Agenda
Minnetonka City Council
Regular Meeting, Monday, January 23, 2017
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Wagner-Ellingson-Allendorf-Acomb-Wiersum-Bergstedt-Schneider
4. Approval of Agenda
5. Approval of Minutes: None
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Resolution approving preliminary and final plat of TONY’S ADDITION at 9597 Sandra Lane
    B. Amended and restated subscription agreements with WGL Energy Systems, Inc.
    C. Ordinance amending permit fees, land use application fee and mechanical contractor licenses
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances: None
13. Public Hearings: None

Minnetonka City Council meetings are broadcast live on channel 16.
Replays of this meeting can be seen during the following days and times: Mondays, 6:30 p.m., Wednesdays, 6:30 p.m., Fridays, 12 p.m., Saturdays, 12 p.m. The city’s website also offers video streaming of the council meeting.
For more information, please call 952.939.8200 or visit eminnetonka.com
14. Other Business:

   A. Resolution reaffirming previous site and building plan approval for the Music Barn Apartments at 5740 and 5750 Shady Oak Road

      Recommendation: Adopt the resolution reaffirming the previous approval (4 votes)

   B. Southwest Corridor Investment Framework Cooperative Agreement

      Recommendation: Adopt the agreement (4 votes)

   C. Items concerning THE ENCLAVE AT REGAL OAK, at 3639 Shady Oak Road and 3627 Regal Oak Lane:

      1) Ordinance rezoning the properties from R-1 to PUD;
      2) Master development plan; and
      3) Preliminary and final plats

      Recommendation: Adopt the resolution denying the requests (4 votes)

15. Appointments and Reappointments:

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

      Recommendation: Approve the appointments

16. Adjournment
Brief Description  Resolution approving preliminary and final plat of TONY’S ADDITION at 9597 Sandra Lane

Recommendation  Adopt the resolution approving the preliminary and final plat

Background

The applicant is proposing to subdivide a 3.3-acre lot into two single-family residential lots. The resulting lots would meet all minimum lot area and dimension standards of the subdivision ordinance and, with minor changes to general grading, the proposal would meet the tree ordinance.

Neighborhood Connection

There has been discussion regarding a requirement staff included regarding a future trail. Based on aerial photographs and discussion with MetroTransit representatives, staff has determined that pedestrians have been crossing the subject property and Lohman’s Amhurst Townhome property (located in the City of St. Louis Park) to access the Independence Avenue and 36th Street bus stops and the 36th Street Bridge, which connects the area west of Highway 169 with the Knollwood Mall shopping center area. To establish a formal connection, MetroTransit asked that a trail easement be provided on the subject property as part of the subdivision. The applicant is agreeable to the easement. The easement would be located between Sandra Lane and the Lohman’s Amhurst Townhome development. While the easement would terminate at the city boundary, it would provide an opportunity to create a future connection. MetroTransit would need to secure a trail easement from the Lohman’s Amhurst Homeowners Association to complete the connection.

Planning Commission Hearing

The planning commission considered the proposal on January 5, 2017. The staff report from that meeting and various plans and documents describing the proposal are attached. Staff recommended approval of the subdivision, with the trail easement condition, noting:

1) The proposed subdivision would result in two properties meeting and exceeding minimum R-1 standards.

2) While the proposed grading plan does not meet the tree ordinance, both planning and natural resource staff believe that there are alternative grading and building options that would allow for the subdivision of the subject lot and meet the city’s tree ordinance. A condition of approval has been added to the resolution that
requires a final grading and tree preservation plan be submitted that is compliant with the tree ordinance prior to building permit approval.

At the commission meeting, a public hearing was opened to take comment. A resident stated concerns with losing trees and a berm that provide sound and visibility buffer to Highway 169. Several residents also voiced concern about existing and future foot traffic on Ann Lane and Sandra Lane, suggesting that foot traffic may increase as a result of the trail easement.

**Planning Commission Recommendation**

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

**Since Planning Commission Hearing**

There have been no changes to the proposal. A letter from Ms. Karin Flynn and Ms. Ann B. Dreier was received by staff, dated January 11, 2017. This letter requests that the city reconsider the trail easement on the property. The letter is attached.

**Staff Recommendation**

Staff recommends the city council adopt the resolution approving the preliminary and final plat for TONY’S ADDITION at 9597 Sandra Lane.

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

Originator:  
Drew Ingvalson, Planner
Brief Description: Preliminary and final plat of TONY’S ADDITION at 9597 Sandra Lane

Recommendation: Recommend the city council adopt the resolution approving the plats.

Introduction

The 3.3-acre subject property is located on the east side of Sandra Lane, west of U.S. Highway 169. The subject lot is currently vacant. The property generally slopes downward from the south and west toward a drainage pond on the northeast side of the property. The property contains nine high-priority trees and 13 significant trees. (See attachment.)

Proposal

James Yacoub is proposing to divide the property into two, single-family residential lots. The applicant is requesting approval of both preliminary and final plats. (See attached.)

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?

  No, not as proposed. Under the proposed grading plan, the applicant would be removing eight high-priority trees, which is non-compliant with the tree ordinance, and three significant trees, which would require tree mitigation.

  Per city ordinance, the applicant can remove no more than three high-priority trees and must mitigate for tree reduction on the property. As the grading plan submitted would not comply with the city’s tree ordinance, as proposed, staff would review the required tree mitigation upon receipt of revised plans.
Both planning and natural resource staff believe that there are alternative grading and building options that would allow for the subdivision of the subject lot and meet the city’s tree ordinance. A condition of approval has been added to the resolution that requires a final grading and tree preservation plan be submitted that is compliant with the tree ordinance prior to building permit approval. (See attachment).

**Staff Recommendation**

Recommend the city council adopt the resolution approving the preliminary and final plats of TONY’S ADDITION.

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

Project No. 03071.16a

Property 9597 Sandra Lane

Applicant James Yacoub

Owner Tahir Hassan

Surrounding Land Uses
North: Single Family Residential, R-1
West: Single Family Residential, R-1
South: Townhouses (City of St. Louis Park)

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

History The subject property was platted as a part of Lohman’s Amhurst 4th Addition in 1994. This subdivision created two residential lots.

In October 2003, a building permit was issued for a single-family home; however, the home was never constructed.

In December 2003, city council approved conditional use permits for an accessory apartment and a detached garage exceeding 1,000 square feet and 12 feet in height. Neither of these structures were constructed.

Lot Standards The proposed plat would meet all minimum R-1 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>64,127 sf</td>
<td>78,214 sf</td>
</tr>
<tr>
<td>Width at ROW</td>
<td>80 ft</td>
<td>104.8 ft</td>
<td>80 ft</td>
</tr>
<tr>
<td>Width at setback</td>
<td>110 ft</td>
<td>118.6 ft</td>
<td>110 ft</td>
</tr>
<tr>
<td>Lot depth</td>
<td>125 ft</td>
<td>&gt;350 ft</td>
<td>&gt;350 ft</td>
</tr>
<tr>
<td>Buildable area</td>
<td>3,500 sf</td>
<td>6,981 sf</td>
<td>35,814 sf</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 northeast side of the property (adjacent to the pond) 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**

There are nine high-priority trees on the subject property. The majority of the high-priority trees are within the right-of-way and consist of three large basswood as well as some ash and boxelder. There is also one large oak along the west lot line. In addition to the nine high priority trees, there are also 13 significant trees on the subject property. (See attachment.)

Under the proposed grading plan, the applicant would be removing eight high-priority trees, which is non-compliant with the tree ordinance. The applicant has also proposed to remove three significant trees. As the grading plan submitted would not comply with the city’s tree ordinance, as proposed, staff would review the required tree mitigation upon receipt of revised plans.

Natural resources staff has reviewed the proposed plan and subject property. Upon review, staff believes that there are alternative grading and building options that would both allow for the subdivision of the lot and meet the city’s tree ordinance. A condition of approval has been added to the resolution that requires a final grading and tree preservation plan be submitted that is compliant with the tree ordinance prior to building permit approval. (See attachment.) No more than three high priority trees may be removed.

**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.

**Pond**

The large ponding area on this property is not regulated as wetland. This area was excavated for ponding in an upland area when County Road 18 was upgraded to U.S. Highway 169.

**Stormwater**

There is 100-year floodplain located on the property (northeast corner of lot). The proposed building pads would meet the required building setbacks.
Stormwater mitigation would be required for each individual single-family home. Each lot would be responsible for capturing one inch of runoff volume over the site’s impervious surface.

**Trail Easement**

The neighborhoods located on Sandra and Ann Lane are disconnected from the MetroTransit bus stop on Independence Avenue South and 36th Street West in the Lohman’s Amhurst Townhome development. (See attachment.) The bus stop (on route 667) provides express transportation from Minnetonka and St. Louis Park to Downtown Minneapolis via 36th Street West which crosses U.S. Highway 169 and connects to the Knollwood Mall shopping center area.

Transit users currently cross the subject property and the Lohman’s Amhurst Townhome property to access the Independence Avenue and 36th Street bus stops. Understanding this, representatives from MetroTransit contacted city staff and asked that a trail easement be provided on the subject property as part of the subdivision. Staff has included a condition of approval requiring a 20-foot wide trail easement to be located along the western property line. (See attached.) The applicant is agreeable to this easement. The proposed trail easement would connect to the Lohman’s Amhurst townhome development which is located in the City of St. Louis Park.

