, planning, natural resources, and fire staff to ensure consistency with the city’s development guides.

2. consistency with this ordinance;
Finding: The proposal meets all minimum ordinance requirements.

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

Finding: At this time, the only exterior improvement is the conversion of a small portion of the existing parking lot and the construction of an outdoor play area. Included as a condition of approval, the applicant must submit a revised site plan and grading information for the outdoor play area. Staff will review the plan to ensure the proposal continues to reasonably preserve the site's natural state.

4. creation of a harmonious relationship of buildings and open space with natural features and with existing and future buildings having a visual relationship to this development;

Finding: Staff reviewed the proposal to determine if it would have an adverse visual impact on existing and future developments. Staff determined that the proposal would not negatively impact the visual appearance of the property. However, the visual appearance of the surrounding area will change over time based on the subject property’s proximity to the future LRT line. Notably, the building on the property to the west will be removed in order to accommodate the future line. Further, based on the most recent LRT plans, grading for the line may extend into the subject property in order to raise the line approximately five feet above the existing grade.

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 site and provision of a desirable environment for occupants, visitors and the general community;

Finding: As currently proposed, a play area would be located on the southeast side of the building. This location would have little to no impact on the property’s interior circulation or sense of order. Included as a condition of approval, the applicant must relocate or reconfigure the outdoor play area out of the city’s easement. Staff will
review the revised plan to ensure it would not negatively impact the site’s circulation.

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

**Finding:** As proposed, the proposal would have minimal impact on the existing open space on the property. Nonetheless, included as a condition of approval, the applicant must submit a landscaping plan. Further, mitigation would be required for the removal of landscaping on the property.

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

**Findings:** No changes to the exterior of the building are proposed at this time.

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

**Finding:** The applicant is proposing to convert a small portion of the existing parking lot into a fenced-in play area on the southeast side of the building. As proposed, the play area would not negatively impact the circulation of the site. Staff believes the play area can easily be relocated without negatively impacting existing circulation patterns.

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

**Finding:** The proposal is for the reuse and remodel of an existing building.

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

Finding: The proposal would not negatively impact adjacent or neighboring properties.

Neighborhood Comments
The city sent notices to 24 area property owners and received no comments to date.

Motion Options
The planning commission has the following motion 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 request. 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.

Deadline for Decision
April 7, 2016
Location Map

Project: Yellow Brick Rd
Address: 10401 Bren Road E
(15035.15a)

City of minnetonka

This map is for illustrative purposes only.
Yellow Brick Road (YBR) intends to use the property at 10401 Bren Road East for early childhood development with the capacity of 135 students specializing in ages birth thru 5 years. In this single tenant space, we will have three infant rooms, two wobbler rooms, two exploring preschool rooms, two preschool rooms, and two prek rooms, as well as a gross motor area. All of our classrooms will follow NAEYC (National Association of the Education of Young Children) recommendations of 50 sq. ft. and all will include the standard requirement of sinks and toilets.

Administrative offices, a staff lounge, conference room, teacher work room and prep kitchen will also be included in the facility. On the East side of the building towards the back there will be two outdoor playgrounds, one for students up to three years of age and the other for students three and older. We intend to have enough space with in the outdoor area to plant a vegetable garden to enhance the students learning. The outdoor spaces will be fenced for the protection of the students.

YBR operates Monday thru Friday from 6am-6pm. On occasion, the space maybe used on nights and weekends for parents education classes, conferences and programs.

YBR will employ up to 29 early education professionals. The parking lot on the North side of the property will be used for employee parking. The Northeast corner of the parking lot will remain available for parents and will have at least 26 parking spaces available and meet ADA requirements for parking.

We are aware that the one way road system currently in affect will be changed to accommodate dual way traffic. This enhancement to the road way, will be a benefit to all the families that we will be serving in the area by allowing for easier access to our program. The time of day that traffic will be the heaviest will be 7:45-8:15am and 4:45-5:15pm. With a large parking lot to accommodate this, it should not impact local traffic patterns.

YBR has been in business for over ten years, is a four star parent aware and NAEYC accredited program. We are dedicated to supporting the families we serve and the community that supports them. We are excited for YBR to be entering your community and look forward to the impact we can make together.
ALTA/ACSM Land Title Survey for:
WL REAL ESTATE HOLDINGS, LLC
of 10401 Bren Road East
Minnetonka, Minnesota

Notes:
- Boundaries shown are based on the plat of SPHERE 2 FOURTH
  MINNESOTA.
- Utilities shown are from information furnished by the City of
  Minnetonka, Hennepin County, Hennepin County Water
  Service District, and Dakota County.
- Other utility companies and services not shown or
  referenced elsewhere.
- All other survey data furnished by the City.
- Contact John Vroom of the City of Minnetonka at 952-949-6502.
- Area = 55,980 square feet (1.30 acres).
- Number of interior parking stalls on site = 42.
- Lighting = 128 total.
- Roof slope rate = 1:12.
- This property is located in the FEMA flood plain designated as a
  flood zone E. The surveyor and developer are not responsible for
  any required flood insurance on the property. The surveyor and
  developer may prepare a flood elevation certificate, to be
  completed by a registered professional engineer based on the City
  of Minnetonka site plan and reflect current 2007 standards.

EASEMENT NOTE

This property is subject to a permanent easement under, along and
over the easements as shown on the plat of Yellow Brick Road
Daycare, under and over the easements as shown on the plat of
Bren Road Daycare, under and over the easements as shown on the
plat of OPUS 2 Addition, under and over the easements as shown on
the plat of Bren Road East.

Property Description:
Lot 9, Block 11, First Addendum, Hennepin County, Minnesota.

Together with an easement for the installation, maintenance and operation of a
flood plain, required by flood plain regulations.

Easement:
- Easement for OPUS 2 Addition.
- Easement for Bren Road East.
- Easement for Yellow Brick Mini Storage.

Survey:
- Construction of site plan for Yellow Brick Mini Storage.
- Construction of site plan for Bren Road East.
- Construction of site plan for OPUS 2 Addition.

Surveyor:

Survey Certification:
- Andrew Shaw, Registered Surveyor, Minnesota.

Rehder & Associates, Inc.
CIVIL ENGINEERS AND LAND SURVEYORS
3445 Federal Drive • Suite 246 • Eden Prairie, Minnesota • Phone (952) 455-3051
E374 - 12/1/2013

Yellow Brick Road Daycare
10401 Bren Road East
15035.15a
The information on this site plan was taken from a survey prepared by Rehder and Associates, Inc. on 04-09-07.
Proposed REMODEL For:

YELLOW BRICK ROAD
10401 Bren Road East
Minnetonka, MN 55343
EXISTING FLOOR PLAN

SCALE: 1" = 20'-0"

Proposed REMODEL For:

YELLOW BRICK ROAD
10401 Bren Road East
Minnetonka, MN 55343

ISSUE/REVISIONS
12-09-15

YELLOW Brick Road Daycare
10401 Bren Road East
15035.15a
## ENROLLMENT SUMMARY

- **INFANTS:** 3 ROOMS x 9 = 27
- **WOBBLERS:** 2 ROOMS x 8 = 16
- **EARLY:**
  - **PRE-SCHOOL:** 2 ROOMS x 12 = 24
  - **PRE-SCHOOL:** 2 ROOMS x 17 = 34
- **PRE-KINDERGARTEN:** 2 ROOMS x 17 = 34

**TOTAL STUDENTS = 135**

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### PROPOSED FLOOR PLAN

**SCALE:** 1" = 20'-0"

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**Paul Meyer Architects, Inc.**

15650 36TH AVENUE NORTH, SUITE 170
PLYMOUTH, MINNESOTA  55446
TEL 763-557-9081 / FAX 763-557-9233

**PROJECT #:** 15256

**NORTH**

---

**Proposed REMODEL For:**

**YELLOW BRICK ROAD**

10401 Bren Road East
Minnetonka, MN 55343

**ISSUE/REVISIONS**

12-09-15

A1

Yellow Brick Road Daycare
10401 Bren Road East

15035.15a
Memorandum

To: Ashley Cauley, Planning
   City of Minnetonka

From: Anthony Heppelmann, PE

Date: December 30, 2015

Re: Yellow Brick Road Daycare Traffic Study
   WSB Project No. 1502-64

Introduction

Yellow Brick Road Daycare is proposing to use the property at 10401 Bren Road East for an early childhood development center with the capacity for 135 students ranging in age from birth thru 5 years. The site location is shown on Figure 1. The company will operate Monday thru Friday from 6am to 6pm. On occasion, the space may be used on nights and weekends for parent education classes, conferences and programs. The purpose of this traffic study is to determine the following.

1. The maximum number of pm peak hour trips at the Bren Road and TH 169 interchange that will be generated by the site between the hours of 4:00 pm and 6:00 pm. The site is located within the Opus Industrial Park which has a trip generation ordinance that requires purchase of additional capacity at the Bren Road and TH 169 interchange if the site will generate more trips to the interchange than is allocated in the ordinance. This site has been allocated 3 pm peak hour trips based on the current industrial zoning of the site. This study estimates the number of pm peak hour trips that will be added to the Bren Road and TH 169 Interchange from the proposed land use.

2. The potential impacts on traffic operations on other roadways within the Opus Industrial Park. The trip generation estimate above addresses the potential impacts and mitigation associated with the Bren Road and TH 169 interchange. However the site access on Bren Road is evaluated to determine if any modifications are required at the access to the site. This analysis also considers the impacts of SWLRT and the reversal of Red Circle Drive.
Projected Trip Generation for Yellow Brick Road Daycare

The trip generation for the Yellow Brick Road Daycare was estimated using two different methods. The first method uses the applicable trip generation rates from the Institute of Transportation Engineers Trip Generation Manual (9th Edition). The second method estimates the trip generation based on the surveyed trip generation rates at Yellow Brick Road’s current facility at 16,000 41st Avenue North, Plymouth, Minnesota.

Table 1 shows the estimated trip generation for the proposed daycare based on the Institute of Transportation Engineers (ITE) Trip Generation Manual average trip generation rates. The average trip generation rates were based on 72 studies. The range in rates varied from .24 to 1.72. The Trip Generation Manual also provides an equation for a fitted curve. Based on this equation the proposed land use would generate 98 pm peak hour trips.

Table 1
Estimated Peak Hour Trip Generation of Yellow Brick Road Daycare in Opus
Based on Average ITE Trip Generation Rates (9th Edition)

<table>
<thead>
<tr>
<th>Average Trip Rate/Student</th>
<th>Estimated Trip Generation 1/</th>
</tr>
</thead>
<tbody>
<tr>
<td>In</td>
<td>Out</td>
</tr>
<tr>
<td>PM peak hour</td>
<td>0.38</td>
</tr>
</tbody>
</table>

1/ Estimated Student Count of 135 Students

Based on discussions with the Yellow Brick Road Daycare they believe that this estimate is way above what they would generate for two reasons. First, many of their students have a sibling in the program and parents or guardians pick up more than one student. Second, some of the students have parents or guardians who work at the center. In order to determine the effect of these factors, WSB counted the traffic at an existing Yellow Brick Road daycare located in the City of Plymouth. This daycare currently has 62 students. This center has many parents and guardians who have 2 or 3 students in the program.

The traffic was counted on Tuesday, December 22, 2015. The owner indicated that all of the students were in attendance on the day of the count. The hours of operation for the Plymouth facility are the same as those proposed for the Opus site. Table 2 shows the traffic volumes that were counted during the pm peak hour between 4:00pm and 6:00pm. Table 2 also shows the current trip generation rates for the site based on the counted trips.

Table 2
Peak Hour Trip Generation of Yellow Brick Road Daycare in Plymouth
Trip Ends based on counts on 12-22-2015

<table>
<thead>
<tr>
<th></th>
<th>In</th>
<th>Out</th>
<th>Total</th>
<th>In</th>
<th>Out</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>PM peak hour</td>
<td>20</td>
<td>19</td>
<td>39</td>
<td>0.32</td>
<td>0.31</td>
<td>0.63</td>
</tr>
</tbody>
</table>

1/ Current Student Count of 62 Students

This is below the ITE average rate and fitted curve but is within the range of the ITE surveys. It is also consistent with an average of 2 students per parent which would result in a trip generation rate of approximately 0.62 trips per student (62 students/2 students per vehicle *2 trips per vehicle –in and out). Not all students are picked up during the peak hour and there are some separate employee trips.

Table 3 shows the estimated trip generation for the proposed daycare in Opus based on the trip generation rates from the Plymouth daycare facility.

Table 3
Estimated Peak Hour Trip Generation of Yellow Brick Road Daycare in Opus Based on Trip Generation Rate from Plymouth facility

<table>
<thead>
<tr>
<th></th>
<th>Average Trip Rate/Student</th>
<th>Estimated Trip Generation 1/</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In</td>
<td>Out</td>
</tr>
<tr>
<td>PM peak hour</td>
<td>0.32</td>
<td>0.31</td>
</tr>
</tbody>
</table>

1/ Estimated Student Count of 135 Students

The 85 pm peak hour trips is slightly less than the number from ITE rates but well within the range of ITE’s survey data.

Trip Distribution and Estimated Trips to Bren Road Interchange

The Trip Generation ordinance for the Opus Industrial Park assumes that 20% of the traffic generated by this site will use the Bren Road and TH 169 Interchange. Assuming 20 percent of the traffic uses the Bren Road and TH 169 interchange and the site pm peak hour trip generation of 109 (based on ITE Trip Generation rates), the site would add 22 pm peak hour trips to the Bren Road and TH 169 interchange, which is 19 trips over the site allocation of 3. Assuming 20 percent and the site trip generation of 85 pm peak hour trips (based on the surveyed trip
generation rates) would result in 17 trips added to the Bren Road and TH 169 Interchange, which is 14 trips over the allocation for the site.

Yellow Brick Road daycare believes that a significant number of students will have parents who live or work within the Opus Industrial Park and therefore this will reduce the percentage that will use the Bren Road and TH 169 Interchange or they are already accounted for in the trip generation of other sites in the area. WSB checked with the Sunrise Montessori School on Bren Road East to see how many students had parents who lived or worked in the Opus Park. They indicated that 7 of the 35 students had parents who lived or worked in the Opus Park. This is 20 percent of the students. A 20 percent reduction in trips to the Bren Road Interchange for parents who live or work in the Park would reduce the trips to the Bren Road Interchange from 17 to 14.

**Potential Impacts on Trip Distribution from Implementation of SWLRT and Reversal of Red Circle Drive**

The implementation of SWLRT will change the access to the site and how traffic gets to the site. The proposed reconfiguration in the area of the site is shown on Figure 2. In the current conditions traffic from the Bren Road and TH 169 interchange would take Bren Road West to the connection to Bren Road East and follow Bren Road East to the site. To exit they would be able to access Bren Road East and follow Bren Road East to the Bren Road and TH 169 Interchange. Based on this configuration it was estimated that 20 percent of the traffic generated by this site would use the Bren Road and TH 169 Interchange.

In the future with implementation of the SWLRT and the reversal of Red Circle Drive it will be more difficult to get to or from the site from the Bren Road and TH 169 Interchange. Traffic from the Bren Road and TH 169 Interchange would take Bren Road West to Green Oak Drive to Bren Road East to Blue Circle Drive to Yellow Circle Drive to the site. Traffic leaving the site can only go west on Yellow Circle Drive to Shady Oak Road. At Shady Oak Road they can go south and use TH 62 or go north on Shady Oak Road. Traffic could go south and access Red Circle Drive to Blue Circle Drive to Bren Road East, but this is very circuitous. Because of the circuity of access back to the Bren Road and TH 169 Interchange from the site, very little if any of the exiting traffic would be expected to use the interchange. In the future with the implementation of SWLRT and the reversal of Red Circle Drive it is estimated that only 10 percent of the traffic generated by this site would use the TH 169 and Bren Road Interchange.

This would cut the number of trips generated by this site at the Bren Road and TH 169 interchange in half, reducing the estimated 14 pm peak hour trips to the interchange to 7 pm peak hour trips. This is 4 trips over the allocation for the site.
Figure 2

Proposed Realignment with SWLRT and reversal of Red Circle Drive
Impact on Bren Road East and Yellow Circle Drive Traffic Operations

The proposed land use on this site will generate 85 pm peak hour trips at the driveway access to the site with about 43 inbound and 42 outbound. The additional 42 trips at this location will have very little impact on the traffic operations on Bren Road East or Yellow Circle Drive. The traffic exiting the site will have a stop condition but should find more than enough gaps in traffic to safely enter either Bren Road East or West Circle Drive.

Conclusions

The following conclusions were reached from the analysis that was conducted for this traffic study of the proposed Yellow Brick Road Early Childhood Development center.

- Yellow Brick Road Daycare is proposing to use the property at 10401 Bren Road East for an early childhood development center with the capacity for 135 students ranging in age from birth thru 5 years.

- The site is located within the Opus Industrial Park which has a trip generation ordinance that requires purchase of additional capacity at the Bren Road and TH 169 interchange if the site will generate more trips to the interchange than is allocated in the ordinance. This site has been allocated 3 pm peak hour trips based on the current industrial zoning of the site.

- Using ITE Rates and the assumption that 20% of the site generated traffic will use the Bren Road Interchange will result in 22 pm peak hour trips to the Bren Road and TH 169 Interchange, which is 19 trips over the allocation for this site.

- A survey of the trip generation rates at a similar facility in Plymouth resulted in a lower estimate of the trip generation for the proposed site which reduces the estimated pm peak hour trips at the Bren Road and TH 169 interchange from 22 to 17, which is 14 trips over the allocation.

- Some of the parents and guardians who have students enrolled at the daycare will live and work in the Opus Park and not add trips to the interchange. The Sunrise Montessori school on Bren Road East estimated that 20% of their students have parents or guardians who live or work in the Opus Park. A 20 percent reduction would reduce the number of trips to the Bren Road and TH 169 Interchange from 17 to 14, which is 11 trips over the allocation.

- The implementation of the SWLRT and the reversal of Red Circle Drive will reduce the number of trips from this site at the Bren Road and TH 169 Interchange from 20% to 10%. This would reduce the actual number of pm peak hour trips to the Bren Road and TH 169 interchange from 14 to 7, which is 4 trips over the allocation.
• WSB recommends that the best estimate of trips from the proposed use on this site to the Bren Road and TH 169 with the implementation of SWLRT and the reversal of Red Circle Drive is 7 pm peak hour trips, which is 4 trips over the allocation for the site.