The proposed trail easement would not link the subject neighborhood to the proposed bus stop or 36th Street West. However, it would provide easement in the City of Minnetonka to begin to create the connection. MetroTransit would need to secure a trail easement from the Lohman’s Amhurst Homeowners Association to complete the connection.

**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.

**Voting Requirement**

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

The city council’s final approval requires affirmative votes of four members.

**Neighborhood Comments**

The city sent notices to 29 area property owners and received one comment to date.

**Deadline for Decision**

January 22, 2017
Project: Tony’s Addition
Applicant: James Yacoub
Address: 9597 Sandra Lane
Project No. 03071.16b

This map is for illustrative purposes only.
My name is Nancy Kallestad ...I am the property owner at 9602 Ann lane. When I first moved in back in aprrx 1990 or 91 the property to my east and along Hwy 169 over to the Amhurst development was annexed from St Louis Park by Minnetonka to allow access and control to the apprx 4 acre site....at that time to keep the density low it was divided into 2 2 acre parcels (this was prompted by a 14 unit townhome proposal) Why has this changed? The notice I received today is the first notice of any proposed subdivision of the remaining parcel.....and since it states any comments must be in by tomorrow, I'm e-mailing you....the notice says the preliminary AND final approval is slated to be dicussed at the planning commission mtg on Jan 5. What has changed that would allow more than a SINGLE single family home on that site.....and it's my understanding that without extensive fill it is a "dirty" site and would require a slab home. ie no foundation could be dug.

I'm disappointed that the original agreement appears to have scrapped with out any neighborhood input....it would not have been agreed to in the 1st place had we known that it could be changed.WITHOUT notifying the people affected. I'm well aware that this is probably going to happen whether I like it or not but I want to go on record as crying FOUL....and shame on all of you for a very poor job of communicating the potential changes
January 11, 2017

Dear Planning Commission

We would like you to respectfully reconsider the easement in the approval to subdivide the subject property of Tony's Addition, 9597 Sandra Lane.

In doing so, please drive through our neighborhood Loop, of Ann and Sandra Lanes, to give you a feel for the neighborhood. To enhance distance considerations, please also drive the full length of 34th street also the distance from the apartments on Minnetonka Boulevard going west from Oak Ridge Road.

Bus transportation is easier to reach on Minnetonka Boulevard than the proposed easement.

As far as “walkability”, We have never seen anyone taking the “Over the Fence Shortcut” returning with shopping bags from Target, Knollwood Mall, or Cub. It has been noted that this is the “Easement to Nowhere”.

In addition, during the night, cars in driveways of residents have been entered with items thrown about.

We repeat, please take a drive through the areas previously mentioned to gain better insight as to our concerns. Thank you for your consideration.

Respectively Submitted,

Karin Flynn
9607 Ann Lane

Ann B. Dreier
9610 Ann Lane
8. Public Hearings

A. Preliminary and final plat for Tony’s Addition at 9597 Sandra Lane.

Chair Kirk introduced the proposal and called for the staff report.

Ingvalson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report. He added that the trail easement is being proposed where pedestrians are currently using the property as a short cut and a worn path is visible.

Larry Fidler, representing the applicant, stated that he spoke to Minnehaha Creek Watershed District personnel and city staff regarding the site. The proposal would divide the parcel into two lots for single-family houses. Depending on the sale price of the lots, the residences would be anticipated to be priced between $400,000 and $450,000 which is comparable to the area.

The public hearing was opened.

Amy Franklin, 9602 Sandra Lane, stated that she is concerned with losing the trees and berm that provide a sound and visibility buffer to Highway 169. The area has a lot of foot traffic and kids ride bikes on the path through the site. The site is currently vacant.

Karin Flynn, 9607 Ann Lane, stated that there is a lot of foot traffic on Ann Lane and Sandra Lane. She wants pedestrians from other neighborhoods to be discouraged from walking on Ann Lane.

No additional testimony was submitted and the hearing was closed.

Mr. Fidler stated that the trail easement has nothing to do with development of the two houses. The proposal would not increase traffic for the area.

In response to Powers’ question, Ingvalson pointed out where the existing bus stops are located. Thomas provided that the Metropolitan Transit Commission (MTC) requested the trail easement be dedicated as part of the proposal. Staff found the request to be reasonable given the existing, informal trail. The easement has no impact on the subdivision of the proposed parcel.

In response to Knight’s question, Ingvalson explained that the easement would provide the opportunity for a trail. A trail would not be paved as part of the current proposal.
Calvert acknowledged the concerns of the neighbors. She supports a sustainable community which includes making it easier to walk and access mass transportation. That is for the public good. She noted that many pedestrians walk in the Burwell area because it has a trail and park. Those residents have come to expect pedestrians as part of their daily life. She supports staff’s recommendation. Chair Kirk agreed. The easement provides an opportunity if sometime in the future access would be granted across the adjacent properties.

Powers agrees with supporting walkability. Right now the trail easement would not connect to anything.

The public hearing was reopened.

Ms. Flynn said that pedestrians walk from Minnetonka Boulevard and 34th Street West to Ann Lane.

The public hearing was closed.

In response to Chair Kirk’s question, Ingvalson explained the alternatives considered and how staff chose the proposed location for a trail easement. The trail would not be constructed unless connections could be made. Gordon explained that MTC requested the trail easement, staff observed foot traffic on the proposed easement location, and St. Louis Park staff agreed that there is a need to improve walkability in the area. The subdivision provides an opportunity that could be combined with other opportunities if and when additional opportunities become available.

**Calvert moved, second by Knight, to recommend that the city council adopt the resolution approving the preliminary and final plats of Tony's Addition.**

*Powers, Calvert, Knight, O'Connell, and Kirk voted yes. Odland was absent. Motion carried.*

**B. Preliminary plat and final plats for a five-lot subdivision at 5325 County Road 101, 5311 Tracy Lynn Terrace, and 5320 Spring Lane.**

Chair Kirk introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.
Resolution No. 2017-___

Resolution approving preliminary and final plats of TONY’S ADDITION at 9597 Sandra lane

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

Section 1.  Background.

1.01  James Yacoub, applicant, representing Tahir Hassan, property owner, has requested preliminary and final plat approval of TONY’S ADDITION, a two lot residential subdivision.

1.02  The property is located at 9597 Sandra Lane. It is legally described as follows:

Lot 2, Block 1, Lohman’s Amhurst 4th Addition, Hennepin County, Minnesota

1.03  On January 5, 2017, 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)  Revised final plat drawing with easement legend and easement dedication clause.
      2)  Two sets of mylars for city signatures.
      3)  An electronic CAD file of the plat in microstation or DXF.
      4)  Park dedication fee of $5,000.
      5)  Title evidence that is current within thirty days before release of the final plat for the city attorney’s review and approval.
      6)  A trail easement document that provides a 20-foot wide trail easement along the west property line of Lot 2, Block 1.
   b) This resolution must be recorded with Hennepin County.

2. Prior to issuance of a building permit for each lot:
   a)  Soil testing may be required at the request of the building official.
   b)  Submit a letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
   c)  Submit a final utility plan. The plan must:
1) Show existing water main and water services.

2) Show proposed water service for Lot 1.

3) Illustrate sanitary sewer main extended east on Sandra Lane to Ann Lane culminating in a manhole. New sewer services must be extended to each lot.

4) Note that all roadway disturbances for utility installation must be repaired to city standard.

d) Submit a final tree preservation and grading plan subject to staff approval. The plan must show house, drive, utilities, grading and other improvements located to minimize tree impacts and must specifically comply with the following:

1) Grading must be adjusted away from the west lot line to minimize impacts to the adjacent large oak trees.

2) Driveways and utility services must be located to prevent loss of the three large basswood trees at the front of the site.

3) No more than 35% of the site’s high-priority trees may be removed in total. Currently, no more than 3 high-priority trees in total may be removed across both lots. No more than one high-priority tree may be removed from Lot 2 (southern lot) and no more than two high-priority trees may be removed from Lot 1 (northern lot), unless a complete grading and tree preservation plan is approved by the city for both lots showing how no more than 3 high-priority trees in total would be removed.

4) Raingardens and any other stormwater management practices must be adjusted to minimize tree impacts.

No site work (grading, tree removal, etc.) may begin prior to issuance of a building permit for each lot unless otherwise authorized by city staff.

e) Submit a stormwater management plan for review and approval of the city engineer.
1) Stormwater management is required for each single-family home. Each lot is responsible for capturing one inch of runoff volume over the site's impervious surface.

2) Drainage must not be directed towards the neighboring property to the west of Lot 2. Existing conditions must be maintained and drainage must be directed toward the street.

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 a right-of-way permit for all work within the city's right-of-way.

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.
4. Permits may be required from other agencies including Hennepin County, Minnehaha 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 January 23, 2018.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 23, 2017.

__________________________
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 January 23, 2017.

__________________________
David E. Maeda, City Clerk
City Council Agenda Item #10B
Meeting of January 23, 2017

Brief Description: Amended and restated subscription solar garden agreements with WGL Energy Systems, Inc.

Recommended Actions: Approve the agreements

Background

On August 31, 2015, the city council authorized the mayor and city manager to execute a solar garden subscription agreement with Innovative Power Systems (IPS), as well as with two other providers. After that approval, IPS indicated that it would be operating the solar garden under the corporate entity, New Energy Equity LLC, and on October 26, 2015, the city council ratified that change to the subscription agreement. From inception, IPS / New Energy has been working with WGL Energy Systems, Inc. as a financing partner.