• The existing roadway system that provides the direct access to the Yellow Brick Road site currently operates at a very good level of service since there are no conflicting flows. The pm peak hour trip generation from this site will have very little impact on the traffic operations on Bren Road East or Yellow Circle Drive.

• The future roadway system with the reversal of Red Circle Drive will also operate at a very good level of service. Again the proposed land use will have very little impact on the traffic operations for Yellow Circle Drive.
Resolution No. 2016-
Resolution approving a conditional use permit and final site and building plans for a licensed daycare at 10401 Bren Road East

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

Section 1. Background.

1.01 Yellow Brick Road Early Childhood Center Inc., represented by Kristy Couture, has requested a conditional use permit for a licensed day care to occupy an existing building.

1.02 The property is located at 10401 Bren Road East. It is legally described as follows:

Lot 5, Block 11, Opus 2 Fourth Addition, Hennepin County, Minnesota.

Together with an easement for the installation, maintenance and operation of a driveway created by deed document recorded December 16, 1977, as Document No. 4342176, and referred to in Deed Document No. 4402360, over, upon and across that portion of Lot 4, Opus 2 Fourth Addition, described as follows: Commencing at the Northeast Corner of said Lot 4; thence South 7 degrees 14 minutes 43 seconds West along the East line of Said Lot 4 for a distance of 55 feet; thence Westerly, at a right angle, a distance of 19 feet; thence North 7 degrees 14 minutes 43 seconds East, parallel to the Easterly line, to the Northerly line of said Lot 4; thence Easterly, along said Northerly line, to the point of beginning.

1.03 City Code §300.20 Subd. 4(e) allows public buildings as conditional uses within the I-1 zoning district.

1.04 City Code §300.20 Subd. 4(l) allows "other uses similar to those permitted within this section, as determined by the city" as conditional uses within the I-1 zoning district.
1.05 The proposed daycare would be similar to a public building, as it is a place where a group of people would gather at a specified time for a specific purpose.

1.06 On January 21, 2016, 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 §300.21 Subd. 2 lists the following general standards that must be met for granting a conditional use permit:

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

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

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

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

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

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

2.02 City Code §300.21 Subd. 3(m) outlines the following specific standards that must be met for granting a conditional use permit for public buildings:

1. Site and building plan pursuant to section 300.27 of this ordinance.

2.03 City Code §300.27 Subd. 5, states that in evaluating a site and building plan, the city will consider its compliance with the following:
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 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 building;

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 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 arrangement and amount of parking.

6. Promotion of energy conservation through design, location, orientation and elevation of the 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 §300.21 Subd.2.

1. A public building is a conditionally-permitted use within the industrial district. The city has conditionally allowed daycares as a use similar to a public building under the "other uses similar to" section of the ordinance.

2. The site is part of the Opus 2 development, which is guided for mixed use. The larger development includes industrial, commercial, office and residential land uses.

3. The proposal has been reviewed by the city’s building, engineering, planning, natural resource and fire staff. Included as a condition of this resolution, the outdoor play area must be relocated or reconfigured out of the existing drainage and utility easement. At which point the proposal would not have any undue adverse impacts on existing or proposed services and facilities, including proposed SWLRT improvement.

4. The proposal is consistent with the city’s water resources management plan. No significant changes are proposed to the property at this time.

5. The majority of the site and building plan performance standards are related to development and construction. The proposal is for the use of an existing building with minimal impacts to the site and exterior building.

6. The proposal is not anticipated to have an undue adverse impact on the public’s health, safety or welfare.

3.02 The proposal would meet the specific conditional use permit standards outlined in City Code §300.21 Subd. 3(m) and as found in Section 3.03 of this resolution.

3.03 The proposal would meet the site and building plans standards outlined in City Code §300.27 Subd. 5:

1. The proposal has been reviewed by the city’s building, engineering, planning, natural resources, and fire staff to ensure consistency with the city’s development guides.
2. The proposal would meet all minimum ordinance requirements.

3. At this time, the only exterior improvement would be the conversion of a small portion of the existing parking lot and the construction of an outdoor play area. Included as a condition of this resolution, the applicant must submit a revised site plan and grading information for the outdoor play area. City staff would review the plan to ensure the proposal continues to reasonably preserve the site's natural state.

4. The proposal would not negatively impact the visual appearance of the property from surrounding properties. However, the visual appearance of the surrounding area will change over time based on the property's proximity to the future LRT line. Notably, the building on the property to the west will be removed in order to accommodate the future line. Further, based on the most recent LRT plans, grading for the line may extend into the subject property in order to raise the line approximately five feet above its existing grade.

5. The proposal would have minimal impact on existing open space or circulation patterns on the property.

6. The proposal is for the reuse and remodel of an existing building.

7. The proposal would not negatively impact adjacent or neighboring properties.

Section 4. City Council Action.

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

1. Subject to staff approval, the property must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   - Narrative date stamped December 9, 2015
   - Site plan date stamped December 9, 2015

2. Prior to issuance of a building permit:
   a) Submit the following items for staff review and approval:
      1) A trip generation fee in the amount of $27,880. This fee is based on the findings of the traffic study by WSB &
Associates, which finds that four additional trips will be generated to the Bren Road/Highway 169 interchange with the implementation of the interchange and the reversal of Red Circle Drive.

2) A developer's agreement for the city attorney's review and approval. Through this agreement the applicant must agree that in the event that the implementation of both the SWLRT and the reversal of Red Circle Drive does not occur additional trip generation fees in the amount of $48790 will be charged. The additional fee is for the additional seven trips that would be generated to the Bren Road/Highway 169 interchange.

3) A revised site plan that illustrates:

   a. The relocation or reconfiguration of the outdoor play area and fence such that the area is out of the existing drainage and utility easement.

   b. No impact of the outdoor play area and fence on the existing bridge abutments.

   c. Plan details of the play area, including grading and landscape removal and mitigation.

4) A landscaping plan. The plan must include mitigation of the removed landscaping near the south entry door. Further, the plan must include information on removed landscaping and mitigation or replacement landscaping.

   b) This resolution must be recorded with Hennepin County.

3. Prior to certificate of occupancy, all applicable state, county, and city licenses/permits must be obtained and copies submitted to the city. This includes the approval of the plans by the State Fire Marshall.

4. The building must be upgraded to accommodate a full fire alarm system.

5. Fire sprinklers must be added or relocated to accommodate the new layout.
6. The maximum capacity is limited to 135 children.

7. A minimum of 23 parking stalls are required for the property.

8. The applicant must inform city staff in writing if any significant changes are made to the daycare's programming. An updated traffic study may be required to determine if the programming changes will have an impact on the surrounding roadway system. If the updated study indicates a negative impact, staff may require the conditional use permit be brought back to the council for further review.

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

10. Sign permits are required for any exterior signs. All signs must comply with City Code §300.30 Subd. 6.

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

12. Any change to the approved use – including an increase in total enrollment – that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 8, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk
Resolution No. 2016-

**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 February 8, 2016.

David E. Maeda, City Clerk
C. Items concerning a licensed daycare facility at 10401 Bren Road East.

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.

Odland asked if there would be a safety concern with the close proximity to light rail. Cauley explained that the outdoor play area would be fenced.

Kristy Couture, of Yellow Brick Road Preschool, applicant, stated that there has been a facility operating in Plymouth for over 10 years. She was available for questions. The program believes that all children should have the right to learn and grow in a safe, nurturing environment. The Bren location would be perfect. The goal is to open in September 2016. The aim is to be a great place to work, be kind to the environment, and be supportive of local schools.

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

Knight thought it looked good. There is a need for more daycare.

Odland moved, second by Knight, to recommend that the city council adopt the resolution on pages A18-A25 of the staff report. This resolution approves a conditional use permit and site and building plans for a licensed daycare facility at 10401 Bren Road East.

Powers, Calvert, Knight, Odland, and Kirk voted yes. Magney and O’Connell were absent. Motion carried.
City Council Agenda Item #13A  
Meeting of February 8, 2016

**Brief Description**  
Resolution vacating public right-of-way at 5835 Louis Avenue

**Recommendation**  
Hold the public hearing and adopt the resolution

**Background**

The property owners at 5835 Louis Avenue, Thomas and Holly Huttner, have petitioned to vacate excess right-of-way adjacent to their property. They are proposing improvements to the front of their home that do not meet setbacks with the current right-of-way, which includes a temporary cul-de-sac remnant. While staff would support a variance in this case, the property owners have decided instead to pursue the vacation of the excess right-of-way.

Louis Avenue was dedicated on the plat of the Louis E. Dvorak Addition in 1949. The road at that time terminated on the southerly end at the platted cul-de-sac as the property to the south had not yet been developed. In 1965, the land to the south was developed and the road was extended as Gatewood Drive all the way to Eden Prairie Road. Since the road is now a through street, the platted cul-de-sac bulb is no longer necessary.

**Staff Comment**

Centurylink and Centerpoint Energy have indicated they have existing utilities in the area to be vacated. As such, a drainage and utility easement must be maintained. The pavement of the existing non-essential cul-de-sac bulb will be removed at the time of a future road project in this neighborhood. Until that time, the city will continue to plow the cul-de-sac bulb and a snow storage easement will be retained.

The petitioners did approach the other three property owners adjacent to the temporary cul-de-sac to ask that they join in the application to vacate the entire cul-de-sac bulb; however, they declined at this time.

**Recommendation**

Hold the public hearing and adopt the resolution vacating the right-of-way, but reserve a permanent drainage and utility easement over the entire area to be vacated. Also reserve a temporary snow storage easement over the westerly 10 feet of the area of vacated right-of-way. The snow storage easement will terminate when the cul-de-sac bulb pavement is removed in the future.
Submitted through:
   Geralyn Barone, City Manager  
   Will Manchester, PE, Director of Engineering

Originated by:
   Sarah Krake, Right of Way Agent
Resolution No. 2016

Resolution vacating public right-of-way at 5835 Louis Avenue

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

Section 1. Background.

1.01 Thomas and Holly Huttner have petitioned the Minnetonka City Council to vacate a portion of right-of-way located at 5835 Louis Avenue.

1.02 The portion to be vacated is legally described as follows: That part of Louis Avenue as dedicated on the recorded plat of LOUIS E. DVORAK ADDITION, Hennepin County, Minnesota, which lies easterly and northerly of the following described line:

Commencing at the northwest corner of Lot 5, said LOUIS E. DVORAK ADDITION, thence southerly, along the west line of said Lot 5, a distance of 38.25 feet to the point of beginning of the line to be described; thence southerly along the southerly extension of said west line to the intersection with the westerly extension of the south line of said Lot 5; thence easterly along said westerly extension to the southwest corner of said Lot 5 and said line there terminating.

1.03 According to Centurylink and Centerpoint Energy, there are utilities present within the area to be vacated.

1.04 As required by law, a hearing notice on this request was published in the City of Minnetonka’s official newspaper.

1.05 On February 8, 2016, the city council held a hearing on the request, at which time all persons for and against the granting of the request 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. The petitioners are owners of the land abutting the subject right-of-way and are, therefore, proper petitioners.
2. The city no longer needs this portion of right-of-way.
3. The vacation is not counter to the public interest.


4.01 The city council vacates the right of way as described in section 1.02, reserving, however, a perpetual easement for drainage and utility purposes over the entire vacated area, and a temporary snow storage easement over the westerly 10 feet of the vacated area. Said snow storage easement will terminate when the pavement for the cul-de-sac bulb is removed.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 8, 2016.

________________________
Terry Schneider, Mayor

Attest:

________________________
David E. Maeda, City Clerk

Action on this resolution:

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

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 February 8, 2016.

________________________
David E. Maeda, City Clerk
Brief Description

On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Urbank Coffee LLC (Dunn Bros. Coffee), 14525 State Highway 7

Recommendation

Open the public hearing and continue to March 14, 2016

Background

The city has received applications from Urbank Coffee, LLC (Dunn Bros. Coffee), for on-sale wine and on-sale 3.2 percent malt beverage liquor licenses. (See page A2-A3). The anticipated opening date is April 2016.

Dunn Bros. Coffee was established in 1988 and has 85 stores in 9 states. Each location is individually owned and operated. In 2014, Dunn Bros. Coffee launched a new concept by expanding their menu to include all-day food options such as sandwiches, salads, and flatbreads as well as wine and beer in some locations.

Business Ownership

Urbank Coffee, LLC is equally owned by Richard and Norma Gunderson. Norma Gunderson will also serve as the general manager. She resides in Blaine and meets the metro-area residency requirements of the city’s liquor ordinance.

The owners are planning to relocate to Minnetonka as they feel it is very important to live and work in the community.

Business Operations

Hours of operation will vary by season but will typically operate from 5:30 a.m. to 9 p.m. seven days a week. Projected sales from beer and wine are expected to be approximately 85% coffee/food and 15% wine/beer.

Staff will include 3-4 full-time employees and 10-12 part-time employees. All employees will receive intensive training on drink safety and applicable laws (See page A2).

Ms. Gunderson has recent experience working for a Dunn Bros. Coffee shop that was licensed to serve wine and beer.

Outdoor Eating Area

The licensed premise will include the existing outdoor patio, which was approved with the site and building plan review in November 2015. The patio is 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.

**Application Information**

Dunn Bros. Coffee was approved for a conditional use permit in November 2015 for restaurant use and a drive up facility.

Application information and license fees have been submitted. The police department’s investigative report is pending and will be forwarded to the council prior to the continued public hearing on March 14, 2016.

**Recommendation**

Staff recommends that the city council open the public hearing and continue it to March 14, 2016.

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

Originated by:
   Kathy Leervig, Community Development Coordinator
Location Map

Dunn Bros Coffee
14525 State Hwy 7

This map is for illustrative purposes only.
The business will be a Dunn Bros. Coffee franchise. It will be open from 5:30 AM to 9:00 PM (Hours may vary by season). The facility will serve coffee, assorted cold drinks, beer and wine. It will have an all-day food menu. Beer and wine are estimated to make up 15% of sales, food at 35% of sales and coffee products at 50% of sales. The facility will have a drive through with room for five vehicle stacking in the drive-up lane.

The facility will be managed by Norma Gunderson, co-owner of the facility. She has almost two years of experience working at Dunn Bros. franchises, including one that served wine and malt liquor. Her spouse, Richard Gunderson and her son, Jonathan Salazar will be assistant managers. All are over 21 years of age. There will be approximately 3-4 full time employees and 10-12 part time employees working at the facility. All will receive training from authorized individuals.

No one under the age of 18 will be allowed to serve wine or beer in the facility. No one under the age of 21 will be allowed to consume wine or beer. All customers who order an alcoholic beverage will be asked for a valid identification according to the State of Minnesota which include:

- A valid drivers' license issued by Minnesota, another state or Canada and including the photograph and date of birth of the person;
- A valid identification card issued by Minnesota, another state or Canada and including the photograph and date of birth of the person;
- A valid military ID issued by the US Dept. of Defense
- A valid passport issued by the United States or a foreign country

Dunn Brothers provides 2 weeks of intensive training for the facility, and an additional week during the facility’s opening. Training includes food and drink safety and applicable laws. It is intensive training for the preparation of all drinks, food and in-store management.

Dunn Brothers has recently hired a full time staffed individual to concentrate on all aspects of drinks served at their franchises, including coffee, cold drinks, wine and malt liquors.
City Council Agenda Item #13C
Meeting of February 8, 2016

Brief Description
On-sale liquor license for RS Sports Grill, 12501 Ridgedale Drive

Recommendation
Open the public hearing and continue to March 14, 2016

Background

The city has received an application from RS Sports Grill (Red Stone Sports Grill) for an on-sale intoxicating liquor license at 12501 Ridgedale Drive. (See pages A2-A3). The site is currently occupied by Redstone American Grill, Inc. In August 2015, Redstone requested an amendment to their liquor license to relocate to Ridgedale Mall. Redstone is in the process of building the new restaurant at Ridgedale and anticipates opening in late spring/early summer. Council approved the amendment to the liquor license and it will transfer to the new location at the mall upon completion. The existing restaurant will then convert to RS Sports Grill after Redstone moves to the mall and will be required to have their own liquor license under the tradename RS Sports Grill.

Business Ownership

RS Sports Grill is owned by Redstone American Grill, Inc. There is no ownership change in Redstone American Grill, Inc. No police background check will be performed as the owners have already been approved as current business owners.

Business Operations

The new restaurant will have a sports theme offering guests the most current audio and visual experience featuring favorite sporting events with an emphasis on local teams. The restaurant will go through some cosmetic change following Redstone’s departure to Ridgedale. The new features will include a northern Minnesota lodge experience to compliment the natural wood and stone fireplaces in the existing building.

RS Sports Grill will employ approximately 100 staff. All staff will undergo the same training programs that exist today for all Redstone restaurants/employees. In 2013, Redstone in Minnetonka encountered a police compliance failure. As a member of the Best Practice Program, they paid an administrative penalty but the license was not suspended.

The hours of operation will be 11:00 am to midnight, Monday through Sunday.

Recommendation
Application information and license fees have been submitted. Staff recommends that the city council open the public hearing and continue the hearing to March 14, 2016.

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

Originated by:
  Kathy Leervig, Community Development Coordinator
Business Development Plan:

“RS Sports Grill”

RS Sports Grill, (Red Stone Sports Grill) will occupy 12501 Ridgedale Dr, Minnetonka, MN 55305, which is the current location of Redstone American Grill. This will be a sports themed restaurant offering lunch and dinner Monday’s through Sundays, 11:00am to Midnight.

RS Sports Grill will strive to become the areas premier sports theme restaurant in Minnetonka. Our goal is to be step ahead of our competition. We want our guests to have more fun during their leisure time in a safe atmosphere. We will provide the most current audio and visual experience while featuring all your favorite sporting events with a emphasis on local teams. We will combine menu selection, atmosphere, ambiance, and outstanding service to create an environment welcoming family and friends.

The restaurant industry is a challenging market and without professionally managed facilities the failure rate can by high. RS Sports Grill has the resources of being owned and operated by Redstone American Grill. Redstone American Grill has been successfully in business since 1999 and operates 8 restaurants in 6 states. The management of RS Sports Grill will fall under this leadership. The combined experience from our corporate offices spans over 100 years in the restaurant industry. Many of the top executives have had several years experience running Champps Americana throughout the United States. That experience will prove to be our greatest assets in developing this new concept.

RS Sports Grill will be managed by a team consisting of:
- General Manager
- 2 Front of House Managers
- Chef
- 2 Sous Chef’s

RS Sports Grill will employ 30 servers, 15 bartenders, 10 host’s, 25 linecooks, 8 dishwashers, and 5 service support.