The first of New Energy’s solar gardens became operational at the end of 2016. As a result, New Energy moved the project from in-construction financing to long-term financing. As part of that process, New Energy assigned its rights under the November 2015 agreement to WGL Energy Systems, Inc. (WGL Energy).

Only a portion of the city’s capacity is being assigned to the “Lind” solar garden, which became operational in 2016. The remaining capacity has been allotted to a garden that is scheduled to become operational this year. New Energy Equity and WGL Energy have requested that the existing subscription agreement be separated into two agreements, each of which contains the changes related to the financing arrangement between New Energy and WGL Energy. The financing-related changes are technical in nature. The revisions do not change the financial impacts of the subscription from what was originally presented.

The city’s energy consultant, Gary Swanson of Energy Management Solutions, and the city attorney have reviewed the proposed changes with respect to the operational solar garden. A copy of that agreement is included, with redlined information for the council’s convenience. A similar agreement will be needed for the next solar garden. To avoid the need to bring technical revisions back to the council for approval, the city attorney has requested that the council authorize the mayor and city manager to execute two or more agreements, substantially in the form of the proposed amended and restated agreement, subject to final review and approval of the city attorney and Energy Management Solutions.
Recommendation

(1) Approve the amended and restated subscription agreement with WGL Energy Systems, Inc. for the Lind solar garden, subject to final review and approval of the city attorney

(2) Authorize the mayor and city manager to approve and execute a similar agreement with WGL Energy Systems, Inc. for the next solar garden that becomes operational

Submitted through:
Geralyn Barone, City Manager
Brian Wagstrom, Director of Public Works

Originated by:
Corrine Heine, City Attorney
This Amended and Restated Subscription Agreement (hereafter “Agreement”) for participation in an approved Solar Rewards-Community Project of Northern States Power Company (hereafter “the Utility”) is entered into by NewWGL Energy Equity LLC, a Delaware corporation (hereafter “Operator”), and City of Minnetonka, a retail electric utility customer of Northern States Power (hereinafter “Subscriber”), pursuant to Minnesota Statutes 216B.1641 and Section 9 - Cogeneration and Small Power Production of the Utility’s Minnesota Electric Rate Book (hereinafter “the Tariff”), each of which as may be amended or supplemented from time to time. Operator and Subscriber may hereinafter be referred to individually as a Party or collectively as the Parties.

Pursuant to the terms and conditions of this Agreement, and in consideration of the mutual benefits provided herein to the Parties, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. Subscriber and Operator New Energy Equity, LLC (“NEE”) entered into that certain Subscription Agreement, dated as of November 12, 2015, which NEE subsequently assigned to Operator on January 9, 2017 and provided notice of assignment to the Subscriber as of January 9, 2017, and which they desire to amend and restate.

B. Operator intends to construct, own and operate certain solar energy facilities (hereinafter “the Project”) with a minimum DC rated nameplate capacity of at least 6,500,000 kilowatts at the following location(s) (hereinafter “the Site”) in the Utility’s Minnesota service territory as outlined in Exhibit H.

C. Operator intends to apply for and seek approval for the Project to sell electricity and energy attributes to the Utility under the terms and conditions of the Utility’s Solar*Rewards Community program as set forth in the Tariff.

D. The Project will be interconnected with the electrical grid and Operator intends to sell all of its power production to the Utility pursuant to a standard Solar*Rewards Community contract between Operator and Utility, a copy of which will be provided to Subscriber and shall be attached to this Agreement as Exhibit B (hereinafter “the Solar*Rewards Contract”). It is expressly understood by the Parties herein that this Subscription Agreement is subject to the terms and conditions of Exhibit B, and that Subscriber’s benefits under this Agreement may be further defined and possibly limited by the terms of Exhibit B, which terms and conditions are fully incorporated herein as if set forth here in full, and which terms may be from time to time amended or revised directly or as a result of statutory and/or regulatory changes.

E. Subscriber represents and warrants that he/she is a qualifying retail customer of Utility and desires to enter into this Subscription Agreement for the purposes of receiving monetary benefits from the Project, including receiving credits on Subscriber’s monthly Utility bills
(the “Bill Credits”) for Subscriber’s Utility account (“Utility Account”) in keeping with the Solar*Rewards Contract. Subscriber’s Utility account is located at: 14600 Minnetonka Blvd. Minnetonka, MN 55345 and has account number: [____].

E.F. Capitalized terms used in this Agreement shall have the meanings set forth in Exhibit A or otherwise as specifically defined herein.

THE SUBSCRIPTION AGREEMENT

I. SUBSCRIPTION PURCHASE

1.1 Operator agrees to sell and Subscriber agrees to purchase a subscription to the Project that is intended to entitle Subscriber to receive Bill Credits on a monthly basis equivalent to Subscriber’s share of the Project’s monthly output, pursuant to the terms of the Tariff and for the term of this Agreement (the “Subscription”) in exchange for purchasing a percentage share of the Project’s monthly output. The value of the Bill Credits shall be calculated under the Tariff, as amended from time to time, which calculations shall include the size of Subscriber’s Subscription (defined below), the Project’s monthly energy production, and the values set forth in the Tariff for Subscriber’s applicable retail rate (“ARR”) and any renewable energy credits (“RECs”) or other energy attributes (“attributes”) produced by the Project that are sold by Operator to the Utility.

1.2 The size of Subscriber’s subscription shall be defined as a percentage of the Project’s DC-rated nameplate capacity. Subscriber agrees to purchase a Subscription of no more than 6,500,000 kilowatts of that total nameplate capacity, that, per the Tariff, shall not in any circumstances exceed 40 (forty) percent of the Project’s total capacity.

1.3 As consideration for this Subscription Agreement, Subscriber agrees to pay Operator an amount equal to 30% of the percentage share (defined in Section 1.4) of the Project’s monthly output (as and when the same output is produced), at and Subscriber receives its corresponding Bill Credits) times the Energy Price in effect at the time of delivery as set forth in Article IX.

1.4 Within 5 days after the project reaches Commercial Operation, Operator will notify Subscriber of the Date of Commercial Operation and the Project’s as-built DC-rated nameplate capacity, and the percentage of output that shall be “Subscriber’s Percentage Share,” which is defined as a ratio in which the amount of kilowatts of total nameplate capacity purchased by the Subscriber is the numerator and the total nameplate capacity of the project is the denominator.

II. TERM AND TERMINATION

2.1 The term of this Agreement shall begin on the “Effective Date,” as established by the date of the last signatory below, and shall expire on the same date as the expiration of the
Solar*Rewards Contract referred to above (the “Term”), unless terminated sooner by one or both of the Parties.

2.2 If the Date of Commercial Operation has not occurred within two years of the Effective Date, then either Party may terminate this Agreement, without liability, upon providing notice to the other Party.

2.3 In addition, Operator may terminate this Agreement:

   a. Upon 60 days prior notice to Subscriber before the startDate of Project’s Commercial Operation based on one or more of the following events of conditions existing with the Project:

      i. Site conditions (including environmental or geotechnical conditions or ecological concerns such as presence of wildlife species) that could not have been reasonably known as of the date of the Subscription Agreement and that could reasonably be expected to materially increase the cost of constructing the Project or adversely affect the electricity production from the Project.

      ii. A material adverse change in the rights of Operator to construct the garden, or the financial prospects or viability of the project, due to market conditions or cost of equipment.

      iii. The local utility does not approve the interconnection agreement for the Project or provide an interconnection upgrade cost that makes the Project financially viable.

      iv. Permits, land preparation, easements, other liens or encumbrances, or other site restrictions that would materially impair or prevent, or have a material adverse effect on, the installation, operation, maintenance or removal of the system.

   b. Upon notice to Subscriber, in the event that the Solar*Rewards contract is terminated for any reason other than as provided in Section 2.4(b) below; and

   c. Upon thirty (30) days prior notice to Subscriber in the event of an uncured Event of Default by Subscriber.

2.4 Subscriber may only terminate this Agreement, upon sixty (60) days prior notice to Operator, if:

   a. Operator fails to perform under this Agreement due to an event of Force Majeure materially affecting Subscriber’s Subscription which lasts more than twelve (12) months; or

   b. The Solar*Rewards contract has been terminated due to a breach
by Operator or Utility and such termination has been approved by the Minnesota Public Utilities Commission.

III. UTILITY AGREEMENT

3.1 Subject to the terms and conditions of the Solar*Rewards contract, Operator will sell 100 percent of the Project’s energy production to Utility.

3.2 The sale of energy to Utility shall begin on the date that the Project’s commercial operation is approved for sale under the Solar*Rewards contract and shall continue for the term of the Solar*Rewards contract, which shall also correspond with the date the Subscriber’s Bill Credits begin to accrue.

3.3 Operator shall have sole responsibility for resolving any disputes with Utility regarding the amount of energy production from the Project, and shall also have sole discretion over any such resolution.

3.4 Subscriber shall be solely responsible for resolving any disputes with Utility regarding the rate applied to energy production and the amount of the Bill Credits paid to Subscriber, as defined and governed by the Tariff. Any conflict between the terms of this Agreement and the Tariff shall be resolved in favor of the Tariff.