They will be supported by our field team in Minnesota.
- Michael Pargman, Director of Operations, Redstone American Grill
- Toby Butler, Director of Culinary, Redstone American Grill
- Kathy Rusnacko, Director of Training and Human Resources, Redstone American Grill

RS Sports Grill managers and hourly staff will undergo the same training programs we currently use in all our restaurants. Food safety is paramount and all our managers are Serve Safe Certified food handlers, a program recognized by the Minnesota Board of Health. The managers, servers and bartenders must also pass ServeSafe Alcohol training which is a nationally recognized program sponsored by the National Restaurant Association.
The development of our menu will be important to assist in delivering the sports theme while offering food that is fun to share and enjoyable for family and friends. The menu items have been created and tested in all our Redstone Grill locations. Each item has been featured in our restaurants with great success. We will continue to create and develop new items to remain current with our guest’s needs of quality and value. The focus of our business will be to continue to enhance our menu to higher standards.

RS Sports Grill will go through a short cosmetic change before we open to assist in enhancing the sports atmosphere. We intend to keep all of the buildings features, which will provide a northern Minnesota lodge experience. The natural woods and stone fireplaces along with the open kitchen and dining room will assist in offering great viewing for all your favorite sporting events.

The attachments included are the current menu we are developing and financial performer based on Food to Alcohol sales and Guest Count to Check Average.
Brief Description
Resolutions vacating drainage and utility easements and approving preliminary and final plat for Wilson Ridge 5th Addition, 4329 Wilson Street

Recommendation
Hold the public hearing and adopt the resolutions approving the requests

Proposal
Providence 55, LLC is proposing to subdivide the property at 4329 Wilson Street into two, single-family residential lots. The existing house would be removed and two new houses would be constructed. The lots would meet all minimum city standards. The proposal requires approval of preliminary and final plat. (See pages A1–A21.)

The applicant has requested vacation of obsolete public drainage and utility easements along the perimeter of existing Lot 1, Block 1, Swallow Hollow. For simplicity, all of the existing drainage and utility easements around this existing lot would be vacated, and would be re-established by the Wilson Ridge 5th Addition plat. (See pages A30-A31.)

Staff Analysis of Vacation Request
Staff finds that the proposed easement vacation is reasonable:

• There are no public utilities within the easement areas that would be vacated.

• The existing easement areas are obsolete.

• New easements would be dedicated within the Wilson Ridge 5th Addition plat.

Planning Commission Hearing
The planning commission considered the preliminary and final plat request on January 21, 2016. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1–A21. At that meeting, one resident appeared at the public hearing. The neighbor raised concerns related to the increase of impervious surface and existing drainage patterns of the area.

Following the public hearing, the commission asked questions and discussed the proposal. The planning commission noted that the property has a variety of nice, mature
trees. Further, the planning commission encouraged the developer, that while not a requirement of the proposal, to preserve as many trees as possible.

**Planning Commission Recommendation**

On a 5-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes may be found on pages A32–A33.

**Since Planning Commission Hearing**

The applicant has discovered that the plat name WILSON RIDGE is unavailable. As such, the applicant has changed the plat name to WILSON RIDGE 5TH ADDITION. No other changes have been made to the proposal.

**Staff Recommendation**

1) Adopt the resolution approving preliminary and final plats for WILSON RIDGE 5TH ADDITION. (See pages A22–A27.)

2) Adopt the resolution vacating existing drainage and utility easements on Lot 1, Block 1 Swallow Hollow. (See pages A28–A31.)

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

Originator: Ashley Cauley, Senior Planner
Brief Description Preliminary and final plat for Wilson Ridge

Recommendation Recommend the city council approve the plats

Introduction

The 2.17-acre subject property is located on the east side of Wilson Street, north of Highwood Drive. The property is improved with an approximately 1,000 square foot home originally built in 1948 and a 980-square foot accessory structure. The property slopes downward in all directions from the home, with an overall grade change of 32 feet. The property contains several mature trees, including 155 high priority trees and 37 significant trees. (See page A6.)

Proposal

Providence 55, LLC is proposing to divide the property into two, single-family residential lots. The existing home and accessory structure would be removed and two new homes would be constructed. The applicant is requesting approval of both preliminary and final plats. (See pages A1-A11.)

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 primary subdivision on staff’s findings.

- **Are the proposed lots reasonable?**
  
  Yes. The proposed subdivision would result in two properties meeting and exceeding minimum R-1 standards.

- **Would the proposal meet the tree ordinance?**
  
  Yes. The property does not contain a woodland preservation area. However, it does contain 155 high priority and 37 significant trees. Based on the general grading plan submitted by the applicant, 52 high priority trees would be removed or significantly impacted. Since both of the proposed lots would exceed one-acre in size, the maximum threshold which limits the removal to 35 percent of the high priority trees resulting from a subdivision does not apply. Nonetheless, staff has
calculated that the proposal would result in a removal of 33.5 percent of the site's high priority trees. (See pages A12-A13.)

**Staff Recommendation**

Recommend the city council adopt the resolution approving the preliminary and final plats of WILSON RIDGE. (See page A22-A27.)

Originator: Ashley Cauley, Senior Planner
Through: Susan Thomas, AICP, Principal Planner
Supporting Information

Project No. 15036.15a

Property 4329 Wilson Street

Applicant Providence 55, LLC

Surrounding Land Uses But for Wilson Park which is located to northeast of the subject property, all surrounding land uses are single family residential homes, zoned R-1 and guided for low density residential areas.

Planning Guide Plan designation: Low density residential
Zoning: R-1

Lot Standards The proposed plat would meet all minimum standards:

<table>
<thead>
<tr>
<th></th>
<th>REQUIRED</th>
<th>LOT 1</th>
<th>LOT 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot area</td>
<td>22,000 sf</td>
<td>49,153 sf</td>
<td>46,632 sf</td>
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<td>width at ROW</td>
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<td>122.5 ft</td>
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<tr>
<td>width at setback</td>
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<td>418 ft</td>
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<tr>
<td>Buildable area</td>
<td>3,500 sf</td>
<td>&gt;29,600</td>
<td>&gt;29,400</td>
</tr>
</tbody>
</table>

Steep Slope By code definition, a “steep” slope is one that: (1) rises at least 25 feet; (2) has an average grade change of at least 20-percent; and (3) has a width of at least 100 feet. While the area near the “center” of the property has a significant grade change, it is not considered a steep slope by ordinance.

Grading As required by the subdivision application process, generalized home footprints, locations, and grading plans have been submitted by the applicant. Specific plans would be submitted and reviewed by staff at the time of building permit applications.

Trees Typically, the subdivision process limits the removal of high priority trees of a property to 35 percent. If more than 35 percent would be removed, the subdivision can result in no more than one lot per developable acre of land. The proposed lots of WILSON RIDGE would exceed one-acre in size. As such, the ordinance which limits the amount of removed high priority trees to 35-percent does not apply.

The property contains several matures trees of oak, pine, fir, birch, maple, basswood, ironwood, cherry, maple, spruce and walnut varieties. There are a total of 155 high priority trees on
site. Based on the generalized grading plans, 52 high priority trees would be removed as a result of direct removal or critical root zone impacts. This would total a loss of 33.5 percent of the site’s high priority trees.

The proposal would be required to mitigate for the loss of high priority and significant trees outside of the basic tree removal area. Based on the general grading plans, the proposal would require an extensive amount of mitigation. Staff believes that the amount of mitigation could be significantly reduced if the grading limits were adjusted to reduce actual tree loss. (See pages A12-A13.)

**Wetland**

Initially staff believed that a wetland partially delineated by another applicant on the property to the southeast encroached onto the subject property. However, a wetland delineation has confirmed that the wetland does not extend onto the site. (See pages A14-A21.)

**Stormwater**

The site is located within 500 feet of a designated wetland. As such, storm water management in compliance with the city’s stormwater resources management plan is required. While the proposal indicates some locations for possible rain gardens, specific stormwater management practices would be reviewed in conjunction with building permits for the new homes.

**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.

**Motion Options**

The planning commission has three options:

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

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

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

**Neighborhood Comments**
The city sent notices to 49 area property owners and received no comments to date.

**Deadline for Decision**
April 12, 2016
Location Map

Project: Wilson Ridge
Applicant: Providence 55, LLC
Address: 4329 Wilson Street
(15036.15a)

This map is for illustrative purposes only.
Preliminary and Final Plat Approval Request Narrative

WILSON RIDGE
Minnetonka, Minnesota
December 14, 2015

Development Team

Developer: Providence 55, LLC, Bill Coffman
Civil Engineer: Alliant Engineering, Inc., Mark Rausch
Surveyor: Alliant Engineering, Inc., Dennis Olmstead

Site Information

Existing Legal Description:
Commencing at the Northwest corner of Lot 4, Block 6, Woodstock; thence South on the East line of Wilson Street, 245.0 feet; thence East and parallel with the North line of said Lot 4, 295.18 feet to the East line of said Lot 4; thence North on the East line of said Lot 4, 245.0 feet to the Northeast corner of said Lot 4; thence West on the North line of said Lot 4, 295.31 feet to the place of beginning, Hennepin County, Minnesota.
Torrens Property
Torrens Certificate No. 814123.

That part of Lot 1 lying westerly of the northerly extension of the west line of Lot 2, Block 1, Swallow Hollow, Hennepin County, Minnesota.
Abstract Property.

Address: 4329 Wilson Street, Minnetonka, MN. 55345
PID: 2111722320039

Development Request

The proposed plan consists of subdividing an existing single family lot into 2 new single family lots meeting the City’s R-1 Low Density Residential District ordinance.

Existing Site Description

The property is home to one single family residence with outbuildings and driveway. The property is zoned R-1 Low Density Residential with a Low Density Residential land use designation. The property is wooded with drainage split in three ways; either to the southeast to an offsite wetland, west to Wilson Street right of way or northerly to the low area on the property to the north.
Proposed Subdivision Plan

It is the applicant’s intent to subdivide the existing 2+ acre single family lot into two 1+ acre lots. The existing buildings will be demolished and removed completely. The proposed plan will meet the existing R-1 zoning requirements and will be consistent with the property’s land use designation.

The following is a brief summary of primary project elements currently proposed:

Proposed Plat Data

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Acreage</td>
<td>2.176 acres</td>
</tr>
<tr>
<td>Approximate Net Acreage</td>
<td>2.176 acres</td>
</tr>
<tr>
<td>Net Density</td>
<td>0.92 units per acre</td>
</tr>
</tbody>
</table>

Lot Dimensions

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Width</td>
<td>110’ (at front setback)</td>
</tr>
<tr>
<td>Minimum Lot Depth</td>
<td>125’</td>
</tr>
<tr>
<td>Lot Size Minimum</td>
<td>22,000 sf</td>
</tr>
<tr>
<td>Lot Area Average</td>
<td>47,393 sf (1.09 acres)</td>
</tr>
<tr>
<td>Minimum Buildable Area</td>
<td>3,500 sf</td>
</tr>
<tr>
<td>Maximum Lot Impervious Coverage</td>
<td>25%</td>
</tr>
</tbody>
</table>

Setbacks

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. One -Side Setbacks</td>
<td>10’</td>
</tr>
<tr>
<td>Total Combined Side Setback</td>
<td>30’</td>
</tr>
<tr>
<td>Front Setback</td>
<td>35’</td>
</tr>
<tr>
<td>Rear Setback</td>
<td>40’</td>
</tr>
</tbody>
</table>

Site Access and Pedestrian Circulation

The proposed plan will require the addition of two new private driveway connections to Wilson Street. No public sidewalks are proposed.

Grading

A sample grading plan has been provided to indicate how home grading would work for a home style that is likely to be proposed on these lots. The grading plan shows the estimated grading limits needed to construct a home, driveway and possible swimming pool on each lot. The grading plan does show hypothetical rain garden locations, however, it will be up to the future home/lot designer as to which stormwater management practices are used to meet the City stormwater management requirements.

Stormwater Management

Each proposed lot will be required to provide stormwater management in accordance with City requirements to mitigate the proposed impervious surface. The City requires that each lot retain stormwater volume on the site equivalent to the runoff volume from 1” over the proposed lot.
impervious surface. The final stormwater management design and calculations per lot will be provided at the time of building permit.

**Sanitary Sewer and Watermain**
The existing property has two sets of City water and sanitary sewer services. The services are spaced such that they are available for the two proposed lots. The southern set of services will be connected to the new southern lot. For the proposed northern lot, the sanitary sewer service is too shallow to provide service to the future home without a lower level grinder pump. In addition, that service is quite shallow for cold weather cover. The Developer is proposing to make a new sewer service connection in Wilson Street where the sanitary sewer is deeper and will allow for gravity service for the proposed home. The northern lot will be able to make use of the existing watermain service.

**Tree Preservation**
A site tree inventory has been completed in accordance with City zoning requirements. The trees were categorized into significant and high priority trees. The City has reviewed the property and determined that there is no woodland preservation area within the plat boundary. The proposed project does propose some high priority tree removal, however, the removal is well below the allowed 35% removal threshold.

**Landscaping**
The lots will be landscaped as desired by the future homeowner with no required tree reforestation mitigation. Any above ground stormwater management practices will be vegetated accordingly.

**Timing/Phasing**
If the City chooses to approve the plan submittal, it is the Applicant’s desire to proceed with obtaining home construction building permits.
LEGAL DESCRIPTION

Commencing at the Northwest corner of Lot 4, Block 6, Woodstock; thence South on the East line of Wilson Street, 245.0 feet; thence East and parallel with the North line of said Lot 4, 295.18 feet to the East line of said Lot 4; thence North on the East line of said Lot 4, 245.0 feet to the Northeast corner of said Lot 4; thence West on the North line of said Lot 4, 295.31 feet to the place of beginning, Hennepin County, Minnesota.

Torrens Property
Torrens Certificate No. 814123.

That part of Lot 1 lying westerly of the northerly extension of the west line of Lot 2, Block 1, Swallow Hollow, Hennepin County, Minnesota.

Abstract Property.

NOTES
1. This survey and the property description shown here are as stated under information from the commitment for title insurance prepared by Custom Home Builders Title, LLC as agent for Old Republic National Title Insurance Company, file no. HB-30564, dated September 28, 2015.
2. The locations of underground utilities are depicted based on available maps, records and field locations and may not be exact. Verify all utilities critical to construction or design.
3. The basis of bearings is assumed.
4. All distances are in feet.
5. The area of the above described property is 94,785 square feet or 2.176 acres.
6. Bench Mark: MnDOT disk marked FAHIL 1990 located approximately 1500 feet south of the property on the south side of Trunk Highway 7, approximately 73 feet east of Fair Hills Road has an elevation of 1015.13 feet NGVD 29.

BOUNDARY AND TOPOGRAPHIC SURVEY
4329 WILSON STREET
MINNETONKA, MINNESOTA

UPDATE SURVEY NOTES SECTION A6
A6
WILSON RIDGE 5TH ADDITION
4329 WILSON STREET

NOTE: DRAWN BY
DENNIS B. OLMSTEAD
215-0111

SIGNATURE
DATE
LICENSE NUMBER
DENNIS B. OLMSTEAD
1/8/16

NOTE: CONTRACTOR SEE LEGEND
A6
1. Site Plan Data
   - Block: 1
   - Lot Data Table
     | Block | Lot | Site Name | Property Type | Project Team |
     |-------|-----|-----------|---------------|-------------|
     | 1     | 1   | Wilson Ridge 5th Addition | Residential | MPR          |
     | 1     | 2   | Wilson Ridge 5th Addition | Residential | MPR          |

2. Site Plan Data
   - Block 1
   - Lot 1
   - Lot 2
   - Site and Utility Plan
   - Wilson Ridge 5th Addition

3. Preliminary / Final Plat Submittal
   - Wilson Ridge Homes
   - 6102 Olson Memorial Hwy.
   - Golden Valley, MN 55422
   - Office: 763-432-4500
   - Fax: 763-432-4501

4. Utility Notes:
   - Water and Sewer Services
   - Electric and Gas Services
   - Storm Drainage
   - Septic System

5. Legend:
   - Property Lines
   - Roadways
   - Utilities
   - Property Notice

6. Scale:
   - 1" = 100'

7. Certification:
   - Mark Rausch, PE
   - Certified Professional Engineer

8. Project Information:
   - Project Name: Wilson Ridge 5th Addition
   - Project Lead: MPR
   - Project Manager: ELL
   - Project Team: MPR, ELL

9. Site and Utility Plan
   - Site Plan Data
   - Preliminary / Final Plat Submission
   - Wilson Ridge 5th Addition
TREE PRESERVATION NOTES:

1. All trees known to be present shall be shown in their current locations on the Survey Notes and updated during the Tree Inventory.
2. The Survey Notes shall be updated within the first year of any construction.
3. Survey Notes shall be kept current throughout the construction phase.
4. The Survey Notes shall be updated during the final construction phase.
5. Survey Notes shall be updated within the first year of any construction.
6. Survey Notes shall be updated during the final construction phase.
7. For all trees known to be present, the tree preservation plan is approved by the City of Minneapolis.

MARK RAUSCH, PE
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 UNDER THE LAWS OF THE STATE OF MINNESOTA.

PROJECT NO: 215-0111
DATE: 1-7-16

LEGEND:
- Propsed Excavation
- Existing Tree
- Tree to be removed
- 100' Tree Protection Limit / Late Stage
- Existing Tree to be removed
- Existing Tree to be retained
- Existing Tree to be protected
- Existing Tree to be transplanted
- Existing Tree to be surveyed
- Existing Tree to be inventoried

GONYEA HOMES
4710 Olson Memorial Hwy.
Minneapolis, MN 55477
612.758.3080 fax 612.758.3099
www.alliant-inc.com

WILSON RIDGE
5TH ADDITION
4329 WILSON STREET

PRELIMINARY / FINAL PLAT SUBMITTAL

TREE INVENTORY AND PRESERVATION PLAN

WILSON RIDGE
Memorandum

Date: September 22, 2015

To: Jo Colleran, City of Minnetonka

CC: Mark Rausch, Alliant Engineering

From: Melissa Barrett, Kjolhaug Environmental Services Company (KES)

Re: Site Assessment for Wetlands

4329 WILSON STREET, MINNETONKA

The 4329 Wilson Street site was examined on September 15, 2015 for the presence and extent of wetland. The site was located in Section 21, Township 117N, Range 22W, City of Minnetonka, Hennepin County, Minnesota. No wetlands were identified or delineated on the site.

The 2.18-acre site was located immediately east of Wilson Street, south of Lake Street Extension, and north of Highwood Drive (Figure 1). Site limits correspond to 4329 Street and Hennepin County PID 21-117-22-32-0039. The site is comprised of a single family home in the southwest corner, and a large shed/workshop in the center of the site. The home and shed were surrounded by small areas of mowed lawn, and the reminder of the site was wooded (Figure 2).

Review of NWI, Soils, and DNR Information

The National Wetlands Inventory (NWI) (Minnesota Geospatial Commons 2009-2014, https://gisdata.mn.gov/dataset/water-nat-wetlands-inv-2009-2014) showed part of a PFO1C wetland within the southeast site corner (Figure 3).

The Soil Survey of Hennepin County, Minnesota (http://soils.usda.gov/survey/geography/ssurgo/) did not show any hydric soils within site boundaries (Figure 4). A table of soil series data and hydric ratings is provided on the following page.
**Soil Survey Information - 4329 Wilson Street, Minnetonka**

<table>
<thead>
<tr>
<th>SMU</th>
<th>Map unit name</th>
<th>Hydric Rating</th>
<th>Acres in AOI</th>
<th>Percent of AOI</th>
</tr>
</thead>
<tbody>
<tr>
<td>L2B</td>
<td>Malardi-Hawick complex, 1 to 6 percent slopes</td>
<td>0</td>
<td>0.7</td>
<td>32.30%</td>
</tr>
<tr>
<td>L2C</td>
<td>Malardi-Hawick complex, 6 to 12 percent slopes</td>
<td>0</td>
<td>0.7</td>
<td>32.40%</td>
</tr>
<tr>
<td>L2E</td>
<td>Malardi-Hawick complex, 18 to 35 percent slopes</td>
<td>0</td>
<td>0.8</td>
<td>35.30%</td>
</tr>
</tbody>
</table>

The Minnesota *DNR Public Waters Map, Hennepin County* (https://gisdata.mn.gov/dataset/water-mn-public-waters) did not show any DNR Public Waters, Watercourses, or Wetlands within or near site boundaries (Figure 5).

The National Hydrography Dataset (U.S. Geological Survey, http://nhd.usgs.gov/) did not show any surface water features within or near site boundaries (Figure 6).

**Wetland Determinations and Delineations**

The 4329 Wilson Street site was examined on September 15, 2015 for the presence and extent of wetland. At that time, herbaceous growth was present, and leaves were present on trees and shrubs.

The southeast corner of the site was investigated for wetland criteria. The boundary of the NWI mapped PFO1C wetland was located using a sub-meter accuracy GPS unit (Figure 2). Based on GPS data, the NWI wetland is present at or below the 966-ft msl contour elevation. This elevation is 12 to 14 feet below the lowest elevation in the southeast corner of the subject site.

No wetlands were identified or delineated on the site.

This concludes the wetland assessment for the 4329 Wilson Street site in Minnetonka, MN.
Figure 1 - Site Location Map

Legend

- Site Boundary

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.
Figure 2 - Existing Conditions Map (2013 FSA Photograph)

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.
Figure 3 - National Wetland Inventory Map (2013 MN DNR)
Figure 4 - Soil Survey Map

4329 Wilson Street (KES 2015-155)
Minnetonka, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.
Figure 5 - DNR Public Waters Map

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.
Figure 6 - National Hydrography Dataset Map (USGS)
Resolution No. 2016-
Resolution approving preliminary and final plats of
WILSON RIDGE 5th ADDITION at 4329 Wilson Street

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

Section 1. Background.

1.01 Providence 55, LLC has requested preliminary and final plat approval of
WILSON RIDGE 5TH ADDITION, a two lot residential subdivision.

1.02 The property is located at 4329 Wilson Street. It is legally described as follows:

Commencing a the Northwest corner of Lot 4, Block 6, Woodstock; thence
South on the East line of Wilson Street, 245.0 feet; thence East and parallel
with the North line of said Lot 4, 295.18 feet to the East line of said Lot 4;
thence North on the East line of said Lot 4, 245.0 feet to the Northeast
corner of said Lot 4; thence West on the North line of said Lot 4, 295.31 feet
to the place of beginning, Hennepin County, Minnesota

Torrens Certificate No. 814123.
That part of Lot 1 lying westerly of the northerly extension of the west line
of Lot 2, Block 1, Swallow Hollow, Hennepin County, Minnesota.

1.03 On January 21, 2016, 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 and final plat approval.
Section 2. General Standards.

2.01 City Code §400.030 outlines design standards for residential subdivisions. These requirements are incorporated by reference into this resolution.

Section 3. Findings.

3.01 The proposed preliminary and final plats meet the design requirements as outlined in City Code §400.030.


4.01 The above-described preliminary and final plats are hereby approved, subject to the following conditions:

1. Prior to the release of the final plat for recording purposes:
   a) Submit the following:
      1) Two sets of mylars for city signatures.
      2) An electronic CAD file of the plat in microstation or DXF.
      3) Park dedication fee of $5,000.
      4) Title evidence that is current within thirty days before release of the final plat for the city attorney’s review and approval.
   b) This resolution must be recorded with Hennepin County.

2. Prior to issuance of a building permit for each lot:
   a) Submit a letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
   b) Submit a grading and tree removal plan. This plan must be in substantial conformance with Grading and Tree Preservation plans dated December 14, 2015 and the following requirements:
      1) The grading limits must be adjusted to reduce impacts within the critical root zone to below 30 percent for the
trees listed below:

a. The row of evergreen trees along the north lot line. This includes trees 749, 762, 765, 772, 774, and 776.

b. The trees along the slope south of the driveway shown on the north lot. This includes trees 705, 717 and 718.

2) The utility work must minimize impacts to adjacent trees and is subject to the review of the city’s natural resources staff. Specific to the north lot, impacts to the trees on the north and south side of the proposed services should be avoided.

3) Raingardens and any other stormwater management practices must be adjusted to minimize tree impacts.

c) Submit a right-of-way permit for all work within the city’s right-of-way.

d) Submit a stormwater management plan for review and approval by the city engineer.

e) Submit a utility plan. This plan must be in substantial conformance with the utility plan dated December 14, 2015 and the requirements below:

1) If unused, the existing sanitary and sewer stubs must be removed back to their respective mains. The sewer wye must be removed and sleeved and the water service must be removed to the main with the corporation stop turned off.

2) To utilize the existing 1-1/2 inch service to Lot 1, the 8-inch stub originating on the east side of the manhole must be removed and replaced with a 6-inch stub. Additionally, provide a boot/fernco to create a watertight seal around the service at the manhole connection.

3) The new water service must be 1-1/2 inch copper pipe.
f) Submit 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.

g) Submit evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

h) Submit cash escrow in the amount to be determined by city staff. The 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.

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

j) Submit all required hook-up fees.

k) Submit proof of subdivision registration and transfer of NPDES permit.

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

a) Builder must confirm that the 1-inch water service proposed to remain is adequately sized in the event that the proposed home must be equipped with a fire sprinkler system.

b) No grading or tree removal is allowed prior to the issuance of a building permit.

c) The lots 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.

4. Permits may be required from other agencies including Hennepin County, Riley Purgatory Bluff Creek Watershed District, and the MPCA. It is the applicant’s or property owner’s responsibility to obtain all necessary permits.

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

6. Unless the city council approves a time extension, the final plat must be recorded by February 8, 2017.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 8, 2016.

__________________________
Terry Schneider, Mayor

Attest:

__________________________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on February 8, 2016.
Resolution No. 2016-
Resolution vacating drainage and utility easements at 4329 Wilson Street

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

Section 1. Background.

1.01 Prestige 55, LLC has petitioned the Minnetonka City Council to vacate existing drainage and utility easements located at 4329 Wilson Street.

1.02 The easements are legally described as follows, to wit:

All drainage and utility easements lying within that part of Lot 1, Block 1, Swallow Hollow, lying westerly of the northerly extension of the west side of Lot 2, Block 1, Swallow Hollow, Hennepin County, Minnesota.

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 February 8, 2016, 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. New easements would be dedicated within the Wilson Ridge 5th Addition plat.

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


4.01 The city council vacates the above-described easements upon filing of the plat of WILSON RIDGE 5TH ADDITION at Hennepin County.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 8, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on February 8, 2016.

_________________________________
David E. Maeda, City Clerk
LEGAL DESCRIPTION OF PROPERTY

Commencing at the Northwest corner of Lot 4, Block 6, Woodstock; thence South on the East line of Wilson Street, 245.0 feet; thence East and parallel with the North line of said Lot 4, 295.18 feet to the East line of said Lot 4; thence North on the East line of said Lot 4, 245.0 feet to the Northeast corner of said Lot 4; thence West on the North line of said Lot 4, 295.31 feet to the place of beginning, Hennepin County, Minnesota.

Torrens Property
Torrens Certificate No. 814123.

That part of Lot 1 lying westerly of the northerly extension of the west line of Lot 2, Block 1, Swallow Hollow, Hennepin County, Minnesota.

Abstract Property.

LEGAL DESCRIPTION OF VACATION

All drainage and utility easements lying within that part of Lot 1, Block 1, Swallow Hollow, lying westerly of the northerly extension of the west line of Lot 2, Block 1, Swallow Hollow, Hennepin County, Minnesota.

Being Abstract Property.
B. Preliminary and final plat for Wilson Ridge.

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.

Cauley clarified that there are 155 high priority trees. The proposal would remove 52 trees.

Odland asked how many additional trees could be saved if the grading area would be limited. Cauley estimated 14 trees.

Bill Coffman, of Gonyea Homes, applicant, concurred with staff’s recommendation. He would attempt to shrink the grading area. The homes would be custom fit onto each lot. The proposed houses would be as far back as the existing houses.

The public hearing was opened.

Jeff Detloff, 4301 Wilson Street, stated that he was concerned that the drainage would run through his yard. There is a lot of water now that travels through his property. He asked how a rain garden would handle the increased hard-surface coverage.

No testimony was submitted and the hearing was closed.

Cauley explained the topography of the site. Engineering staff would review drainage mitigation plans that would require one-inch of infiltration of run off for the increase in impervious surface. The stormwater requirements take into consideration what is part of the proposal. It would look at the existing site, but not mitigate for current conditions.

Calvert understood why the houses would be setback from the street, but was concerned that it would increase the amount of impervious surface from the long driveways. She was glad that the older, high-priority trees would be saved.

Chair Kirk noted that grading would be reviewed during the building permit process. The current application is for the lot split. Cauley agreed.

In response to Calvert’s question, Colleran explained that tree regulations do not differentiate between a tree that was planted for landscaping and one that grew naturally.
In response to Calvert’s question, Colleran explained that decreasing the grading area to save trees is a requirement in the resolution. Mitigation would require planting 87, 6-foot evergreen trees and 13 deciduous trees on 2 lots.

Odland asked if the houses could be moved closer to Wilson to reduce the driveway length. Cauley said that would be an option to reduce the mitigation requirements.

Chair Kirk visited the site and understands the reasoning for the layout. The site is large enough to be subdivided. It would make a lot of sense.

*Powers moved, second by Odland, to recommend that the city council adopt the resolution approving the preliminary and final plats of Wilson Ridge (see pages A22-A27 of the staff report).*

*Powers, Calvert, Knight, Odland, and Kirk voted yes. Magney and O’Connell were absent. Motion carried.*
City Council Agenda Item #14A
Meeting of February 8, 2016

**Brief Description**
Concept plan for Highview Villas, a residential development of properties at 4301 Highview Place and an adjacent, unaddressed parcel

**Recommendation**
Discuss concept plan with the applicant. No formal action required

**Concept Plan**

In 2014, Whitten Associates submitted a concept plan contemplating the redevelopment of the property at 4301 Highview Place and an adjacent, unaddressed parcel. Cumulatively the two properties, zoned R-1, have an area of approximately 4.5 acres. The concept plan included six lots of single-family detached homes around a newly constructed cul-de-sac. The plan met all R-1 district standards. At that time, Whitten Associates had not partnered with a builder. (See page A2.)

In late 2015, Whitten Associates and Ridge Creek Custom Homes submitted a revised concept contemplating the redevelopment of the properties with 10 villa style homes around a newly constructed cul-de-sac. The council was generally supportive of smaller lots with price points in the range of $450,000 to $650,000 in the area. However, the council expressed concern regarding the concept's proposed density. (See concept plan on page A3 and minutes on pages A4-A7.)

Whitten Associates and Ridge Creek Custom Homes have submitted another revised concept for the redevelopment of the two properties and is requesting further comments from the city council. The current concept includes nine new lots for construction of detached, villa-style homes around a newly constructed cul-de-sac.

If a formal application were submitted it would likely include: (1) rezoning to planned unit development; and (2) preliminary and final plats. (See pages A8-A14.)

**Review Process**

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

- **Neighborhood Meeting.** The developer held a neighborhood meeting on January 13, 2016. Three people attended the meeting and raised concerns similar to those submitted for the previous concept related to traffic and construction noise. In addition, the neighbors raised additional questions regarding:
  - Rationale for rezoning of the property to PUD;
• Size and density of the homes, particularly around the cul-de-sac;
• Project timing.

• Planning Commission Concept Plan Review. The planning commission conducted a review of the concept plan on January 21, 2016. Nine members of the public provided comments on the concept plan, six of which raised concerns regarding the development. Generally, the concerns were consistent with those raised at previous meetings. Three members of the public spoke in general favor of the redevelopment of the two properties.

While generally supportive of the intended house-size and price-point, the commissioners discussed the neighborhood’s concern related to density. (See pages A18-A28.)

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

Staff Recommendation

Staff recommends the council provide comments, feedback and direction that may lead to the preparation of more detailed development plans.

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

Originator: Ashley Cauley, Senior Planner
SUPPORTING INFORMATION

Next Steps

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

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

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

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

Roles and Responsibilities

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

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

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

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

- City Staff. City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
Location Map
Project: Highview Concept Plan
Applicant: Ridge Creek Custom Homes
Address: 4301 Highview Place

This map is for illustrative purposes only.
2014 6-lot concept
Previous 10-lot concept
14. Other Business:

A. Concept Plan for Highview Villas, a residential development of properties at 4301 Highview Place and an adjacent, unaddressed parcel

Acting City Planner Susan Thomas gave the staff report.

Wagner the information indicated the project would be similar to the Groveland Pond project. He asked if that was correct. Tim Whitten of Whitten Associates, 4159 Heatherton Place, provided the history of the project.

Rob Eldridge of Ridge Creek Custom Homes said he was not involved in the six lot concept. The driving force to the ten lot concept was the proximity to the highway. The infrastructure cost would require the homes in the six lot concept to be priced in the $900,000 to $1 million range. The ten lot concept would allow all the driveways to be off the new cul-de-sac. A PUD would allow more control for the council providing for restrictions for setbacks, infrastructure, and natural resource protection. For the six lot concept, other than the standard setback requirements, just about anything could be built and the homes could be located just about anywhere on the lots. There could also be possible water management issues for the homes downhill from the development. Clustering the homes together would allow the natural buffer of the trees to remain. He said he would be the developer and builder and wanted to work closely
with the city and neighbors. The price point for the homes would be in the $450,000 to $650,000 range.

Acomb said her initial thought was there may be a couple too many houses. Earlier in the day she asked staff if the developer considered R-1A zoning with 15,000 square foot lots. She wasn’t opposed to smaller lots but felt the lots in the concept plan may be too small. She liked the potential price point.

Allendorf said he was trying to understand the motivation for what was in the plan. Two years ago the price of the lots was for $300,000. At six lots it comes to $50,000 per lot. At ten lots it comes to $30,000 per lot. He noted Eldridge indicated six homes would be priced in the $900,000 to $1 million range. The projected total then would be $6 million. Ten homes at $500,000 would equate to $5 million. He asked what the motivation was for doing this. Eldridge said the motivation was he felt the product would sell faster than a $1 million product. There was a lot more upper bracket new housing product already in the city. The buyers for the upper bracket housing tend to be particularly picky. There was a cost to holding the money as well. He said there already was a person interested in buying what was in the plan.

Greg Carson, 4222 Maple Lane, said the development would be added into the middle of his neighborhood. There were six homes between the development and Lake Street Extension. Putting a bunch of cookie cutter homes in the middle of the neighborhood would change the neighborhood character.

Tony Fernandes, 4232 Highview Place, said he and his wife moved to the neighborhood around four and a half years ago. His house is fairly secluded. He believed that anybody who buys property should be allowed to do anything with the property as long as it does not impose any hardships on anyone else in the neighborhood. He said the lot next to his was empty and he was told when he bought his home that it was a watershed area and no one could build on it. Much to his surprise around two weeks after he bought his house there was a for sale sign on the neighboring property. There was one spot on the property a house could be built. The single location was 20 feet from his house. He attended a council meeting and was told by the council there was an ordinance requiring people to go through certain procedures in order to remove trees. He said the development pretty much cleared the lot. He didn’t see anything wrong with this even though others in the neighborhood did. Fernandes said if a person should be allowed to get as much money as they can for a property as long they stay within the rules.
Bergstedt said typically when a concept plan comes before the council the plan is way too dense and the developer is told it would have to be scaled back. He said last year when the initial concept plan for this property was reviewed it was for six homes, five off of a new cul-de-sac, one off the existing cul-de-sac. All the city's standards were met and no variances were needed. He said it was a nice concept plan. One year later the plan was for ten detached villa homes sitting in the middle of the neighborhood. He shared the neighbors' concerns that ten homes were too many. There could be a possibility for more than six homes. He liked the initial concept plan a lot better because it fit in with the neighborhood. While a PUD would provide for more control for the city, he didn't feel the need for much extra control for a proposal that met all the city's standards. His first home in the city was right off Highway 7 close to this area. The noise did not bother him but significantly bothered his wife. There were people that would be turned off by living this close to the highway. Others would be interested in buying. He said for the past year the discussion was about how the detached villas were the hot product and Groveland Pond was used as an example. So far there has only been one unit built. This made him worried about price points. He would hate to allow something this dense in the middle of a neighborhood that ultimately did not sell.

Allendorf said for Groveland Pond initially the proposal was for more units and then the development got scaled back. When asked why the proposal was scaled back the developer indicated it was to get a higher cost for the proposed homes. He said this was the opposite situation. He liked the price point being close to $500,000 in comparison with the Groveland Pond's price point being around $760,000. He thought ten homes was too many but he liked the concept of the less expensive smaller homes. If an application was submitted, a traffic study would answer some of the neighbors' objections. As for what was the correct number of homes, he would have to see the proposal to evaluate the setbacks between the homes.