IV. General Representations and Warranties

Each Party represents and warrants to the other Party:

4.1 If the Party is an entity, that it is duly organized, validly existing, and in good standing in the jurisdiction of its organization and is qualified to do business in the State of Minnesota. If the Party is an individual, that he/she is over the age of 18 and is otherwise competent to enter this agreement under the laws of the State of Minnesota.

4.2 That the Party has full legal capacity to enter into and perform this Agreement.

4.3 That the execution of this Agreement has been duly authorized and the person executing this Agreement on behalf of the Party has full authority to bind the Party.

4.4 To the best of its knowledge, there is no pending litigation, governmental action, proceeding, investigation or other legal process affecting or involving the Party’s ability to carry out its obligations under this Agreement.

V. OPERATOR REPRESENTATIONS AND OBLIGATIONS

5.1 Operator agrees to design, construct, operate and maintain the Project
consistent with prudent industry standards, codes and regulatory requirements and will use commercially reasonable efforts to maximize the production from the Project over the term of this Agreement.

5.2 Installation, operation, repairs and maintenance of Project’s solar equipment shall be under the supervision of NABCEP certified professionals directly employed or working under the direction of Operator, and the Project’s interconnection with the electrical grid shall be undertaken by an electrical contractor licensed in the State of Minnesota directly employed or working under the direction of Operator.

5.3 Operator shall maintain the Project’s equipment and interconnection with the electrical grid consistent with industry standards and recommendations from equipment manufacturers.

Operator shall develop a written plan for operation and maintenance (“O&M”) of the Project, to be incorporated into this Agreement as Exhibit C, and shall conduct operations and maintenance of the Project consistent with such written plan.

5.4 Operator shall maintain or cause to be in effect insurance coverage for liability and casualty losses associated with design, construction, operation or maintenance of the Project with a company or companies licensed or otherwise authorized to do business in Minnesota, as required by the Tariff.

5.5 Operator shall provide timely notice of any unscheduled disruption in Project’s energy production to Subscriber with an estimate of the duration of such disruption and any loss of energy production.

5.6 For purposes of questions, comments, complaints or other information regarding the Project, Subscriber may contact Operator as follows:

WGL Energy Systems, Inc.
705 Melvin Avenue
Suite 409
Annapolis, Maryland 21401
Attn: Lindsey Gillis

8614 Westwood Center Drive
Vienna, Virginia 22182

From time to time, Operator may designate another contact for the Project upon notice to Subscriber.

VI. SUBSCRIBER REPRESENTATIONS AND OBLIGATIONS

6.1 Subscriber represents and warrants that it is a retail electrical customer of
the Utility on the account described in Recital E above, meeting all of the criteria necessary for a subscriber to a Solar*Rewards Community project.

6.2 Subscriber represents and warrants the premises served by the Utility accounts listed for its Subscription in Recital E are in the same county or an adjacent county as the Project Site or Sites in Recital B above.

6.3 Subscriber represents and warrants that the size of its Subscription is not greater than 120 percent of Subscriber’s average total annual electrical demand over the most recent 24 months for Subscriber’s Utility Account (including all accounts at any of the premises subject to the Subscription.)

6.4 Subscriber agrees to provide such Utility Account information and usage data as may be required by the Utility or Operator for purposes of verifying Subscriber eligibility and providing Subscriber’s Bill Credits. Subscriber agrees to promptly notify Operator of any actual or anticipated changes to Subscriber’s usage data or factors that would materially impact Subscriber’s eligibility for the Subscription.

6.5 Subscriber agrees to execute Utility’s Solar*Rewards Community Subscriber Agency Agreement and Consent, which is attached hereto as Exhibit D.

6.6 Subscriber agrees to execute Utility Data Privacy Policy Form, which is attached hereto as Exhibit E, and hereby acknowledges that Utility may share some of Subscriber’s data solely for purposes of administering the Solar*Rewards Community program.

6.7 Subscriber acknowledges and agrees that, aside and apart from the calculations of Bill credits, it will have no interest in any environmental or compliance value associated with its Subscription in the energy production of the Project (including RECs), any tax benefits arising from ownership or operation of the Project, or any incentives associated with the Project under the Minnesota Department of Commerce’s Made in Minnesota program, Utility’s Solar Rewards program, or similar programs, other than those set forth herein. Subscriber acknowledges that RECs associated with the Project will be sold by Operator to the Subscriber at $20.00 per REC for the term of the Agreement, and then will be sold to the Utility under the Solar*Rewards contract and the value of such RECs will be included in the Bill Credits paid to Subscriber by Utility.

VII. ANNUAL REPORT

Operator shall provide Subscriber with an annual report on the Project no later than April 1 of each year for the previous 12-month period from January through December. The annual report will include detailed information on the following aspects of the Project in addition to such information as the Operator shall deem relevant to the Subscriber’s understanding of the Project and its operation:

(1) Total annual energy production;
(2) Typical Meteorological Year (TMY) data for the location closest to the Project site at which complete TMY data is available;
(3) Analysis of the effect TMY data had on energy production;
(4) Warranty actions or insurance claims submitted on behalf of the Project;
(5) Estimated environmental benefits for the report period and aggregated benefits since the start of commercial operations;

VIII. ASSIGNMENT OF SUBSCRIPTIONS

8.1 Subscriber shall not assign this Agreement without the consent of Operator, such consent not to be unreasonably withheld.

8.2 In the event that Subscriber terminates this Agreement during the Term because it will no longer obtain electric service from Utility through the Subscriber Account set forth in Recital DE above, Subscriber shall use commercially reasonable efforts to facilitate discussions between Operator and a successor Subscriber or occupant of the Premises regarding the sale of Output subscription to such new Subscriber or occupant pursuant to an assignment of this Agreement acceptable to Operator. In the event that Operator accepts such an assignment or enters into an agreement with such new Subscriber or occupant for the sale of Output subscription on terms at least as favorable to Operator as this Agreement, then Subscriber shall have no further liability to Operator. Otherwise, Subscriber shall be liable to System Owner Operator for damages in accordance with the provisions of Article XII and XIII.

8.3 Subscriber shall be responsible for determining eligibility of the Assignee and securing all necessary information regarding the Assignee’s premises and account information as well as execution of Utility’s Data Solar*Rewards Community Subscriber Agency Agreement and Consent Form and Data Privacy Policy form. Operator reserves the right to perform its own due diligence on the eligibility of the Assignee to be a subscriber to the Project under the terms of the Tariff and maintains the right to withhold consent to any proposed transfer, in its sole discretion, upon a determination by Operator of Assignee’s ineligibility under paragraph 8.2 above.

8.4 Operator shall update information with Utility within 10 business days of receiving notice that an approved transfer is complete for purposes of reallocating Bill Credits associated with the Subscription to transferee which will be prorated as of the date of transfer.

IX. SUBSCRIPTION FEES AND EXPENSES

9.1 Subscription Fees

(a) Invoicing. Operator shall invoice Subscriber for Energy monthly. Operator shall deliver each invoice within thirty (30) Business Days after the end of each monthly billing period. Each invoice shall set out the amount of Energy delivered in kWh during such billing period, the then-applicable Energy Price, as set forth on Exhibit F, and the total amount then due to Operator, including any taxes assessed on the sale of
Energy to Subscriber. The amount due shall be prorated for any partial month during the Term. Such invoice shall include sufficient details so that Subscriber can reasonably confirm the accuracy of the invoice. Subscriber shall pay the amount due to Operator within thirty (30) Business Days after receipt of each invoice. Payments not made within 30 days of receipt of Operator’s invoice shall be subject to a penalty equal to one (1) percent per month of the invoiced amount until paid.

(b) Operator agrees to work in good faith with Subscriber to establish a system of invoicing and payment that is as efficient as possible for Subscriber and is as consistent as possible with Subscriber’s system for accounts payable.

X. ASSIGNMENT

10.1 Subscriber may not assign its interest or obligations under this Agreement except as provided in Article VIII.

10.2 Operator may assign any or all of its interests and obligations in this Agreement upon notice to Subscriber of such assignment. Any assignee shall be subject to the terms and conditions of this Agreement unless otherwise agreed to in writing by Subscriber.

10.3 The Parties acknowledge that Operator may obtain construction and long-term financing, or other credit support or tax equity financing, either directly or through an affiliate, from financing parties in connection with the development and ownership of the Project (the “Project Financing”). Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the financing parties in order to support the Project Financing.

10.4 The Parties agree that, in accordance with Section 10.3, Operator may assign this Agreement to a tax equity partnership or a third party Project owner, or to financing parties as collateral to support the Project and Operator’s obligations to such financing parties.

10.5 In connection with any such assignment by Operator, Subscriber agrees that an assignee or financing parties shall be entitled to (i) assume the rights and obligations of Operator under this Agreement; (ii) receive copies of certain notices hereunder that Subscriber may provide to Operator; (iii) have the same extended cure periods to cure any defaults by Operator hereunder; and (iv) be provided other similar or related benefits or protections as reasonably requested by the owner and/or financing parties to support the Project Financing.

XI. TAXES

Operator makes no representations concerning the taxable consequences to Subscriber with respect to Bill Credits or any other aspect of this Agreement.
XI. CALCULATION OF ESTIMATED BENEFITS TO SUBSCRIBER

Subscriber acknowledges receiving a Calculation of Estimated Benefits from this project and understands that said calculation is an estimate of the ongoing costs and benefits subscriber may anticipate. Said Calculation of Estimated Benefits is attached hereto as Exhibit G, and Subscriber specifically acknowledges that the Calculation is an estimate based upon several variables that may change, resulting in a change in the amount and nature of the benefits.