Wiersum said he didn't think this was an unattractive concept. The villa concept works but was unproven in Minnetonka. The issue was price point and $500,000 homes were more attractive to him than $1 million homes for this location. However the council's track record related to price points was that the discussion started at one price but the eventual price was always higher. The sale sign for Groveland Pond indicated the prices started at $750,000. The model was closer to $900,000. This was the challenge. The amount of land was fixed and if 10 homes were built it obviously would be cheaper than if six to eight homes were built. He agreed that he would like to see fewer than 10 homes. He also agreed there was a demand for the product in the city. It was important to understand lowering the number of homes would cause the price point to
increase. He said this was a challenging piece of property because it abuts I-494. This would appeal to some and not appeal to others. He disagreed with the comments that the development was in the middle of the neighborhood. It was in the middle of the access to the neighborhood. There was nothing to the north or east of the neighborhood other than the highway. He thought eight homes sounded reasonable with the understanding it would impact the price.

Wagner said the reason Groveland Pond was done was because it was higher zoned and then the zoning was lessened. The area for the villas by the townhomes near the Carlson Towers was zoned medium density for 30 plus years. Usually he was an advocate for the need for smaller lots in the city but this didn't feel like the right location for that because it seemed awfully isolated. He agreed ten homes would be a challenge for this location. He understood the concern about price point. He didn't think he would pay $800,000 for the Groveland Pond house because of the size of the property.

Ellingson asked how many homes under the comprehensive guide plan were permitted for the property. Wischnack said there was a four unit per acre guidance. The property was currently zoned R1 which allowed approximately two units per acre. She said eleven lots total, including the existing house, would equate to about 2.4 units per acre. Including the existing house the area was approximately 4.5 acres. Without the existing house included staff estimated the rest of the site was around 3.8 acres. The exact number would not be known until the survey was done.

Schneider shared the sentiment that six large homes priced at $1 million would be difficult to sell given the location. Having a little more diverse housing type available with the villa homes probably balanced keeping this low density residential with minimal impact while still mitigating the cost of the land with a public road adjacent to a busy highway on two sides. He didn't know the correct number of houses but he thought what was in the plan was a little too dense. The density of the southern half appeared to be fairly reasonable. Going north with the remaining four lots looked a little tight. He would rather have eight attractive more moderately priced homes than either nothing or homes that cost around $1 million. He thought the city needed this type of housing. He said if the Groveland Pond developer had done what they originally intended to do, having smaller lots adjacent to the commercial area in the $650,000 price range, the houses would have sold. The value for an $850,000 home wasn't there.
Highview Villas
4301 Highview Place

Current 9-lot Proposal

1/6/16

Neighborhood Feedback
Hi Ashley,

It was nice meeting you last night. Thanks for listening to my concerns, I really enjoyed having the time with you, the builder and the owner of the land to discuss this development. I’m not sure if my involvement can move the needle as much as a powerful developer that thanks for listening.

My takeaway from the evening was that with how expensive the creation of the cul de sac will be for the builder, 9 homes is what he believes is worth his time and effort, and of course he will try to argue it’s also best for the neighborhood. But although 9 homes would be best for him I don’t see how 9 homes is what’s best for the neighborhood in the **long term**. I understand his obligation to his company as his motivation for 9 homes but I also understand that the cities obligation is to the current homeowners on Maple lane to not disrupt the neighborhood too dramatically. I know this isn't the first project you and the city have seen nor will it be the last so I am confident that you will make a good chose that balances the needs of the neighborhood with the desires of the builder.

I was looking at a map of the area and it looks like Christy Lane which runs parallel to Maple lane to the West would be the best model for how this development should be laid out. Christy lane has 7 homes on a street with a cul du sac about the size of the one proposed. Although unlike the proposed development there aren’t 6 homes **crammed** on the cul du sac itself. With Christy lane as a reference this project would only have 5 new homes because of the proximity of two of the existing homes.

I can understand that the builder is going to use the lower limit of lot sizes in the area as support for his project. But what might be a better reference is the median lot size on Maple Lane or the distance between the existing homes on Maple Lane or at the very least another cul du sac in the area like Christy lane.
Just because 5 homes might not be best for the developer doesn’t mean it’s not what’s best for the neighborhood. I’m sure that if this builder passes on the project there will be another builder or builders that would be happy to build 5 homes.

I understand that from the builders prospective, as the number of homes decreases the size and price of the homes must increase but that also makes the homes difficult to sell given the proximity to the highway. I don’t mean to sound insensitive but that’s not the neighborhoods problem. Just because the market isn’t there for the homes now doesn’t mean it won’t be there in the future.

In terms of

the added traffic that this project could cause in the long term, in my opinion there’s a reason that the road from highway 7 was removed from Maple Lane and that’s because all the thru traffic was dangerous especially given the intersection at Lake Street. So from a traffic stand point 5 is much safer than 9 as well.

I know I can’t stop this project and even though ideally I would rather it not happen at all but it seems very obvious that 5 homes would be much better for the health of the neighborhood aesthetically and from a traffic standpoint in the long term than 9 homes.

The last comment I have and I’m not sure if I mentioned it last night but once new homes have been built so close to a busy highway and from the sounds of it they will be in the $500,000 range how long will it be before the people living in those homes demand that a wall be built (at the cities expense no doubt) to mitigate the road noise.

Thanks again for the time last night and if you have any questions please let me know.

Leif

4214 Maple Lane

Minnetonka, MN 55345
ITEM 9B – Highview Villas

The city received the attached comments following publication of the report.
January 16, 2016

Planning Commissioners
Mayor Schneider & Council Members

My wife Susie and I have been the property owners of the two parcels located at 4301 Highview Place for 30 years. We both grew up in the City of Minnetonka and have seen the City evolve over the years. Our sons are now grown and we are looking to downsize and simplify our lives. It has been our plan since day one to use our property to help facilitate our retirement.

We started the process in the Spring of 2014, when we began working with Tim Whitten with Whitten Associates. Tim went to the City to discuss our property and they indicated they preferred a cul-de-sac for lot access. The cul-de-sac reduced the number of properties in the immediate neighborhood affected by the drive-by traffic from 16 to 7. The marketing of our property has been challenging and has been a true hardship. After we received the nod from the City Council on the six lot concept, Tim contacted over fifteen builders who, because of cost of the cul-de-sac improvement and the proximity to the highway, had little interest in building six expensive homes on the site. We have seen how long it has taken for Williston Glen and other similar developments to sell and build, one lot at a time. We are encouraged with the nine lot concept as it is more marketable and a price point that is needed in the City. We are thankful to have found one quality builder to commit to the project.

Susie and I have been good neighbors, and have always been there to help a neighbor out. We were surprised that some of the neighbors seem opposed to our land being developed. However, as neighbors learned more of the facts about the proposed development, some acknowledge they were quick to judge, and understand that development is going to happen. Additionally, we and some neighbors recognize there could be far less attractive alternatives.

We know change is hard, but we have already seen two tear downs and two lot divisions on Maple/Highview in recent years. We see the proposed development as a continuation of the revitalization of the neighborhood.

We are believers in the process, and ask for your support of the nine lot concept plan.

Sincerely,

Dan & Susie Swanson
Dear Ashley,
I wanted to reach out to you in regard to a signed petition our household signed in regard to the Highview Villas. We signed against it, and would like to change that or have our name removed; it is under Glassbrenner. We were approached by a neighbor and didn’t know all the facts in regard to this project at the time. I am not sure that we know all of them, but have made some effort to learn more to make an educated opinion.

After speaking with my spouse, we agreed that we do not want to hinder the Swanson’s efforts to sell their land. We are more concerned about the road safety that is lacking in this family oriented neighborhood. Further, we have learned more about their sensitivity to this development and efforts to retain the beauty of the trees to the extent they see fit. Their obligation seems to go beyond what is legal and has just been out of their own personal decency that they haven’t pushed their legal rights and the property. I think some neighbors are terribly misinformed or are reacting out of disappointment with erroneous information. I understand as a neighbor in the community that it can be favorable to have fewer cars, buildings, and disruptions going on in the neighborhood, but we don’t believe that this should be at their loss or cost. As a neighbor in this area and fairly networked with a few other young families, it is my understanding that most are just concerned with the lack of stop signs, speed of cars and blind intersections. I take that seriously, and it is a concern for us as parents of two small children who will eventually be riding bikes. It’s very dangerous. The road width, lack of sidewalks make the project off-putting. However, I don’t agree that they Swanson’s should pay for the lack of road safety efforts from the city.

Sincerely,

Cinnamon Glassbrenner
Good morning Ashley-
My name is Tim Thorpe and I live in the Royal Hills neighborhood, adjacent to the proposed Highview Place development.

I have been following the discussion of the proposed development and I fully support and am in favor of the proposed 9 homes recommendation; this type of development will be a nice addition to the NW side of Highway 7 & 494 and will also help to revitalize our neighborhood.

If you have any questions or would like to talk, please let me know.
Thank you-
Tim Thorpe
4245 Queens Way
Minnetonka, MN
Hello Ashley,

Steve and I are returning from vacation and won't be able to attend tonight's meeting. We have known a development would eventually occur at the Swanson property and were disconcerted by the initial plan. We asked that the city look at how all of us would be impacted. Steve and I feel this has been duly considered. We have also come to appreciate the quality of the builder and developer and believe this combination will provide the best outcome for all of us. We thank you for the work you have done on this project. We hope the quality, affordable development plan the Swansons are presenting will be approved rather than pursuing individual lot options.

Please let me know if you have any questions. I am sending this from my phone as we travel to the airport.

Stephanie and Steve Huss

Sent from my Verizon 4G LTE Smartphone
January 19, 2016

Mayor Terry Schneider
14600 Minnetonka Blvd
Minnetonka, MN 55345

Re: Sherry Blohm
4328 Highview Place
Minnetonka, MN 55345
Our File No.: 268514 MN

Dear Mayor Schneider:

The undersigned firm has been contacted by Ms. Sherry Blohm in regards to a development proposal for Highview Villas, 4301 Highview Place in Minnetonka.

Ms. Blohm understands that the revised proposal for the above mentioned property will include nine new lots of detached villa style homes around a newly constructed cul-de-sac as opposed to the original proposal for ten new lots.

Ms. Blohm objects to the current proposal for nine new lots. Under the current R1 Low Density Residential District Zoning, the builder would be allowed to build up to six new lots, which is more compatible with the current community. In order for nine new homes to be built, Ms. Blohm understands the current zoning would have to be changed to a Planned Unit Development District.

Section 300.22 specifies PUD zoning may be considered by the city when it would result in one of the specified public benefits. At this time, Ms. Blohm informs us she is not aware of how this proposal could be a benefit to the community. At a prior meeting, Ms. Blohm received the impression the motivation behind the increased number of homes seemed to be economical viability for the builder, even though a six home or less model would be a better long term fit in this community.

The Planning Commission and City Council have a responsibility to the community to consider the long term impact on the community as a whole. Ms. Blohm believes the higher number of homes on this plot of land will greatly increase the amount of traffic to the neighborhood, which could impact the safety of the streets. In addition, she feels there will be an increased drain on resources, an increased noise level, and an unacceptable disruption to the current members of the community.

It is Ms. Blohm’s hope that the Planning Commission and City Council will keep in mind the current median lot size, the current distance between the existing homes, and other relevant factors which make her community what it is today.
Sincerely,

WAGNER, FALCONER & JUDD, LTD.

Tamara Larson
Attorney at Law

TML/ph

cc: Ms. Sherry Blohm
    Geralyn Barone, City Manager
    Director of the Planning Commission
    City Council Members
B. Concept plan for Highview Villas, a residential development of properties at 4301 Highview Place and an adjacent, unaddressed parcel.

Chair Kirk introduced the proposal and called for the staff report.

Cauley reported. Staff recommended that commissioners provide comments, feedback, and direction related to the contemplated density and general site design of the previous concepts and the current nine-lot concept.

Robert Eldridge, applicant, said that:

- The cul-de-sac lots would meet all R-1A requirements. The three lots on the north end would not meet the lot-width requirement.
- The mayor favored the cul-de-sac, but thought the lots felt tight in the previous proposal. One lot was removed from the previous proposal. He reviewed the increased setbacks.
- The proposal strives to bring “affordable” new construction in Minnetonka. He hopes to keep the prices in the $500,000s.
- Less than half of the single-family residential properties in Minnetonka meet the 22,000 square-foot lot-size requirement.
- Six lots might be tough to sell due to the site’s proximity to Highway 7 and Interstate 494. Woods of Fairview and Williston Glen took over 10 years to sell out.
- He appreciated the commission’s feedback and time.

Powers asked for the sizes of houses. Mr. Eldridge estimated from 1,800 square feet to 2,700 square feet. He has buyers interested in the proposed houses. Adding upscale features could increase the price from the $500,000s.

Chair Kirk asked for the benefits of PUD zoning. Mr. Eldridge stated that the building pad width would be limited to 40 feet to keep the units affordable, more trees could be saved on the east and south to keep more of the buffer, and there would be more control of storm water management. Vehicles would fit easily on the wide street. Each of the driveways would hold two to four vehicles and the garages would hold two to three vehicles.

Mr. Eldridge differentiated his proposal from Williston Glen with its price point over $700,000. An R-1 in this location would not make sense. The 80-foot cul-de-sac would be huge.
Rene Fine, 13900 Lake Street, asked if the proposal is within standard guidelines. She is pretty excited to see something developed. A lot of the houses have been sold in the last 15 years. She supports revitalization.

Greg Carson, 4222 Maple Lane, preferred the zoning to stay the same. The conceptual turn-around looks smaller than one that is the minimum size allowed for a turn around.

Tony Fernandes, 4232 Highview Place, saw no reason why the proposal should not be accepted. Apartments could be constructed. The proposal would increase property values.

Bob Anderson, 4316 Highview Place, objected to the proposal because it would be too many houses. The houses would be too close together. Six houses would be allowed without a zoning change. The builder said gigantic houses would have to be built then. Average-size houses could be built. The property has been zoned R-1 for years. Someone’s desire to maximize financial gain needs to be balanced with the effect that would have on the neighbors. He objects to the proposal because it would damage the character of the neighborhood and quality of life to the neighbors. It would be too many houses.

Leif Swenson, 4214 Maple Lane, stated that it is not the problem of current residents if the houses would not sell right away. Christy Lane is a good mirror of the site and would be reasonable. Twelve houses would not fit with the aesthetic and cause more vehicle trips.

Chad Colsch, 4320 Highview Place, questioned the differences between R-1 and PUD zoning for the site and requested an example of a similar situation and the impact that PUD zoning had on the neighborhood. He asked who would pay for a sound barrier if the neighbors would want one constructed.

Daniel Swanson, 4301 Highview Place, stated that a big cul-de-sac is not needed. He prefers a 6-lot plan that follows R-1 zoning regulations, but he could not find a builder. He has a builder now who wants to do the 9-lot plan. He wants to retire and not live there 10 more years.

Greg Lewis, 4230 Maple Lane, stated that he agrees with Dan and Tony. It would be nice to have some change in the neighborhood. He agrees with staff’s recommendation for Villa West. He wants to agree on something. Nine houses would not be a good fit. There would be too many houses, vehicles, and trees removed. He has 13 oak trees and has lost 4 to oak blight. A bus would not be able to turn around. Snow removal would be an issue. A lot of vehicles use the
road. Six lots would be better. He lost a buyer for his house because the buyer did not want to see construction.

Ms. Fine stated that it seems that there would be no developer interested in a plan with six lots. She wondered if there would be a compromise. Change is hard. She is planning to stay and raise her small children. The developer widened the lots on Highway 7 and maintained the natural beauty of the trees. A compromise would be beneficial to the neighborhood.

Sherry Bloom, 4328 Highview Place, was concerned with the change in zoning. She favored R-1 zoning regulations. She wants the look of the neighborhood preserved.

Chair Kirk asked if the cul-de-sac would meet requirements. Cauley answered that the cul-de-sac would be reviewed when a formal application is received.

Chair Kirk asked staff to address the sound-barrier question. Gordon stated that a developer may construct a wall or fence as part of a development. MNDOT maintains a list of requests for sound barriers on highways and freeways and would be the authority for a barrier constructed in the right-of-way.

Knight asked if one of the lots on the street would be removed, then would R-1A zoning requirements be met. Cauley answered affirmatively. The lot widths would then meet R-1A standards.

Knight noted that the view would not change from Maple Lane or Highview Place if one lot would be removed. Knight favored 8 lots.

Calvert noted that the proposal would create new construction at a price-point for a demographic that does not have new construction, but it does seem dense. She does see a benefit to new construction. She did not see a lot of space to store snow in the cul-de-sac.

Powers thought the neighborhood does not need revitalization. He did not want to tell a developer how big a house could be. Going from 9 lots to 8 lots would cause a fairly significant change in the cost per square foot. He prefers the current concept plan to the one with 10 lots. Relative to Legacy Oaks, the proposal would not be dense at all. The concept plan is headed in the right direction. He likes 8 lots. Change is not always that difficult. It is healthy to have new houses built in a neighborhood. Engineering staff would figure out the subtleties.
Chair Kirk noted how the site would be connected to the surrounding neighborhood. The character is not isolated.

Odland asked if 7 lots would meet R-1 zoning requirements. Cauley estimated that if the existing house would be removed, then 8 lots would be possible based on the total area of the site.

Calvert asked for the zoning for the area. Gordon answered single-family residential of up to 4 units per acre.

Chair Kirk noted that diversified housing stock is a city goal. The property owner has the right to develop the land. The concept plan is still too dense. These comments go to the city council.

Powers did not see anything healthy about vacant property sitting empty. Lots need to sell within a reasonable amount of time. It is better for the health of a neighborhood.

Calvert was conflicted. She agreed that diversified housing is needed and a vital development that sells in a reasonable amount of time is positive. On the other hand, she had some concern that eight might fit better than nine, but then the price point would go up and the housing stock reverts back to large houses on large lots.

Knight was concerned that decreasing the number of lots would create something similar to the Williston Road project which was an absolute disaster for a long time. Neighbors did not like having empty lots adjacent to them. It was an eyesore. He understood the developer not wanting to create a similar development. Six lots would have big houses.