XII. DEFAULT

Upon the occurrence of, and during the continuation without cure of, an Event of Default, the Non-Defaulting Party shall have the option, but not the obligation, to terminate this Agreement, and the Defaulting Party shall be liable to the Non-Defaulting Party for damages for Default. The following shall constitute an Event of Default by a Party:

13.1 The Subscriber fails to make any material payment due under this Agreement within thirty (30) days after delivery of notice from the other Party that such payment is overdue.

13.2 Except as provided in 13.1 above, the Party materially fails to perform or comply with any representation, warranty, obligation, covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after delivery of notice thereof from the other Party, provided if it cannot reasonably be cured within such thirty day cure period, the defaulting Party will have such additional time as needed (not to exceed an additional thirty (30) days) provided that the defaulting Party promptly commences and diligently pursues cure and continues such cure to completion, and provided that such extended period of cure does not materially adversely affect the other Party.

13.3 The Party is subject to a petition for dissolution or reorganization voluntary or involuntary, under the U.S. Bankruptcy Code. In the case of an involuntary proceeding filed against a Party by a third party, such Party shall have sixty (60) days to have such proceeding or petition dismissed before it matures into an Event of Default.

13.4 Remedies for Default

13.4.1— If a Subscriber Event of Default occurs, (i) Operator shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Subscriber, and promptly following such termination, shall have the right to remove the System from the Site, and (ii) Subscriber shall be liable to Operator for actual, direct Damages. At all times following an Event of Default by the Subscriber until the termination of this Agreement, Operator shall have the right, but not the obligation, to deliver the Output to the Subscriber, and the Subscriber shall be obligated to purchase and pay for such Output in accordance with this Agreement. (iii) Subscriber shall be liable to Operator for actual, direct Damages.
13.4.2 If an Operator Event of Default occurs, then Subscriber shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Operator and to pursue any remedy it may have at law or equity.

13.4.4 Operator may exercise any remedy it may have at law or equity, including recovering from Subscriber all resulting damages, which damages shall include, but not be limited to, projected payments for Energy generated for the remainder of the Contract Term; the cost of removing the System from the Premises; any loss or damage to Operator due to lost or recaptured Environmental Attributes or Environmental Incentives, including, without limitation, lost revenue from the sale of Environmental Attributes to third parties (including any damages due to the early termination of any agreement for such sale), and the recapture of the investment tax credit under Section 48 of the Internal Revenue Code, the grant in lieu of tax credits pursuant to Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, and accelerated depreciation for the System; and all other amounts of any nature due under this Agreement (collectively, “the Damages”).

XIV. REMEDIES; LIMITATION OF LIABILITY; INDEMNIFICATION

14.1 Subject to the limitations set forth in this Agreement, the Parties each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Parties hereto under this Agreement. Under no circumstances shall Operator’s liability for breach of this Agreement exceed the total net credit value of the Subscription in Year 1 the 12-month period beginning on the date the Subscriber first receives Bill Credits under this Agreement times the number of years remaining in the Solar*Rewards contract.

14.2 Except as expressly allowed herein, no Party shall be liable to the other Party for special, indirect or punitive damages of any character, resulting from, arising out of, in connection with or in any way incident to any act or omission of a Party related to the provisions of this Agreement, irrespective of whether claims or actions for such damages are based upon contract, warranty, negligence, strict liability or any other theory at law or equity.

14.3 Each Party shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof, from and against all loss, damage, expense liability and other claims, including court costs and reasonable attorney’s fees (collectively “Liabilities”) resulting from any third party actions relating to the breach of any
representation or warranty in this Agreement and from injury to or death of persons, and
damage to or loss of property to the extent caused by or arising out of the negligent acts or
omissions of, or the willful misconduct of, the indemnifying party. The party seeking
indemnification hereunder shall notify the indemnifying Party in writing of any Liability
asserted, or known to be under commencement, by a third party as soon as possible and
cooperate with the indemnifying Party. The indemnifying Party shall immediately take control
of the defense and investigation of Liabilities at the indemnifying Party’s sole expense.

XV. DISPUTE RESOLUTION AND AMENDMENT

15.1 The Parties shall make good faith efforts to resolve any claims, disputes or other matters
related to this Agreement by mediation. If mediation does not resolve the claim or dispute,
either Party may pursue remedies available at law or equity.

15.2 This Agreement may be amended only by written agreement of both Parties.

XVI. FORCE MAJEURE

16.1 Force Majeure shall mean any event or circumstance not within the control of the Parties
to the extent that the circumstance could not be prevented or avoided by a Party, the event
is not due to a Party’s negligence or willful misconduct, or such an event is not the result of
any failure of a Party to perform any of its obligations under this Agreement. Force Majeure
events may include but are not limited to acts of God, war, terrorism, riot or civil unrest, labor
strikes, fire, floods, epidemics, or hazardous materials existing on the Site prior to Operator’s
start of construction or during the period of Project’s commercial operation.

16.2 Except as provided in Section 2.4(a) above, neither Subscriber nor Operator shall be
considered in default or breach in the performance of their obligations under this Agreement
to the extent that performance of any such obligation is prevented or delayed by a Force
Majeure circumstance or event.

XVII. NOTICES

Any notice required, permitted, or contemplated under this Agreement shall be in writing
and addressed to the Party to be notified at the address set forth below or at such other
address or addresses as a Party may designate for itself from time to time by notice
hereunder. Such notices may be sent by personal delivery or recognized overnight courier,
and shall be deemed effective upon receipt.

If to Operator:
NewWGL Energy Equity-LLC Systems, Inc.
705 Melvin Avenue
Suite 100
Annapolis, Maryland 21401
XVIII. MISCELLANEOUS

18.1 This Agreement constitutes the entire agreement among the Parties relating to the Project and Subscription and supersedes any and all prior oral or written understandings.

18.2 The Parties intended that this agreement be treated as a “Service contract” within the meaning of Section 7701(e) of the Internal Revenue Code.

18.3 This Agreement will be governed by and construed in accordance with the Laws of the State of Minnesota without regard to conflicts of law provisions.

18.4 Any provision of this Agreement found to be void, illegal or otherwise unenforceable shall not affect the validity or enforceability of the other provisions which shall not be affected and will continue in force.

18.5 This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by each Party to this Agreement or its successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

18.6 Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of another Party or to create a joint venture, partnership, agency or any relationship between the Parties.

18.7 Nothing contained in this Agreement shall be construed as an intent by Operator to dedicate the Project to public use or subject itself to regulation as a “public utility” (as such term may be defined under any applicable law).

18.8 This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (“.PDF”) signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date:

OPERATOR:

WGL Energy Systems, Inc.

NAME: ____________________
TITLE: ____________________
DATE: ____________________

SUBSCRIBER

City of Minnetonka

NAME: ____________________
TITLE: ____________________
DATE: ____________________
EXHIBITS:

A. Definitions
B. Solar*Rewards contract
C. Operation and Maintenance Plan
D. Solar*Rewards Community Subscriber Agency Agreement and Consent Form
E. Xcel Energy Data Privacy Policy Disclosure Form
F. Table of Energy Prices
G. Calculation of Estimated Benefits to Subscriber
H. Name and Locations for CSG Solar Gardens
Exhibit A - Definitions

“Agreement” has the meaning set forth in the preamble.

“ARR” has the meaning set forth in Section 1.1.

“Bill Credit(s)” has the meaning set forth in the recitals.

“Date of Commercial Operation” has the meaning set forth in the Solar*Rewards contract.

“Early Termination Fee” has the meaning set forth in the Tariff.

“Event of Default” has the meaning set forth in Article XIII.

“Energy Price” means, for any Subscription year, the applicable amount set forth on Exhibit F.

“Energy” means a Subscriber’s share of the Project’s monthly energy production as set forth in Section 2.51.1.

“Enhanced Bill Credit” has the meaning set forth in the Tariff.

“Liabilities” has the meaning set forth in Section 14.3.

“O&M” means operations and maintenance of the Project.

“Operator” has the meaning set forth in the preamble.

“Monthly Allocation” has the meaning set forth in Section 9.1.

“Production Month” has the meaning set forth in Section 9.1.

“Project” has the meaning set forth in the recitals.

“Project Financing” has the meaning set forth in Section 10.3.

“RECs” has the meaning set forth in the Solar*Rewards contract.

“Site” has the meaning set forth in the recitals.

“Subscriber” has the meaning set forth in the preamble.

“Subscriber’s Allocation” has the meaning set forth in Section 1.4.

“Subscription” has the meaning set forth in Section 1.1.

“Tariff” has the meaning set forth in the preamble.

“Term” has the meaning set forth in Section 2.1.

“Utility” has the meaning set forth in the preamble.

“Utility Account” has the meaning set forth in the recitals.
“Solar*Rewards” Contract has the meaning set forth in the recitals.
EXHIBIT B
“SOLAR*REWARDS” CONTRACT

TO BE ADDED BEFORE COMMERCIAL OPERATION
EXHIBIT C
Operation and Maintenance Plan

TO BE ADDED BEFORE COMMERCIAL OPERATION
EXHIBIT D
Solar*Rewards Community Subscriber Agency Agreement and Consent Form

TO BE ADDED BEFORE COMMERCIAL OPERATION
EXHIBIT E

Northern States Power Company ("the Utility or Xcel") Energy Data Privacy Policy Disclosure Form

TO BE ADDED BEFORE COMMERCIAL OPERATION
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EXHIBIT G
Calculation of Estimated Benefits to Subscriber

TO BE ADDED BEFORE COMMERCIAL OPERATION
EXHIBIT H
Name and Location of CSG Solar Gardens

TO BE ADDED BEFORE COMMERCIAL OPERATION

CSG Site Name:
CSG Site Address:
CSG Site City, State, Zip: CSG
Xcel Application #:

CSG Site Name:
CSG Site Address:
CSG Site City, State, Zip: CSG
Xcel Application #:

CSG Site Name:
CSG Site Address:
CSG Site City, State, Zip: CSG
Xcel Application #:

CSG Site Name:
CSG Site Address:
CSG Site City, State, Zip: CSG
Xcel Application #:

CSG Site Name:
CSG Site Address:
CSG Site City, State, Zip: CSG
Xcel Application #:
Brief Description  Ordinance amending permit fees, land use application fee and mechanical contractor licenses

Recommendation  Adopt the ordinance

Background

There are three housekeeping items needed for the inspections, planning and licensing department.

When Ordinance No. 2016-15 was adopted, it did not include the words “fire or sewer/water” in paragraph 9 of section 710.005 to reflect that the permit fees for those permits were also increased. Also, in paragraph 16 for land use applications, the addition of “master plan” to site plan or major amendment to master plan plus “or lot division” to preliminary plat (no new public roadways) is needed to clarify application fees. Also, the plan review description should be revised to say “15% of permit fee only if permit valuation is over $30,000”.

In addition, staff realized that local cities that issue competency cards for mechanical licenses no longer include the cities of Burnsville and Edina as they no longer test and provide competency cards. Therefore the ordinance needs to be updated to remove those cities as providers of the cards.

Recommendation

This ordinance was introduced on January 9, 2017. Staff recommends the city council adopt the ordinance.

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

Originated by:
   Lenny Rutledge, Building Official
   Karen Telega, Community Development Assistant
Ordinance No. 2017-

An Ordinance amending Minnetonka City Code Section 710.005, paragraph 9 regarding permit fees and Section 515.010, subsection 4 regarding contractor licensing

The City of Minnetonka Ordains:

Section 1. Minnetonka City Code Section 710.005, paragraph 9 is amended as follows:

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<th>description</th>
<th>amount</th>
<th>code section</th>
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<td>electrical, fire, gas piping, mechanical, plumbing or sewer/water permit</td>
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<td></td>
<td>$1,301 to $5,000</td>
<td>$50.00 plus 2.98% of amount over $1300</td>
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<tr>
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<td>$5,001 to 10,000</td>
<td>$162.00 plus 2.70% of amount over $5,000</td>
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<td>$10,001 to $25,000</td>
<td>$297.50 plus 2.35% of amount over $10,000</td>
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<td>$25,001 to $50,000</td>
<td>$651.00 plus $2.14% of amount over $25,000</td>
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<td>$50,001 and up</td>
<td>$1186.50 plus 1.80% of amount over $50,000</td>
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<td>in addition, the following flat-rate fees are charged:</td>
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<td></td>
<td>plan review</td>
<td>15% of permit fee only if valuation is over $30,000</td>
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<tr>
<td></td>
<td>re-inspection fee</td>
<td>$77.00</td>
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The stricken language is deleted; the underlined language is inserted.
Section 2. Minnetonka City Code Section 710.005, paragraph 15 regarding site plan or major amendment to plan and preliminary plat (no new public roadway) are amended as followed:

<table>
<thead>
<tr>
<th>para. no.</th>
<th>description</th>
<th>amount</th>
<th>code section</th>
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<tbody>
<tr>
<td>15.</td>
<td>land use applications</td>
<td></td>
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<tr>
<td></td>
<td>site plan, <strong>master plan</strong> or major amendment to master plan</td>
<td></td>
<td>300.22 300.27</td>
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<tr>
<td></td>
<td>administrative site plan review</td>
<td>$300.00</td>
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<td></td>
<td>other site plan review</td>
<td>$1,050.00</td>
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<td>$25,001 to $50,000</td>
<td>$651.00 plus $2.14% of amount over $25,000</td>
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<td>$50,001 and up</td>
<td>$1186.50 plus 1.80% of amount over $50,000</td>
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<td>subdivision or lot division</td>
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<td>400.015</td>
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<td></td>
<td>administrative lot division</td>
<td>$500.00</td>
<td></td>
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<tr>
<td></td>
<td>preliminary plat (new public roadways)</td>
<td>$1050.00</td>
<td></td>
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<tr>
<td></td>
<td>preliminary plat (no new public roadways) <strong>or lot division</strong></td>
<td>$400.00</td>
<td></td>
</tr>
</tbody>
</table>

Section 3. Minnetonka City Code Section 515.010 subdivision 4, is amended to read as follows:

4. The building official may require the license applicant to undergo an examination before a license is issued. The examination will be for the purpose of determining the applicant's ability to adequately undertake the work being licensed. The applicant must perform to the satisfaction of the building official before a license will be granted. The building official may waive the examination for applicants who provide proof that they passed the examination in the Minnesota cities of Bloomington, Burnsville, Edina, Minneapolis, St. Cloud, St. Paul, St. Louis Park, or Rochester.

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

Section 5. This ordinance is effective upon adoption.
Adopted by the city council of the City of Minnetonka, Minnesota, on.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

**Action on this Ordinance:**

Date of introduction: January 9, 2017
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

David E. Maeda, City Clerk

The stricken language is deleted; the underlined language is inserted.
City Council Agenda Item #14A
Meeting of January 23, 2017

Brief Description  Resolution reaffirming previous site and building plan approval for the Music Barn Apartments at 5740 and 5750 Shady Oak Road

Recommendation  Adopt the resolution reaffirming the previous approval

Background

On May 18, 2015, the city council approved final site and building plans for construction of the Music Barn Apartments, a 27-unit affordable housing project. By city code, approval of final site and building plans expire on December 31 of the year following approval unless: (1) a building permit has been issued and substantial work performed on the project; or (2) the city grants a time extension. As the council is aware, a building permit has not been issued for construction of the apartment building. In December, the property owners submitted information that they were comfortable with the extension request. Staff intended to place an extension request on the council’s December 19, 2016 meeting agenda together with the bonding extension, but legal notification requirements could not be met prior to that meeting. As such, the Music Barn Apartment site and building plan approval expired on December 31, 2016.

Reaffirmation

The city has occasionally reaffirmed previous approvals – rather than requiring a proposal go through a full review process again – when: (1) there have been no changes to the previously approved plans; (2) when there have been no changes to city code or policy that could affect the previous approvals; and (3) when reaffirmation would not adversely affect the interests of neighboring property owners.

Staff finds that reaffirmation of the previous Music Barn Apartments site and building plan approval is reasonable, as:

(1) Other than changes required to meet conditions of the 2015 approval, there have been no substantive changes to the previously approved plans;

(2) There have been no changes to city code or policy that would affect the previous approval; and

(3) In staff’s opinion, reaffirming the 2015 approval would not adversely affect the interests of neighboring property owners. Rather, reaffirmation would simply allow the project to continue as previously approved.
Public Comments

The city sent public notice to 443 area property owners and received written comments from three area residents. These residents expressed opposition to the proposal in 2015 and continue to have several areas of concerns. The concerns can generally be placed into one of three categories: (1) land use; (2) design; and (3) management. The primary concerns and staff responses – which reflect the staff report and presentations from 2015 – are outlined below.

(1) Land Use:

✓ **PUD Zoning.** Residents suggest that project results from a “misuse” of PUD zoning. The city may consider the use of PUD zoning when it would result in a defined public benefit. In staff’s opinion, the project provides a clear public benefit in the provision of 27 new, affordable living units.

✓ **Traffic.** The level of traffic added to an already busy Shady Oak Road is questioned. Staff notes that, on average, an apartment unit generates 6.65 vehicle trips per day. This would amount to 180 trips per day for the proposed 27-unit building, which equates to a less than 1 percent increase in traffic on Shady Oak Road. The Hennepin County Engineer conducted a preliminary review of the plan in 2015 and made no comment on traffic volume implications. Appropriate access and roadway work permits must be obtained from Hennepin County.

(2) Design:

✓ **Parking Spaces.** Some residents question if the number of parking stalls provided will be adequate. By city code, the 27-unit apartment building must be served by 54 parking stalls. The project meets this requirement.

✓ **Parking Lot Grade.** Residents suggest that the 4 percent grade in some areas of the driveway and parking areas will be dangerous for residents and garage vehicles. The city does not have specific grade requirement for private parking lots or driveways. The proposed 4 percent grade is less than the maximum 7 percent grade allowed for public streets.

✓ **Structural Integrity.** Some residents question whether the existing barn can accommodate structural changes and whether the proposed retaining walls have been appropriately designed. The city’s building official evaluates structural issues in conjunction with review of building permits. In addition, as
a condition of the 2015 approval, the retaining wall must be designed by a certified engineer.

- **Tree Preservation.** The impact on existing trees is concerning to residents. The proposed building and associated grading would be located at the base of an existing wooded slope. As designed, the project would result in removal or significant impact to 19 percent of the site’s high-priority trees. This is well below the 35 percent allowed by city code.