Chair Kirk did not think it would be fair to require the current owner to provide a buffer between other neighbors and Highway 7. This is a great spot for a decent price point. He hopes it works. He thanked those present for attending.
-----Original Message-----
From: Brad Wiersum
Sent: Wednesday, February 03, 2016 12:39 PM
To: Sherry Blohm
Cc: Geralyn Barone <gbarone@eminnetonka.com>; Julie Wischnack <jwischnack@eminnetonka.com>
Subject: RE: Highview Villas

Dear Ms. Blohm:

Thank you for your letter. I appreciate knowing your point of view. Please continue to stay involved in the process regarding this and any other development proposals that may be presented regarding this property. I have made no decisions regarding this proposal, and I work to keep an open mind regarding development proposals. I try to weigh all of the facts when it is time for me to vote on a proposal. Thank you again.

Sincerely,

Brad J. Wiersum
Minnetonka Ward 3

From: Sherry Blohm
Sent: Wednesday, February 03, 2016 12:08 PM
To: Brad Wiersum
Cc: Tim Bergstedt
Subject: FW: Highview Villas

Please see the letter that follows:

Sent from Mail<http://go.microsoft.com/fwlink/?LinkId=550986> for Windows 10

From: Sherry Blohm
Sent: Wednesday, February 3, 2016 12:03 PM
To: dallendorf@eminnetonka.com<mailto:dallendorf@eminnetonka.com>; pacomb@eminnetonka.com<mailto:pacomb@eminnetonka.com>; bellingson@eminnetonka.com<mailto:bellingson@eminnetonka.com>; twagner@eminnetonka.com<mailto:twagner@eminnetonka.com>
Subject: Highview Villas

Yesterday I spoke with State Representative Yvonne Selcer. I believe she spoke with some of you as well. She indicated that the City Council was looking for a compromise on the Highview Villa project.

To that end, I am offering the following information on how the neighborhood feels about this project.

The homeowners surrounding this project have a number of concerns:

1. A change in zoning from R1 to PUD.
In the research we have done, PUD has never been used to zone single family homes, over the last 20 years, it has been used to facilitate condos and townhomes.

Concern: It appears as if the developer can come back to the City Council with a new plan to build condos or townhomes on this property. It is our concern that MDUs will affect the value of our property.

Concern: No mention has been made on the zoning of the owner’s existing home, which, if we understand correctly, is part of this development. This property faces Highview Place. Placing small tract homes here would destroy the integrity of the neighborhood. We would suggest that this piece of the property retain its R1 zone.

Solution: Is there another type of zoning that would allow the owner to get a reasonable price for his property, and address the concerns of the surrounding homeowners ie, retain the R1 zone for the owner’s home and change the zoning for the property that has been in discussion, to zoning that would not permit MDUs, but would facilitate the current proposed development?

2. Public safety.

The intersection of Lake Street Extension and Maple Lane is dangerous. In the past, two public safety vehicles collided at this intersection, and each of the neighbors have stories of near collisions or fender benders. To make matters even worse, the school district has stopped bus service for the children on Maple Lane and Highview Place. The students are dropped off at the intersection of Lake Street Extension and Maple Lane. Some of the parents drive their children to the bus stop, which makes the situation more dangerous. The addition of more traffic to this neighborhood is not safe. There is only one way in and out.

Solution. We really don’t see one. We need help from the City of Minnetonka.

3. Quality of Life
The following is a quote from the petition that was submitted to you, by 30 property owners surrounding this development:

“The city has established half-acre per home standards that support the open spaces setting for our city. Do not compromise this standard for the financial gain of one resident. We who live here will suffer from that decision.”

We understand that it is the City Council’s responsibility to hear concerns from all residents, and make the best decisions possible. We do not understand the rationale for allowing a property owner to destroy a neighborhood by obtaining a change in zoning. The property is currently zoned R1, and up to 6 homes can be built without any zone change.

Solution. The number of homes is not the issue here, the zoning is. Find another zoning category what would not allow MDUs.

To be built in this neighborhood, and more importantly, find a plan that would facilitate a reasonable number of homes that would fit the existing aesthetic of the neighborhood. As 10 is too many, the City Council has requested a proposal for 8, we would support a proposal for 7, if the aesthetic of the neighborhood is maintained, and if some of our public
safety issues

would be addressed.

Thank you for taking the time to read this letter. We look forward to a response from you regarding these issues.

Sherry Blohm
4328 Highview Place
Minnetonka, MN 55345
952.938.1075

Sent from Mail<http://go.microsoft.com/fwlink/?LinkId=550986> for Windows 10
City Council Agenda Item #14B
Meeting of February 8, 2016

Brief Description
Concept plan review for Villa West at 16913 State Highway 7

Recommendation
Discuss concept plan with the applicant. No formal action.

Background

In 2015, RTS Development submitted a concept plan for redevelopment of the existing single-family residential properties at 16901, 16913 and 17101 State Highway 7. The plan contemplated construction of 30 detached villa homes accessed directly from Highway 7 via a new, one-way street. During review of the concept, area residents, the planning commission, and the city council raised concerns about density, site design, and the concept’s general lack of information. (See pages A1–A12.)

Revised Concept

RTS Development has now submitted a revised concept plan for redevelopment of the 16913 State Highway 7 site only. The revised concept plan contemplates construction of three, two-unit townhomes, accessed directly from Highway 7 via a new roadway. The plan further projects continuation of the concept to the west if and when that property becomes available. (See pages A13–A17.)

Key Issues

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

- **Access:** MnDOT has jurisdictional control of access from Highway 7. Therefore, the applicant would need to work with MnDOT and the city in order to provide safe access to the development site.

- **Planned Development:** The parcel is part of a larger area that is guided for medium-density residential development. The comprehensive plan anticipates that this area would be developed as a single, medium-density development. This is especially important due to access constraints. It is not desirable to have separate developments with separate accesses from Highway 7. However, it may be difficult for one developer to assemble all of the properties at one time given that there are multiple property owners involved. In this case, any development of a portion of the properties would need to account and plan for the potential of future development on the other properties that are guided medium-density. (See pages A19–A22.)
Review Process

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

- **Neighborhood Meeting.** The developer held a neighborhood meeting on January 21, 2016. Approximately 16 area residents were in attendance. Residents owning single-family properties to the south and townhome properties to the west indicated general support for the concept. They noted the revised concept would be significantly less impactful to the site and surroundings than the previous concept. However, residents owning other single-family properties adjacent to Highway 7 expressed concern that this concept would severely limit their options for future development or would result in multiple smaller developments contrary to the city’s vision for the area.

Since the neighborhood meeting, staff met with three of the Highway 7 property owners. They continue to be frustrated about a perceived lack of cooperation in developing an overall concept for the area. It is their intent to also present a concept plan to the city at some point in the near future.

- **Planning Commission Concept Plan Review.** The planning commission conducted a review of the RTS concept plan on January 21, immediately following the neighborhood meeting. The commission generally expressed support for the concept as presented, suggesting it was a good transition between existing residences and the highway. Commissioners did note that access, particularly minimizing the number of access points, would be important for this and any future development along Highway 7. (See pages A24–A25.)

Since the planning commission meeting, staff met with three of the Highway 7 property owners. The owners reiterated they wish to be involved in a larger development of all properties in a coordinated manner. As a follow up to that meeting with staff, a representative of the group provided a letter and information about the properties. (See pages A26-A30.)

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

**Staff Recommendation**

Staff recommends the council provide comments, feedback, and direction that may lead to the preparation of more detailed development plans.
Through: Geralyn Barone, City Manager
        Loren Gordon, AICP, City Planner

Originator: Susan Thomas, AICP, Principal Planner
ADDITIONAL INFORMATION

Next Steps

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

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

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

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

Roles and Responsibilities

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

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

- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and concerns prior to the council’s consideration by carefully balancing the interests of applicants, neighbors, and the general public.
City Council. As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, planning commissioners, applicants and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.

City Staff. City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
Location Map
Project: Villas West
Address: 16913 State Highway 7
2015 CONCEPT PLAN

GROSS AREA:
4.5 Acres Approximate

PROPOSED LOTS:
50 Single Family Residential Lots
Minimum 40 ft. Width

PROPOSED DENSITY:
6.7 Units per Acre Approximate

ONE-WAY PRIVATE DRIVE:
1,050 ft. Length Approximate
20 ft. Vehicle Drive
5 ft. Shoulder
2 ft. Gravel (One Side)
30 ft. Total Width
Odland was concerned with the water table level and what potential negative changes would occur to provide underground parking. A location closer to light rail might make more sense. There are issues that need to be looked at.

Magney felt multi-family housing would be a good choice for the location. A little smaller scale of three or four stories may be preferable. He was not concerned with the groundwater issue. The engineers would work out those details. It might impact the whole project, but the engineers would determine that. There should be more guest parking. In the big picture, multi-family housing would be just fine.

O'Connell concurred that the density of housing would be a good fit for the area with an office park so close to jobs. It fits the long-term vision of using existing infrastructure. The issues raised would have to be addressed. He supports the proposal.

Knight agrees with Magney and O'Connell. The proposal would be an appropriate use of the property. The area has a lot of employment. Right now, employees are driving in from outside the area. If some of the workers lived in the apartment building, then that would be a good thing. The area is not residential where neighbors would be concerned about what could be seen out the window. It would not bother him if a five-story building was constructed next to the building he works in. The size of the building does not bother him at all.

Chair Kirk recapped that more than five stories would be an issue for the commission. Transportation issues need to be addressed because of current problems, but the proposal is not being rejected. He would appreciate more of a clear, long-range vision in the comprehensive guide plan for the Opus area. He did not object to the proposal, but he was worried how the greater Opus area associations and trip counts fit in with each other. Wischnack stated that the city council will look at comprehensive guide plan studies done on the Opus area.

B.  Concept plan review for Villa West on State Highway 7.

Staff recommends that commissioners provide feedback to assist the applicant with direction that may lead to the preparation of more detailed development plans.

Bob Schmidt, president of RTS Development, applicant, stated that:

- Thomson did a good job explaining the proposal.
- The property owner of the site used to fix his boat props. It was a unique piece of property located off a gravel road on Highway 7.
The plan is wonderful. It would create housing for the aging population.

An association would maintain the grounds.

He developed townhouses on Covington Road in Minnetonka years ago. He built villa-style townhomes in Golden Valley which is a primary example of the proposed development.

This property lends itself to a community development master plan.

He found a way to access the property that MNDot agrees with.

He was available for questions.

Scott Dahlke, civil engineer of site design, stated that:

The site is a long, rectangle shape. The plan proposed an access road to run down the center of the property and be constructed on both sides of the road.

There are currently no sewer or water utilities. The utilities would be extended from the northwest corner down the center of the road.

He has met with MNDot and reviewed many concept plans. MNDot prefers a single access point on the east end. There would be a private drive 20 feet in width with a turn lane on Highway 7 for the entrance. Traffic would enter on the east side, travel west through the site, and then exit on the west end. The reason MNDot prefers this configuration is because of the existing exit from the adjacent townhomes on the west. The nearest city street is Clear Spring Road. A connection to Clear Spring Road would not be beneficial.

Topography and drainage details will be provided as the plan moves forward. He described the drainage pattern, location of wetlands, stormwater management plans, and importance of tree preservation and screening.

Rob Eldrich, of Ridge Creek Custom Homes, stated that he is one of the preferred builders for the project. He is looking to do the detached villa concept, rambler houses, and two-story houses. The targeted market would be looking to downsize or get rid of large yards. There would be main-floor master suites and elevators for some. Minnetonka’s median age is 60 years. These would be nice, new homes for local residents. He is available for questions.

Chair Kirk invited residents to provide input.

David Devins, 17100 Sandy Lane, stated that:
• The project is too dense. The homes would be substantial in size and be priced around $500,000.
• The property is zoned R-1 and guided R-3. He asked for the comprehensive guide plan to be changed to R-1, single-family residential.
• He has concerns about tree preservation and keeping the existing berm. It works as natural drainage control.
• The area has terrible drainage and is full of springs. The whole area is wet.
• There is mixed topography.
• The density seems too big. Houses with 2,800 square feet would be too large to still have room for trees, streets, and driveways.

Lisa Brown, 4926 Clear Spring Road, stated that:

• The small area cannot handle going from 5 houses to 30 houses.
• The issues include loss of trees, wetlands, and springs.
• She has seen a lot of change in 26 years. She remembers Snuffy’s and Lilliput.
• The proposal would be too big and cause the removal of mature trees that are significant.
• Removing buckthorn would eliminate a lot of screening.
• She understood something would be constructed, but this would be too big.
• She encouraged commissioners to visit the site. There is a bike trail along Highway 7.

Beth Frost, 4914 Clear Spring Road, stated that:

• The proposal seems massive.
• Her lot and those in the area are huge, but they would abut 40-foot lots if the proposal would be done. The proposal would be out of character with the neighborhood. She feels strongly about that.
• The elevation would be higher, so the proposed houses would be looking down on the existing surrounding houses and create a privacy issue.
• Access to Highway 7 would be crucial for the neighborhood, because it would create too much traffic for Clear Spring Road.
• She wants more history on Mr. Schmidt and his developments. The judgements against him are extensive, so she hopes those are looked at.
John Eiden, 16821 Highway 7, stated that:

- He declined selling. He does not think the proposal is a good idea. It would create a dead end. It would not be the best use of the property.
- The 2030 comprehensive guide plan is dedicated to preserving Minnetonka’s natural beauty. This proposal would impact the drainage. He explained the drainage pattern.
- This corridor is a gateway to a section of Minnetonka. The property owners have taken care of the land for decades. Trees help preserve the ozone, reduce emissions, and prevent global warming.
- He supports extending the Purgatory Creek area to the site. All 7 properties drain into Purgatory Creek.
- He does not want to live next to all of the construction. His living room faces Highway 7. It does not look pretty and is not quiet. He cannot see people paying $700,000 for property that is not quiet. The builder did not say anything about sound barriers. The project would be a “slow seller.” Neighbors would have to watch the construction unless barriers are provided.
- He understood that the property owners want to sell, but that does not mean that the neighborhood should be turned into a senior living center.
- He reviewed the traffic pattern. He did not think it made sense.
- The best use of the property would be to turn it into open space. It would look good as a corridor and bring up the value of surrounding properties.
- The proposal would be a mistake.

Pam Scherling, 4925 West End Lane, stated that:

- She had the same concerns as the previous speakers.
- There is a heavily used trail located in the front of the property. There are many near misses. Construction equipment would create a lot of traffic.
- Resident surveys show that parks and trails are a main priority. Residents do not want neighborhoods leveled or trees removed.
- The development should be much lower density. There is no walkability to shopping.
- The price point would be too high for a high-traffic area.
Ms. Frost added that the wetlands on the northwest side are connected by a tunnel that travels under Highway 7 and the bike path connects to Purgatory Creek.

Knight asked how the proposal compares to the development on the west in terms of density. Thomson said that the proposal would be 6.5 to 7 units per acre. Medium density zoning allows 4 to 12 units per acre. Thomas calculated that the Carlyle Townhomes next door are 9 units per acre.

Calvert asked what the price point would be. Mr. Eldrich did not know the lot cost yet, so the price has not been determined. The estimate would be $500,000 for one story with 1,400 to 1,700 square feet on the main level and $600,000 for two stories with 1,000 square feet on the main level and 1,500 square feet above. A market study was completed. There is a project in Minnetonka off of County Road 101 and Highway 5 that starts in the upper $700,000 and goes into the $1 million range.

Odland remembered conversations that Groveland Pond would be too big. The proposal looks like 15 lbs. of potatoes would be put into a 5 lb. bag. It would be too large. She thought the price point would be too high for a resident downsizing and considering that the units would be on a highway.

Chair Kirk was concerned that the access on Highway 7 would not be safe. The development would be too dense. The Carlyle development looks fairly dense. Once the driveways and garages were added to the Groveland Pond proposal, commissioners determined it would be too dense. The houses would have been within 15 feet of each other. There must be a market, because developers are proposing the density. Determining whether the residences would sell is up to the developer. The size, density, and safety of the accesses is within the purview of commissioners.

Knight has been on the trail biking. He did not like the steep hills to the Carlyle Townhomes. He stops for the stop sign and nearly hits a cyclist that does not stop at that intersection often. He crosses the path on his way to work. Motorists stop in the middle of the road because bicyclists do not stop.

Calvert noted that it seems that the Carlyle is protected by old trees that provide a buffer. The proposal would have to reduce the number of trees by an enormous amount. That would not be right.
Chair Kirk asked if commissioners would prefer an extension of Carlysle Place. Calvert said that the proposal is hard to visualize. A neighborhood would be significantly changed and commissioners have it in their purview to encourage responsible development that includes meeting demographic need by attracting young people and helping seniors have housing options. She was not convinced if the proposal would achieve either goal. It is hard to see the impact without a tree survey and the actual plans. Minnetonka does not have a lot of the type of housing that Carlysle would provide. There is not a lot of space to build new single-family housing stock in Minnetonka. It is a conundrum.

Chair Kirk said that it is nice to have some amenities when adding single-family houses. This is not a great spot. It would not be an easy place to get in and out of. It is not walkable to the store. Carlysle is full, but has the same traffic issues.

Thomson requested direction from commissioners regarding potential future development of the area as a whole. Chair Kirk asked if waiting for other parcels to be included in the development site would be an option. Thomson stated that the comprehensive guide plan guides the area to be considered as a whole for redevelopment. Planning for future connections would be a reasonable approach.

Chair Kirk thought that two additional lots on the east would be an easy extension of the proposal.

Thomson clarified that the comprehensive guide plan calls for an understanding that redeveloping the area in part would have some impact on future redevelopment of two properties on the east and what would ultimately happen to them.

Chair Kirk stated that the commission could request that the developer to create an extension of the proposal that would incorporate those two additional lots.

Chair Kirk wants tree preservation and a buffer to the Clear Spring Road neighborhood taken into account. To go from low density to high density suggests that there needs to be an area of buffer. Commissioners agree that the proposal is too dense and a buffer is needed between the proposal and Highway 7.

Calvert took to heart the comments regarding the wetlands.

Chair Kirk was interested to see how acceleration and deceleration would work with the access points.
Odland requested statistics on the number of accidents at Carlysle for motor vehicles, bicyclists, and pedestrians. Thomson will request that information from the police department.

O'Connell deferred the access issues to MNDot. He was not so certain that it would not be too dense based on the comprehensive guide plan. The same arguments could be made for Carlysle, but residents like living there.

Magney agreed that the proposal would not be too dense. The site is awkward. Safety is a big concern, but he would defer to MNDot on that.

10. Adjournment

Odland moved, second by O'Connell, to adjourn the meeting at 9:20 p.m. Motion carried unanimously.