- **Landscaping.** Residents question the lack of landscape buffer between the building and Shady Oak Road. As with any development project, a final landscape plan must be submitted for the review and approval of natural resources staff. The plan must meet cost and mitigation requirements as outlined by code. It is always staff’s goal to achieve a plan that is both aesthetically pleasing and viable in the long-term.

- **Signage and Lighting.** Residents question the impacts of site signage and lighting. Both signage and lighting on the subject property, and all other sites, must meet the standards as outlined in city code. Anything outside of these standards would require a variance, and further evaluation by the planning commission.

(3) Management:

- **Building management.** Residents ask whether the site will have 24-hour management. The city does not require such management at any multi-tenant residential building. This a decision for the property owner.

- **Parking Designation.** Some residents question how parking will be designated. The city does not generally require specific resident/visitor parking designation at any multi-tenant residential building. This a decision for the property owner.

- **Garbage pick-up.** Residents question when and how garbage pick-up would occur. Garbage receptacles will be located in the underground garage and moved out on pick-up day. Staff acknowledges that the location of the exterior garbage pad will require some coordination by building management to ensure the garbage vehicle can access the dumpster and turn around to exit the site.

- **Snow Storage.** Residents asked how snow storage will be handled. Snow storage area is available south of the barn structure and a smaller area north of the garage entrance drive. The applicant has indicated that snow may need
to be hauled from the site, which has been done in the past at other buildings owned by the applicant.

- **Play and Animal Areas.** Residents express concern that children and animals residing on the site will not have adequate outdoor spaces. Plans submitted with the building permit application show a children’s play area/play set proposed on the south side of the barn accessed by sidewalks. This area and the existing and proposed building will be surrounded by green space. In addition, the entrance to Lone Lake Park is within 300 feet of the site and accessible via an existing sidewalk.

- **Building aesthetic.** Some residents do not like the building design. Design is a matter of personal taste and, as such, this is a valid opinion. Staff acknowledges that the design is significantly different than that of the Beachside townhomes and that it is unique relative to apartments recently constructed in Minnetonka. However, staff does not believe this difference/uniqueness in design equates to bad design. Staff appreciates that the design takes visual “cues” from the existing barn.

**Summary Comments**

Staff acknowledges that some area residents were, and continue to be, opposed to the proposed Music Barn Apartments. However, staff continues to support the project finding it is consistent with the previous approvals, it expresses thoughtful design and will contribute to the city’s affordable housing goals and expectations.

This item was originally scheduled for city council consideration on January 9, 2017. However, the applicant was unable to attend the meeting and requested postponement to a future date.

**Recommendation**

Staff recommends the city council adopt the resolution reaffirming the previous approval of final site and building plans, subject to previous conditions of approval.

Submitted through:
- Geralyn Barone, City Manager
- Julie Wischnack, AICP, Community Development Director
- Loren Gordon, AICP, City Planner
Subject: Reaffirmation of Music Barn Apartments Site and Building Plan approval

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

Project: Music Barn Apartments
Applicant: Community Housing Corp of America, Shelter Corp.
Address: 5740 & 5750 Shady Oak Rd

This map is for illustrative purposes only.
GRADING, DRAINAGE & EROSION CONTROL NOTES

1. All disturbed areas of ground, the external margins of bodies of topsoil and sod, or areas that are to be submerged by the contractor, will be given a grading or compaction base.

2. The contractor shall take all precautions necessary to assure proper drainage to adjacent properties during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

3. The contractor shall be responsible for providing and maintaining traffic control devices in such a manner that no directional signs, warning signs, directional signs, or other traffic control devices are located in the pathway of the contractor's own vehicular traffic. Traffic control devices shall be approved by the engineer prior to placement. Traffic control devices shall be maintained by the contractor at all the time and in accordance with Minnesota Department of Transportation Standards.

4. All temporary rock entrance pads shall be maintained by the contractor at all points of vehicle exit from the project site. Said rock entrance pads shall be installed in accordance with generally accepted construction practices. The contractor will be solely and completely responsible for conditions on the job site, including safety of all persons and property on the property of the contractor. The contractor shall not be required to install permanent rock entrance pads.

5. All disturbed areas shall be given a grading or compaction base. The grading or compaction base of the contractor's property is not required to include the formation of the contractor's property or the property of the contractor's subcontractors. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

6. Before beginning construction, the contractor shall install a temporary rock entrance pad at all points of vehicle exit from the project site, and maintain the rock entrance pad in accordance with the requirements of the city. The contractor shall be responsible for all permits and inspections as required by the city.

7. All streets and alleys shall be swept to keep them free of sediments, and sediments shall be swept as needed or within 24 hours of notice by the city. A regular sweeping schedule must be established.

8. Contracted Sod is to be maintained by the contractor for the duration of the project.

9. All existing structures, both public and private, shall be adjusted to the proposed grades where disturbed and comply with all requirements of the utility owners. Structures, trees, and other objects shall be adjusted to conform to the proposed grades. The utility owners are responsible for maintaining their service and / or relocation of lines.

10. The contractor shall take all precautions necessary to avoid property damage to adjacent properties during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

11. All unptaved areas are subject to adjustment. All disturbed soil shall be restored to the proposed grades. All disturbed areas shall be graded to the face of the building, face of the pavement, or to the gutter line. Existing topography provided by Lojkows Associates partial topographic survey dated 09/05/14.

12. Streets and alleys must be cleaned and swept whenever tracking of sediments occurs and before sites are left idle for weekends and holidays. A regular sweeping schedule shall be established.

13. Prior to and during construction, all disturbed areas shall be given a grading or compaction base. These areas shall be watered by the contractor until the sod or seed is installed. These areas shall be watered by the contractor until the sod or seed is installed. These areas shall be watered by the contractor until the sod or seed is installed. These areas shall be watered by the contractor until the sod or seed is installed.

14. The duty of the engineer of the developer to conduct construction review of the contractor's performance is not intended to include review of the adequacy of the contractor's safety measures, or ensure the construction plan.

15. The contractor shall be responsible for any damages to adjacent properties occurring during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

16. All existing structures, both public and private, shall be adjusted to the proposed grades where disturbed and comply with all requirements of the utility owners. Structures, trees, and other objects shall be adjusted to conform to the proposed grades. The utility owners are responsible for maintaining their service and / or relocation of lines.

17. The contractor shall take all precautions necessary to avoid property damage to adjacent properties during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

18. All disturbed areas shall be given a grading or compaction base. The grading or compaction base of the contractor's property is not required to include the formation of the contractor's property or the property of the contractor's subcontractors. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

19. All disturbed areas shall be given a grading or compaction base. The grading or compaction base of the contractor's property is not required to include the formation of the contractor's property or the property of the contractor's subcontractors. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

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30. All disturbed areas shall be given a grading or compaction base. The grading or compaction base of the contractor's property is not required to include the formation of the contractor's property or the property of the contractor's subcontractors. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.

WARNING:

The contractor shall take all precautions necessary to avoid property damage to adjacent properties during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project. The contractor shall be held responsible for any damages to adjacent properties occurring during the construction phase of this project.
UTILITY PLAN NOTES

1. All sanitary sewer, storm sewer, and water services shall be furnished and installed per the requirements of the specifications, the City and the standards of the various boards of the City Engineers Association of Metropolitan St. Paul.

2. All utilities to be furnished on the Plans and Specifications shall be furnished by the Contractor and shall be completed as shown.

3. The Contractor shall maintain 8 feet of cover over all water mains and services.

4. All unused existing water services to be cut off by SPRWS, excavation and restoration by Contractor.

5. All utility pipe bedding shall be compacted sand or fine granular material per the requirements of the City. All compaction shall be performed per the requirements of the City Engineers Association of Minnesota (CEAM), 1999 Edition.

6. The Contractor shall field adjust watermain to avoid conflicts with sanitary sewer, storm sewer, and services as required.

7. All utility pipe bedding shall be compacted sand or fine granular material per the requirements of the City. All excavation and restoration by the Contractor.

8. All connections to existing utilities shall be performed per the requirements of the City. The City Department of Engineering and Building Inspections and the construction engineer may be notified at least 24 hours prior to any work affecting the public right of way, or work impacting public utilities.

9. The Contractor shall notify GOPHER State One Call at least 48 hours prior to performing any excavation or underground work.

10. The Contractor shall advise the City of any potential conflicts with sanitary sewer, storm sewer, and services as required.

11. All street surfaces and finishing shall be performed per the requirements of the City. All street closures shall be performed by the Contractor and shall be approved by the City Department of Engineering and Building Inspections.

12. All public streets shall be open to travel at all times. No road closures shall be permitted without the expressed authority of the City.

13. All traffic control shall be performed by the Contractor and shall be in accordance with the Minnesota Manual of Uniform Traffic Control Devices (MMUTCD) and the City.

14. Sanitary Service

15. Storm Sewer

16. Structural Steel

17. Electrical

18. Gas

19. Proposed Pipe Materials:

- PVC SDR 26
- ALUMINIZED CSP
- ALUMINIZED CSP
- DUAL WALL HDPE
- OR DUAL WALL HDPE
- DIP CLASS 53
- RCP
- 12" DIAMETER
- 6" TO 12" DIAMETER
- 36" DIAMETER
- 8" DIAMETER
- 8" DIAMETER

WARNING:

The Contractor shall be responsible for locating all underground utilities, turn off service to all utilities, and maintain their service and/or relocation of lines. The Contractor shall not be responsible for the location of existing underground utilities. The Contractor shall also be responsible for damage to existing utilities due to their work. All damage shall be repaired at the cost of the Contractor.