By: ____________________________

Lois T. Mason
Planning Secretary
Aggarwal said he would not be back before the council asking for another variance. He asked if it mattered to the council if the homes had a full basement or a lookout. Schneider said it did matter. The way the 3,200 square foot was calculated was on all exposed levels. Wischnack said that would be included in the resolution.

Allendorf moved, Wiersum seconded a motion to adopt Res. 2015-083 approving the preliminary plat including the condition that:

- Plat won’t be released until the building plans are submitted that meet the specified criteria – Square foot above ground of 3200 or less; FAR of 0.14
- Building permits won’t be approved unless the plans submitted with the building permit application substantially conform to the plans approved prior to release of the final plat

All voted “yes.” Motion carried.

Schneider said if the provision worked there may be other opportunities to do the right thing without making things so complicated.

C. Concept plan review for Villa West

Thomas gave the staff report.

Bob Schmidt, president of RTS Development, said the villa concept was designed for Minnetonka residents looking to downsize or not wanting to do yardwork.

Scott Dahlke, civil engineer of site design, said the biggest challenge was the access. He met with MnDOT staff who provided a recommendation about how to maintain access to the properties. The recommendation was to continue down to the east to the most easterly boundary, come off of Highway 7 and circle back through the site with an exit at the west end. This would provide two exit maneuvers that were in close proximity on to Highway 7. He said all of the properties except the most westerly property were on well and septic. The project would extend sewer and water to all the lots. A survey has been completed and wetland delineation has been done. There is a creek that runs through the center of the site. The development plan would take that into consideration.

Rob Eldrich, of Ridge Creek Custom Homes, said one issue that came up during the neighborhood meeting and the planning commission meeting was the tree canopy and the privacy of the neighboring properties. He said he, Schmidt, and Dahlke went out to the property and were confident that the major woods along the south property line would maintain the privacy.
The goal was to maintain a buffer from between the proposed houses and the existing houses so the woodsy feel remains. He said it was likely that none of the homes would be priced above $750,000. Looking at new construction in the city built during the last two years, there were six homes available under $750,000, five were two stories, one was split level. The median age in the city was 60 years old. He was excited to bring this product to the market.

Schneider asked if the homes would be detached or attached. Eldrich said they would be detached with a rambler style. There were some alternative two story styles for young families looking for new construction.

Schneider asked if there was any effort to cooperatively work with the property to the west of the western exit to have the entrance be combined between the two. The tradeoff would be more setback behind the home. Dahlke said that had been discussed with MnDot and the recommendation was for the exit to be independent.

Allendorf asked for more information about how the circuitous route exiting on the east side would work. Dahlke said traffic coming from the west would go along the entire frontage of the project with a turn lane on Highway 7 coming into the easterly point. Traffic would come back through to the west on the one way private drive that would exit on to Highway 7 continuing to the east. Allendorf asked if there had been any consideration of an internal two way circulation system that would allow entering and exiting on the east to avoid the proximity of the two exits to the west. Dahlke said the limited property boundaries led to the narrower one way configuration. There just wasn’t enough space to have a full two way road. Allendorf said that meant no street parking on the property. Dahlke confirmed that was correct. He said more work would be done to look at how to handle the parking.

Schneider said this was less of a concept review and more a reaffirmation of the density of housing. There wasn’t enough information to evaluate the pros and cons of the concept.

Wiersum agreed. His natural inclination was to wonder what the houses would look like and that information was not yet available. He recommended that the applicant not come back with an application before doing a more detailed concept review.

Schmidt said the plan began with a single parcel and then the neighbors expressed interest in selling. He said there was a lot of demand and interest for this type of housing. The density would be about half of the density of the neighboring townhouses.
Bergstedt said he attended a neighborhood meeting at the beginning of the process. There were a lot of questions about the concept review process. He noted staff had not seen any type of detailed plans. The area had been planned for medium density since the 1970's so he didn't think anyone should be concerned with a medium density proposal. He said some of the neighbors inquired about the city purchasing the property for park land or open space. This would not happen and he thought the property should be developed but developed sensibly. Along with the existing Carlyle Place townhouses there were six single family parcels, four were under control. Whatever plan that comes forward involving the four parcels should be looked at more broadly to determine how the final two parcels would be integrated in an orderly way. He thought the detached villa townhomes would be very popular but looking at the plan it seemed to be very dense.

Pam Scherling, 4925 West End Lane, said the townhomes were not double the density of the proposed new development. The proposal was for six per acre and the townhomes were nine per acre. She said the proposal had one street while the townhomes had four. The four streets were curved so the townhomes looked like a neighborhood. Because of the amount of open space between the buildings there were mature trees that were able to thrive. This was also where guests parked. One of the association's challenges was the guest parking because many of the residents own boats and sometimes the boat takes up the entire garage space. She said the trees would have to be clear cut in order to get to the proposed density. She questioned who would move into the proposed houses given the pricing.

David Devins, 17100 Sandy Lane, said when he exits his driveway and enters Highway 7, traffic does not yield and he was concerned about an exit on the neighboring property with traffic going out at the same time. He said the density was way out of line. He noted there were serious water and drainage issues when Carlyle Place was built.

D. Concept plan review for redevelopment of the property located at 10101 Bren Road E

Thomas gave the staff report.

Wagner said as the council had discussed the area, the discussion was that it was going to change to a higher density. He thought there was agreement it would be a combination of businesses and residential. It was more logical that the Merchandise Mart area might have more residential, and he had argued for residential on the Datacard site as well but the
Ms. Thomas

As we have discussed in our previous meetings, I would like to withdraw the site plan proposed for the properties at 17101, 16913 & 16901 State Highway 7.

After careful consideration I would like to submit for your review the attached concept plan for 16913 State Highway 7 that would result in three, two unit townhomes, along with a ghost plat. The ghost plat shows the same number of units on the adjoining property at 17101 State highway 7 plus 1 additional unit on 16913. In order to meet the guide plan of no fewer than 4 units per acre, I intend to transfer 7,000 sq ft of the 16913 property I have under contract to the owner of the adjoining 17101 property. This is achieved by having the one way exit outbound on the 17101 property in the event I can get control of said property.

In designing the layout of the roads and townhomes, the existing entrance(s) to the property was utilized. The homes were positioned to maximize views and stay outside the required setbacks and high priority was given to tree preservation.

House plans start just under 1,500 sq ft, with optional sunroom and loft they increase to 2,223 of above ground finished square footage. The market I am targeting is Empty Nesters who want to stay in Minnetonka but can't (or won't) pay the high prices for existing newly constructed one-level, maintenance free homes. I anticipate the base price will be $489,900.

I look forward to working with you on this project and hope we can get it through all the required steps for full entitlement.

If you have any thoughts or questions, Please give me a call.

THANK YOU

Robert T Schmidt
612-812-0000 cell

See Attached:

Proposed site plan on 16913, Ghost Plat continuing onto 17101, Front elevation of Twin Home.
First floor plan and loft floor plan.
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Section F  Land Use Plan Implementation

The following land use implementation section describes the methods that the City of Minnetonka will utilize to initiate the implementation of the Minnetonka 2030 Vision according to the planning strategies for the growth strategy themes listed in Section B of this chapter. The implementation methods also consider the conditions and policies established in the other chapters of the 2030 Comprehensive Guide Plan.

This section establishes the land use categories and review criteria to guide private and public decisions regarding development and redevelopment in accordance with the targeted planning areas (residential neighborhoods, villages, regional areas/corridors, and transportation/natural area corridors) within the city. The implementation methods include:

* the 2030 land use definitions;
* the 2030 land use plan map;
* the 2030 population, household and employment forecasts;
* the overall development review criteria, including those established in Sections C and D of this chapter, to determine consistency of development and redevelopment projects with the land use plan; and
* implementation procedures that include city regulations (the zoning and subdivision ordinances) and specific 2030 Comprehensive Guide Plan amendment criteria that pertain primarily to the land use chapter text and 2030 land use map.

2030 Land Use Definitions

The land use districts should not be confused with the zoning designations of property. The land use districts describe general land uses and may include other criteria to be considered when development and redevelopment projects are reviewed by the city to ensure that the project meets the 2030 Comprehensive Guide Plan policies and the appropriate policies and strategies of other chapters of the plan. The corresponding zoning designation and associated performance standards describe specific criteria that must be met before development can occur on property.

The city’s land use definitions follow, according to the general land use category. Appendix IV-A of this chapter provides illustrative examples of the specific types of uses found within each land use category.

1. Residential Land Use Districts

Prior to 1979, the medium- and high-density residential definitions restricted densities to five to eight, and nine to 12 units per acre, respectively. The definitions were changed, as part of a comprehensive planning effort, to allow a greater density to provide more opportunities for housing choice (variety and cost), recognition of the rising cost of land in Minnetonka, and to bring the density standards more in conformance with other metropolitan area communities and Metropolitan Council policies.
The density definitions are expressed in terms of ranges to allow for development flexibility and compatibility with natural resource and other site specific characteristics of property. Therefore, an appropriate density for a particular use may be at the lower end of the density range rather than the higher end.

Further, the density definitions do not specify the type of housing; rather, the zoning ordinance specifies the type of housing and specific standards that must be met by a particular development. The decision regarding the specific density for a particular property is made during the development review process, where the following conditions are considered by the city:

- The existing environmental conditions of the property including wetlands, floodplains, steep slopes and the quality of existing vegetation;
- the specific site plan including the type of housing units proposed and requirements for development facilities such as stormwater ponding, municipal sewer and water, etc.;
- the existing and requested zoning classification for the property; and
- the surrounding neighborhood characteristics.

A. Low-density residential: development that ranges in density from two to four dwelling units per acre.

Most residential neighborhoods that contain existing single-family homes in the city are designated for low-density residential uses. Although low-density uses include detached single family housing types other residential housing types such as duplexes and attached townhomes are included provided that the overall density does not exceed four units per acre. This land use district is established to recognize the primary residential development pattern in the city and accommodate housing goals, including affordable and mid-priced housing.

B. Medium-density residential: residential density ranges from more than four to 12 units per acre.

Typically, this land use district includes attached housing types such as small-lot single family developments (“zero lot line”), duplexes, townhouses, “quads,” and low-rise multiple family buildings. This land use designation is used to:

- Encourage and allow the opportunity for residential project design techniques that incorporate natural resource protection and open space preservation techniques such as “clustering”.
- Create appropriate transitions between different and more intense land uses and low-density areas.
- Encourage opportunities for residential development near and within village and regional centers, employment centers or major transportation corridors.
- Broaden housing choice, especially with an increasingly aging population and accommodate housing goals, including affordable and mid-priced housing

Development within medium-density residential areas should incorporate:

1. Design techniques that facilitate natural resource protection and open space preservation; and
2. Buffers and/or transitions between more intense land uses and low-density areas.
Chapter IV. 2030 Land Use Plan

Environmental features such as wetlands, floodplains, steep slopes, and heavily vegetated areas should be used, as available, as buffers. Developments should incorporate appropriate transitions, such as landscaping and other land use or design features between non-residential and residential uses of a lower density.

C. High-density residential: residential developments with densities above 12 units per acre.

Typical high density residential development consists of apartment or condominium units in multistory buildings. The intent of this district is to provide the opportunities for residential developments that:

- serve a wide range of income group and changing lifestyles;
- are in close proximity to services, employment centers and transportation corridors, especially transit routes; and
- broaden housing choice, especially with an increasingly aging population and accommodate housing goals, including affordable and mid-priced housing.

As is the case with medium-density residential development, development within high-density residential areas should incorporate:

1. Design techniques that facilitate natural resource protection and open space preservation, and buffers and/or transitions between more intense land uses and low-density areas.

2. Buffers and/or transitions between more intense land uses and lower density areas. Environmental features such as wetlands, floodplains, steep slopes, and heavily vegetated areas should be incorporated, as available, within buffers. Developments should incorporate appropriate transitions, such as landscaping and other land use or design features between non-residential and lower density residential uses.

High-density residential development projects should occur in a planned manner, with specific consideration given to all uses within an area and also to impacts on adjacent developments, services and transportation. Development will not be encouraged to occur until appropriate services and infrastructure are available or programmed.

2. Business Land Use Districts

Business land uses typically include categories of uses that are measured by the intensity of development and off-site impacts. These uses are found in the village areas, regional areas and corridors of the city. Additionally, business land use districts apply to several planned corporate campuses such as the Cargill and Welsch developments in the city.

The following describe the categories of business uses in the city.

A. Office

The office land use district provides locations for administrative, executive, professional or other offices and related service uses, such as financial institutions, lodging, day care and similar uses. It is not intended for retail uses that serve the general public. The office designation can be used, if designed appropriately, as a transitional use between residential and more intense commercial districts.

B. Service commercial

The service commercial land use district is a land use district used in the I-394 Corridor and other specific areas. It is considered a tool that increases flexibility in siting uses that
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Knight thought it looked good. There is a need for more daycare.

*Odland moved, second by Knight, to recommend that the city council adopt the resolution on pages A18-A25 of the staff report. This resolution approves a conditional use permit and site and building plans for a licensed daycare facility at 10401 Bren Road East.*

*Powers, Calvert, Knight, Odland, and Kirk voted yes. Magney and O’Connell were absent. Motion carried.*

9. Other Business

A. Concept plan review for Villa West at 16913 State Highway 7.

Chair Knight introduced the proposal and called for the staff report.

Thomas reported. Staff recommended that commissioners provide comments, feedback, and direction that may lead to the preparation of more detailed development plans.

Kirk noted that the proposal has changed to only include 16913 State Highway 7.

David Carlson, real estate developer with Gatehouse Properties, applicant, stated that the design would be for empty nesters. The houses would be one level with master bedroom, second bedroom, two bathrooms, and sunroom or loft within the roof line. There is little new construction at a reasonable price for empty nesters. The property owner of the adjacent property declined to sell, but a plan was created to show what could be done on the Anderson property. The proposal is at the minimum number of units per acre. The base price would be $489,900 for 1,500 square feet and a 12 x 12-foot sunroom or 700-square-foot loft. Three of the lots could have a basement. A loft is a let less expensive than a basement.

Knight asked about the different plans. Mr. Carlson explained that six units on the Carlson piece would be done if the Anderson property would not be included. The other plan is an example of what could be done if the Anderson property was included in the proposal.

Scott Dahlke, applicant’s engineer, explained that a small modification could be done to keep the extension if the Anderson property would be included in the project.
Odland asked what would be done to make the site blend in with the neighborhood. Mr. Carlson said that the minimum number of units per acre would blend in nicely. He provided a clearer rendering to commissioners. The mass would be kept to one level or within the roof line for units with a loft.

Odland asked if there would be a yard. Mr. Carlson answered in the affirmative. All of the units would be end units. The windows would be staggered to provide private backyards.

Calvert said that the proposal feels like it would be part of the neighborhood.

Mr. Carlson said that he received no objections from the neighbors to the south.

Chair Kirk invited those present to provide comments.

David Devins, 17100 Sandy Lane, stated that he objected to the last proposal and favored something like the current proposal. The current proposal would fit into the neighborhood. He preferred one entrance and one exit.

Calvert thought the other concept plan was too dense, but this transitions from the surrounding neighborhood and fits the space better. The homes are attractive. The price point is right. This fits all of the criteria for a down-sizing demographic.

Powers likes the proposal.

Chair Kirk appreciated the proposal taking bicyclists into account and the applicant including an example of what could happen with the Anderson property.

Chair Kirk noted that there would have to be another entrance and exit on Highway 7 if the three parcels to the east would be developed.

Odland asked if it would be possible to add a bridge to mirror what is proposed on the west side and provide safety for bicyclists and pedestrians if all of the parcels would be developed at one time.

The city council will review the concept plan February 8, 2016.

B. Concept plan for Highview Villas, a residential development of properties at 4301 Highview Place and an adjacent, unaddressed parcel.
City of Minnetonka Council:
City of Minnetonka Planning Commission:
City of Minnetonka planning staff:

I moved on to my property in spring of 1984 and purchased it a couple years after that. When I purchased I was aware of the R3 guidance. With that in mind I resisted over developing my home understanding this row of houses would one day be redeveloped into townhomes. The proposed development at 16913 Hwy 7 negatively impacts me and my property at many levels, here are just a few of my concerns.

1) Running the utilities along the highway to this development will destroy a significant portion of Hwy 7's “Natural Green Corridor” as defined by overall growth strategies of the comprehensive plan.

2) This proposed redevelopment significantly changes the character of my neighborhood. 66% of the units back up to my yard destroying my privacy. This also adds headlight panning across my property as cars enter the new road. I would expect a significant buffer possibly in the form of a forested berm to mitigate these damages.

3) I see no accommodations for access to the remaining properties to the East. This will force yet another highway access to Highway 7, affectively doubling the expenses and safety issues posed by merging on and off the road and pedestrian and bike traffic on the trail.

4) At the lowest end of R3 density. This proposal underutilizes these properties potential. By not developing this entire row, (at a time when there are 4 homeowners actively pursuing sales to these properties) it forces extra and unnecessary roadways. This drives down potential density. In turn lowering property values and offering less housing options to the public.

5) Single price point does not offer multiple options in housing and does not encourage a diversified neighborhood. Intermixing triplexes amongst the other units will offer a more affordable option in the middle of the end units for a more diverse demographic.

These are just a few of my concerns at this time. Please understand I am not opposed to city redevelopment. At this time when 80% of the property owners on this stretch are trying to market this land to developers, this island development will be detrimental to those efforts. Please help us help the city to develop in a responsible manner where all parties involved, developers, land owners, neighbors and city can see a positive outcome.

Thank you for your time:

Dean Nelson
Hello Susan and Loren,

Thank you for meeting with us three landowners in the “Strip” of properties here on Highway 7.

Considering the view, the trail system, the wildlife, and all other amenities, plus the shortage of such facilities in the City of Minnetonka, I believe the best possible development of this Strip of property would be as a Senior Citizen/Assisted Living/Memory Care facility. With over 125 businesses (please see attachment) at the intersection of 7 and 101; and, with the new Minnetonka Medical Center located just up the road, practically all of the residents’ needs could be accommodated near home. I also believe this land use should prove to be the best tax revenue-producer for the City.

The majority of us, the landowners, are in agreement with the City’s original comprehensive plan. That is to develop this strip of properties all together; and, for the same purpose.

Thanks for your consideration.

Sincerely,

Gary Andersen
17101 Highway 7, Minnetonka, Mn.
55345
MINNETONKA LAND FOR SALE

For the future “Nature’s View” Retirement Community?

(arbitrary name for the strip of property proposed for development)

LOCATION:
TWO BLOCKS EAST OF CO. ROAD 101, ON THE SOUTH SIDE OF HIGHWAY 7.  ZIP CODE 55345

LAND DETAILS:
Traveling from the Westernmost (Andersen) to Easternmost (Con-Mix), the lot acreages are 1.43, 1.71, .82, .68, .58, .53, .42, & .10 respectively, totaling 6.27 maximum available acres:

Gary Andersen 17101 State Hwy. 7 = 1.43 acres (952) 933-3376 (“Anchor Lot” - includes all utilities: Natural Gas, City Water & Sewer, 220 Volt Service, Cable, & Land lines)

Neil Carlson, 16913 Highway 7, has 1.71 acres  952-564-1343

Dean Nelson, 16901 Highway 7 – his Eastern lot = .68 acres. his Westerly lot has no assigned street number; and, it is .82 acres, for a combined 1.50 acres 952-220-2000

John Eiden, 16821 Highway 7 has .58 acres  612-281-1235

Milton Bruflodt, 16809 Highway 7 has .53 acres

Con-Mix, LLC PO Box 189, Cokato 55321 owns last two lots on East. Neither have an address assigned. The Western lot = .42 acres. The Eastern lot - .1 acres. Total = .52 acres.

Currently, there is no consortium of land owners; and, as of March 16, 2015 none of the above listed properties are currently listed with Real Estate Agencies.
CONVENIENCES:
“Nature’s View” lies about 6 blocks from the new MINNETONKA MEDICAL CENTER;
and, about 2 blocks from the following businesses:

**AUTOMOBILE:** Discount Tires, Fratallone’s Hardware, Freedom Gas, Northern Hydraulics, O’Reilly Auto Parts, Super Target.

**BANKS:** Bremer Bank, TCF Bank, U.S. Bank, Wells Fargo Bank.

**CLINICS:** Dynamic Chiropractic, The Joint Chiropractic, M D Care Walk-in Clinic, Thrive Chiropractic, Radio Shack.

**GROCERS:** Cub Foods, Super Target.

**PERSONAL CARE:** Cub Foods, Great Clips, K T Nails, Massage Envy, Modern Eyewear, Pro Cuts, S S Tan, Sport Clips, Royal Nails, Super Target, Walgreens.

**PETS:** Banfield Pet Hospital, Cub Foods, Village Animal Hospital, Wild Bird Feed Store.

**RESTAURANTS & FAST FOODS:** Arby’s, Beijing Chinese Cuisine, Bruegger’s Bagels, Burger King, Caribou Coffee, Cherry Berry Yogurt, Chipotle, Dairy Queen, Hurricane Grill & Wings, Noodles & Company, Papa Murphy’s Pizza, Potbelly, Subway, Super Target, Toppers Pizza, Wendy’s.

**OTHER CATEGORIES:** Bethesda Thrift Shop, Big Thrill Factory, Brain Balance, Cigar Lounge, The Great Frame-up, Great Tile, H & R Block, MGM Liquors, Mathnasium, Opitz Outlet, Pilgrim Cleaners, Sherwin-Williams, Sprint, Super Target, T-Mobile, Walgreens, Way To Go Sports, & various Accountants, Doctors, Dentists, Insurance Agencies, Realtors, etc.
PROPERTY FEATURES:

“Nature’s View” is elevated above Highway 7, just East of County Road 101. It overlooks a Protected Wetland on the North side of Hwy 7; and, has direct access to the Minnetonka “Loop Trail System”.

Wildlife: Whitetail Deer, Red Fox, Raccoons, Squirrels, Turtles, Chipmunks, Nuthatches, Quail, Waterfowl, Gulls, Swallows, Wrens, Eagles, Hummingbirds, Thrushes, Woodpeckers, Cardinals, Owls, Orioles, Chickadees, Finches, Tanagers, Hawks, Jays, etc.

Trees: Minnetonka prides itself on its trees. Some of the many species found in this strip of properties include: Cherry, Pear, Apple, Oak, Black Walnut, Maple, Birch, Aspen, Hickory, Ash, Elm, Spruce, Pine, Fir, Cedar, etc.

NOTES:

Director of Planning for the City of Minnetonka is Mr. Loren Gordon 952-939-8296. In Gary Andersen’s most recent conversation with Mr. Gordon, he indicated that all existing Assisted Living/Memory Care/Senior Housing Facilities within Minnetonka’s City Limits are full; and, all are maintaining waiting lists for applicants.

Contact Gary Andersen during normal business hours at 952-933-3376 for a walk-through.
Brief Description  Resolution Supporting the DEED Job Creation Fund Application by Freudenberg North America LP

Recommendation  Adopt the resolution

Background
Recently, the city was contacted by DEED (Minnesota Department of Employment and Economic Development) and Greater MSP about a company expanding at a site in Minnetonka. The company is Freudenberg Medical located at 111 Cheshire Lane (see map on A1).

Freudenberg Medical is a leading global manufacturer of components for medical devices used in the biotech, healthcare and pharmaceutical industries. The company has more than ten medical manufacturing operations located within the USA, Europe, South America and Asia. The company conducts custom manufacturing services for medical devices and components.

Proposal
The company is interested in expanding their Minnetonka location. The expansion will provide for 15 new jobs over 3 years. The project will also include capital investment into the building which will be approximately $500-$600,000. The project is expected to begin this spring.

Recommendation
There are no documents or agreements required for the city. This request is to support the company’s application to the State of Minnesota. Staff recommends the city council adopt the resolution (pages A2-A3) supporting the job creation fund application by Freudenberg North America LP.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Julie Wischnack, AICP, Community Development Director
Resolution No. 2016-

Resolution Supporting the DEED Job Creation Fund Application
By Freudenberg North America LP

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

Section 1.  Background.

1.01.  Freudenberg North America LP (the Company) has a facility located within the city of Minnetonka (City) at 111 Cheshire Lane.

1.02.  The Company desires to expand this facility to meet the needs of their business (the Project).

1.03.  The Company has applied for assistance from the Minnesota Department of Employment and Economic Development (DEED).

Section 2.  Findings.

2.01.  The City would like to assist the Company which is proposing an expansion.

2.02.  The City has not or will not incur costs related to this request.

2.03.  The City understands that the Company, through and with the support of the city, will apply for an award from the Job Creation Fund.

Section 3.  Council Action.

3.01.  The City hereby expresses their support of the project proposed by the Company and its application for an award from the DEED Job Creation Fund.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 8, 2016.

______________________________
Terry Schneider, Mayor
Attest:

__________________________________________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on February 8, 2016.

__________________________________________
David E. Maeda, City Clerk
City Council Agenda Item #15A  
Meeting of February 8, 2016

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

Recommended Action: Approve the appointments

Background

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

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

Recommendation

Approve the following appointments:

- Terry Schneider as the Minnetonka City Council Legislative Contact to Metro Cities.
- Terry Schneider as the Minnetonka City Council representative to the Municipal Legislative Commission Board of Directors.
- Dick Allendorf as the Minnetonka City Council representative to the I-494 Joint Powers Organization.
- Dick Allendorf as the Minnetonka City Council representative to the Southwest Suburban Cable Commission and Robert Ellingson as the alternate.
- Corrine Heine as the Minnetonka City Council’s appointed representative to the Suburban Rate Authority and Perry Vetter as the alternate.
- Perry Vetter as the Minnetonka City Council’s appointed representative to the Bennett Family Park Board.
- Sara Woeste as the Minnetonka City Council’s appointed representative to the Minnetonka School District Community Education Advisory Council.
- Dave Johnson as the Minnetonka City Council’s appointed representative to the Music Association of Minnetonka.
- Terry Schneider as the Minnetonka City Council representative to the West Hennepin Affordable Housing Land Trust (Homes Within Reach).
- Julie Wischnack as the Minnetonka City Council’s appointed representative to the Wayzata Schools Community Collaboration Council.
Submitted through:
   Terry Schneider, Mayor
   Geralyn Barone, City Manager

Originated by:
   Pat Schutrop, Administrative Assistant
## CITY ASSOCIATIONS

<table>
<thead>
<tr>
<th>Committee</th>
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<tr>
<td>LMC Improving Fiscal Futures Committee</td>
<td>None</td>
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<td>LMC Improving Service Delivery Committee</td>
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<td>Brad Wiersum</td>
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<td>*Metro Cities Legislative Contact</td>
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<td>NLC Energy, Environment, &amp; Natural Resources Steering Committee</td>
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## REGIONAL ORGANIZATIONS

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<td>Dave Pellner &amp; Dan Duffy (Twinwest)</td>
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## MINNETONKA AREA ORGANIZATIONS

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Revised February 2016
Addenda
Minnetonka City Council
February 8, 2016 Regular Meeting

Item 13C – On-sale liquor licenses for RS Sports Grill, 12501 Ridgedale Drive

Attached is a letter received today from an attorney representing the property owner of 12501 Ridgedale Drive.

Item 14A – Concept Plan for Highview Villas, a residential development of properties at 4301 Highview Place and an adjacent, unaddressed parcel

Attached is a memo from the city planner with an email that was received after the council packet was distributed. Also included are staff responses to an email received last week. The original email was included in the council packet.

Item 14B – Concept plan review for Villa West at 16913 State Highway 7

Attached is an email that was received after the council packet was distributed.
February 8, 2016

VIA EMAIL

Mayor Terry Schneider
tschneider@eminnetonka.com
City of Minnetonka
14600 Minnetonka Blvd
Minnetonka, MN 55345

Ms. Geralyn Barone
gbarone@eminnetonka.com
City Manager
City of Minnetonka
14600 Minnetonka Blvd
Minnetonka, MN 55345

Ms. Kathy Leervig
kleervig@eminnetonka.com
Community Development Coordinator
City of Minnetonka
14600 Minnetonka Blvd
Minnetonka, MN 55345

Re: Public Hearing Notice On-Sale Liquor License: Application from RS Sports Grill (Red Stone Sports Grill) for an on-sale intoxicating liquor license at 12501 Ridgedale Drive

Dear Mayor Schneider, Ms. Leervig and Ms. Barone:

We represent The Rotenberg Companies Inc., the owner of the subject property at 12501 Ridgedale Drive. The Redstone Grill restaurant premises currently leased by Redstone American Grill, Inc. ("Redstone") from my client are located on this property. Also located on this property is my client’s office building, commonly referred to Ridgedale Executive Center.

My client just received the above-referenced public hearing notice in the mail. We understand that the matter is on the City Council’s agenda for tonight’s meeting.

Please note that Redstone requested my client’s consent to a sublease of its Redstone restaurant premises to RS Sports Grill, LLC and to a change in the trade name under which the premises are operated to “RS Sports Grill.” We understand these requests were made in effort to implement a conversion of the existing Redstone Grill restaurant to a new concept, sports-oriented restaurant, which Redstone refers to as an ‘RS Sports Grill.’ My client, as the landlord with various approval rights under the lease, has not approved that proposed sublease nor the proposed change in trade name due, in part, to concerns that the new concept will not integrate favorably with use of the remainder of the property. This has been communicated to Redstone previously. Accordingly, my client does not believe that issuing a liquor license to RS Sports Grill for the 12501 Ridgedale Drive property is appropriate. Given the short notice of tonight’s meeting, neither my client nor I will be able to attend. However, we respectfully request that the foregoing be communicated to the City Council for their consideration in connection with the subject hearing.
February 8, 2016
Page 2

Please do not hesitate to contact me in regard to any questions you may have in this matter. Thank you.

Very truly yours,

[Signature]
Charles G. Carpenter III

c: Karen Bjorkman (karen.bjorkman@maslon.com)
    Bill Mower (bill.mower@maslon.com)
Memorandum

To: City Council
From: Loren Gordon, AICP, City Planner
Date: February 8, 2016
Subject: Change Memo for February 8, 2016

14A – Highview Villas Concept Plan

An additional email was received after the packet was distributed. (See pages A1-A2).
Also, staff responses are provided to the email from Sherry Blohm. (See page A3).

14B – Villa West Concept Plan

An additional email was received after the packet was distributed. (See pages A4-A5).
From: Leif Swenson
Sent: Friday, February 05, 2016 11:03 AM
To: Bob Ellingson <bellingson@eminnetonka.com>; Ashley Cauley <acauley@eminnetonka.com>
Subject: Highview Place

Hello Ashley & Councilman Ellingson

I just finished reading over the most recent report regarding the Highview Place development and I have a few additional comments.

1. Dan and Sue Swanson are asking the neighborhood and the city to fund their retirement plan.

In the meeting on January 21st the home owner of the property, Dan Swanson, stated that he wanted to retire which is the reason for the sale of his property (page A26). On page A19 the letter from Dan and Sue Swanson states that it was their plan from day one of owning their property to us the sale of the property to “help facilitate their retirement”. Considering the property was zoned R-1 when they bought it they knew full well what they were getting themselves into. It wasn’t until Dan and Sue realized that they wouldn’t be able to get the price they wanted for their property that they perused re-zoning.

I believe that the Swanson’s should be able to do whatever they want with their property within the current R-1 zoning restrictions. The Swanson’s have every right to sell their land and nothing is stopping them from doing so. But the fact that they are asking the city to re-zone their property so they can get a higher price doesn’t seem to be taking the current neighborhood into account.

I can sympathize with Dan Swanson’s desire to retire, I have family members that would like to retire after long carriers in very physically demanding professions. But to ask for a neighborhood to pay for it through years of development and disruption doesn’t seem reasonable.

2. Analogous to #1, the developer is asking for the neighborhood and the city to subsidize his profit margin.
I believe that the builder should be free to build whatever homes he wants within the current R-1 zoning restrictions. My issue and I believe the issues of most of the neighbors is that he’s asking the city to allow him to build more homes at a lower price point so that he can make a greater profit. If his property remains zoned R-1 nothing is stopping the developer from building 6 homes at $600,000 rather than 6 homes at $900,000. It’s just that this particular developer might not see this type of development as overly profitable for him.

On page A25 Robert Eldridge stated that “an R-1 in this location would not make sense”. But what he should have said was “an R-1 in this location would not make sense for him”. As I said in an early message, just because it doesn’t make sense for this developer at this time doesn’t mean that this project should be rezoned.

3. In my judgement the choice to re-zone would be in the best interest for the home owner and the developer not the long term health of the current neighborhood.

I truly hope that the needs and health of the current neighborhood are not outweighed by the desires of the developer and home owner.

Thank you,
Leif Swenson
4214 Maple Lane
Minnetonka, MN 55345
Responses to Sherry Blohm’s comments:

1. “In the research we have done, PUD has never been used to zone single family homes, over the last 20 years, it has been used to facilitate condos and townhomes.”

Response: PUD is a widely used zoning tool in the city to facilitate both residential and commercial development. Almost half of the properties zoned PUD have been developed for single-family detached homes. (32 developments; 611 lots). PUD has also been used for many attached residential developments.

2. “The intersection of Lake Street Extension and Maple Lane is dangerous.”

Response: Lake Street Extension is a two-lane roadway with a 22-foot width. It serves as the main access road to adjacent neighborhoods east of Williston Road and has a posted speed limit of 25 mph. Approaching the “T” intersection, both Maple Lane and Lake Street Extension are on a hill with grades of 6 and 7 percent. A “blind intersection ahead” sign is located on Lake Street Extension at the crest of the hill, approximately 190 feet west of its intersection with Maple Lane.

Crash data from the past 10 years report one accident occurred at the intersection. The report indicates it was a rear end incident that occurred at night on snow packed road. The accident involved a city police car that was rear ended by a Minnesota state patrol enroute to a call.

City staff would not recommend any additional improvements to the intersection or roadway signage. There is some opportunity for right-of-way vegetation removal that may improve visibility in leaf-on conditions. Also, when Lake Street is up for reconstruction, opportunities to reduce the height of the hill could be evaluated, however, there are a couple driveways and resulting grades that could also be impacted.

3. “The city has established half-acre per home standards that support open spaces setting for our city. Do not compromise this standard for the financial gain of one resident. We who live here will suffer from that decision.”

Response: In addition to R-1 zoning (22,000 square feet lot minimum), the zoning code would allow other lot sizes in areas guided for low density residential, if approved by the city. Zoning districts that are within the density range of the low density residential comprehensive plan guidance include: R-1, R-1A, R-2 and R-3 Districts. The smallest lot size permitted by these districts is 10,000 square feet.
Hello Ms. Barone,

My name is Gary Andersen. My departed wife Judith and I bought the property at 17101 Highway Seven in September, 1993. We did so not only to serve as our home; but, as a means of investing in our retirement. We understood that almost forty years ago, the City of Minnetonka had drawn up a Comprehensive Plan for the strip of property which included ours on the West and continued to the East as far as Clear Spring Road. One of the basic premises for that comprehensive plan, we were told, was to emphasize development of the complete strip of property all at the same time; and, in its entirety. Another premise was to develop it in a manner consistent with the Carlysle Place Town Home Development just to our West.

It is my contention that the six plus acres included in this strip of property will now best be developed as a Senior Housing / Assisted Living / Memory Care Facility (“SHALMC”).

I have three basic reasons for this contention:

#1 The Carlysle Place Town home models are no longer in demand as they were in the past. None of the Brokers or Developers with whom I have discussed this project were interested in building those models, any longer.

#2 There is a severe shortage of "SHALMC" facilities in the City of Minnetonka. In my latest conversation with Mr. Loren Gordon, I observed that each of the existing "SHALMC" facilities is full; and, each has a waiting list. Mr. Gordon said he believes that is accurate. I am currently contacting businesses involved in such developments to pursue this possibility. In this effort, I have arbitrarily named this promotion "Nature's View" and have categorized over 125 different businesses located two blocks away, at the intersection of Highway 7 and County Road 101 to illustrate their proximity to this strip of land.

#3 This type of development should provide the City of Minnetonka with the highest return in the form of tax revenues.

I know that there are now several Developers interested in the possibility of building Villas on one or two of these individual properties. If the City of Minnetonka were to approve of such a departure from its Comprehensive Plan, I would object in part for the above reasons. In addition, such a departure; and, depending on the pricing, the resulting Villa Development could severely reduce the value of the involved landowners' properties.

I am currently out of State; so, I am unable to attend tonight's City Council Meeting (February 8, 2016) at which at least one such Villa proposal is scheduled to be reviewed. Earlier, I have e-mailed my concerns to Mr. Gordon and to Susan Thomas; but, not in as great detail as I now send to you.

I just want to go on record as a concerned Minnetonka Resident; and, at the risk of redundancy, between the three of you, I hope that end can be achieved.

With sincere thanks for your attention,
Gary Andersen

p.s. you may contact me at the following e-mail address: [REDACTED]