Music Barn
Apartments
Community Housing Corporation of America
City Submittal -
10/26/2014

C4-1
WARNING: THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES PRIOR TO DIGGING.

THE CONTRACTOR SHALL CONTACT Gopher State One Call at 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING.

THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.
Resolution No. 2015-039

Resolution approving final site and building plans for the Music Barn Apartments at 5740 and 5750 Shady Oak Road

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

Section 1. Background.

1.01 Community Housing Corporation of America/Shelter Corporation has requested approval of final site and building plans for the Music Barn Apartments.

1.02 The properties are located at 5740 and 5750 Shady Oak Road. They are legally described on EXHIBIT A of this resolution.

1.03 On May 7, 2015, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the final site and building plans.

Section 2. Site and Building Plan Standards and Findings.

2.01 City Code §300.27, Subd. 5, outlines several items that must be considered in the evaluation of site and building plans. Those items are incorporated by reference into this resolution.

2.02 The proposal would meet site and building plan standards outlined in the City Code §300.27, Subd.5.

1. The proposal would result in a medium-density residential development consistent with the site's comprehensive guide plan designation. Further, the proposal has been reviewed by city planning, engineering, and natural resources staff and found to be
generally consistent with the city’s development guides, including the water resources management plan.

2. The proposal is consistent with zoning ordinance standards.

3. The proposal would preserve much of the site in its natural state. The proposed building and associated parking would be appropriately situated at the base of the significant wooded slope on the site. There would be little encroachment into the steepest portions of the slope and, correspondingly, removal of just 19% of the site’s high-priority trees.

4. The proposal would result in a harmonious relationship of buildings and open space. Much of the site’s open space would be preserved.

5. The proposal has been designed to complement the site’s existing barn and to evoke the historical farm-use of the property.

6. As new construction, the building code would require use of energy saving features.

7. The proposal would visually and physically alter the site and the immediate area. However, it does not follow that visual change is unreasonable. In designing the proposal, the applicant has given consideration to natural resources and has taken visual “cues” from the existing site. The result is a thoughtfully designed development, which would contribute to the city’s affordable housing goals and expectations.


3.01 City Code §300.28, Subd. 20, outlines several standards for construction within code-defined steep slopes. Those standards are incorporated by reference into this resolution.

3.02 The proposal would meet the standards outlined in the City Code §300.28, Subd.20.

1. The property is physically suitable for the design and siting of the proposed development. The proposal will preserve significant natural features by minimizing disturbance to existing topographical forms.

   a) The proposal includes little grading outside of the building footprint and parking and driveway areas.
b) Retaining walls would be used as an alternative to banks of cut-and-fill.

c) The proposal would concentrate development on the least sensitive portion of the site to maximize the preservation of trees and natural features.

2. The development would not result in soil erosion, flooding, severe scarring, reduced water quality, inadequate drainage control, or other problems.

a) Impervious surface would be minimized.

b) Construction would occur at the base of the slope.

c) The proposal would avoid building on areas of the existing slope that has an average grade of 30 percent or more.

3. The proposed development provides adequate measures to protect public safety.

a) The slope of the private driveway would be less than 10 percent.

Section 4. City Council Action.

4.01 The above-described site and building plans are hereby approved subject to the following conditions:

1. Subject to staff approval, the Music Barn Apartments must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

a) Grading plan dated September 26, 2014
b) Utility plan dated September 26, 2014
c) Landscape plan dated September 26, 2014
d) Building elevations received March 31, 2015 and May 4, 2015

2. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.

a) The following must be submitted for the grading permit to be considered complete.
1) An electronic PDF copy of all required plans and specifications.

2) Three full size sets of construction drawings and project specifications.

3) Final site, grading, stormwater management, utility, landscape, tree mitigation, and natural resource protection plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.

   a. Final stormwater management plan must meet the requirements of the city's Water Resources Management Plan, Appendix A. Design.

   b. Final utility plan must:

      1. Provide evidence of connection to an 8-inch watermain.

      2. Provide evidence of connection to an 8-inch sanitary sewer stub.

      3. Illustration location of a new hydrant to the site. The gate valve controlling service to the building must be located beyond the hydrant so the hydrant can remain operational in the event that water to the building is shut off.

      4. Include an 18-inch gate valve on the south side of connection point for isolation purposes.

      5. Confirm acceptance of storm casing under the building.

      6. Replace CSP pipe within the proposed stormwater facility with a city-approved material.

      7. Include a SAFL baffle or similar device used in conjunction with the proposed sump.
c. Final landscaping and tree mitigation plans must:

1. Meet minimum landscaping and mitigation requirements as outlined in city code. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.

2. Include an itemized plant material list to illustrate that the landscape value will meet city code requirement.

3. Any deciduous trees must be planted at least 15 feet behind the edge of trail or curb and evergreen trees at least 20 feet behind the edge of trail or curb.

4) A stormwater maintenance agreement for the review and approval of the city attorney.

5) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct parking lot and utility improvements, comply with grading permit, tree mitigation requirements, landscaping requirements, and to restore the site. One itemized letter of credit is permissible, if approved by staff.

a. The city will not fully release the letters of credit or cash escrow until:

   • A final as-built survey has been submitted showing floodplain alteration;

   • An electronic CAD file or certified as-built drawings for public infrastructure in microstation or DXF and PDF format have been submitted;

   • Vegetated ground cover has been established; and

   • Required landscaping or vegetation has survived one full growing season.
6) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.

7) A copy of the approved MPCA NPDES and MDH permits.

8) Evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

9) All required administration and engineering fees.

10) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city. At its sole discretion, the city may accept escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction.

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

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

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

b) Prior to issuance of the grading permit:

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

2) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff as determined by city staff.

c) Permits may be required from other outside agencies including, Hennepin County, the Nine-Mile Creek Watershed District, and the MPCA. It is the applicant's responsibility to obtain any necessary permits.

3. Prior to issuance of a building permit:

a) Submit the following documents:

1) Proof of subdivision registration and transfer of NPDES permit.

2) A snow removal and salting application rate plan.

3) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

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

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

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
If the builder is the same entity doing grading work on the site, the cash escrow submitted at the time of grading permit may fulfill this requirement.

c) Submit all required new hook-up fees and any outstanding hook-up fees.

4. Retaining walls on the site must be engineered.

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

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

7. The site plan term of approval outlined in City Code §300.27 Subd.10 is waived. The approval will expire on December 31, 2016.

Adopted by the City Council of the City of Minnetonka, Minnesota, on May 18, 2015.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this Resolution:

Motion for adoption: Allendorf
Seconded by: Acomb
Voted in favor of: Ellingson, Allendorf, Acomb, Wiersum, Bergstedt, Wagner, Schneider

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 May 18, 2015.

David E. Maeda, City Clerk
EXHIBIT A

Parcel 1:
That part of the East 30.00 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:
Commencing at the Southeast corner of said Southeast Quarter of the Northeast Quarter, thence on an assumed bearing of South 87 degrees 06 minutes 28 seconds West along the South line of said Southeast Quarter of the Northeast Quarter a distance of 972.80 feet; thence North 2 degrees 53 minutes 46 seconds West a distance of 448.09 feet, said last described line if extended would intersect the North line of said Southeast Quarter of the Northeast Quarter at a point 1008.65 feet West of the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North 87 degrees 06 minutes 28 seconds East a distance of 97.56 feet to the point of beginning of the land to be described; thence North 2 degrees 53 minutes 46 seconds East a distance of 460.27 feet to the South line of said Southeast Quarter of the Northeast Quarter; thence South 63 degrees 25 minutes 51 seconds East a distance of 173.57 feet, to the point of beginning of the land to be described; thence South 26 degrees 34 minutes 09 seconds East a distance of 160.00 feet to the Southwesterly right-of-way line of County Road Number 61; thence Northwesterly along said right-of-way line to its intersection with a line bearing North 63 degrees 25 minutes 51 seconds East to the point of beginning; thence South 63 degrees 25 minutes 51 seconds West to the point of beginning.
Hennepin County, Minnesota
Abstract Property

Parcel 2:
That part of the East 30 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:
Commencing at the Southeast corner of Section 35; thence South 87 degrees 06 minutes 28 seconds West, assumed bearing, along the South line of said Southeast Quarter of the Northeast Quarter, 996.01 feet; thence North 1 degree 19 minutes 39 seconds West 388.02 feet; thence North 86 degrees 20 minutes 14 seconds East 12.59 feet, which point is marked by a Judicial Landmark; thence South 2 degrees 53 minutes 45 seconds West 460.27 feet to the point of beginning of the land to be described, which point is marked by a Judicial Landmark; thence South 2 degrees 53 minutes 46 seconds East, along the last described line, 460.23 feet; thence North 87 degrees 06 minutes 28 seconds East 97.56 feet; thence North 63 degrees 25 minutes 51 seconds East 186.14 feet to the Southwesterly right-of-way line of County Road 61 (also known as Shady Oak Road); thence North 54 degrees 35 minutes 25 seconds West, along said right-of-way, 248.72 feet; thence North 59 degrees 29 minutes 15 seconds West, along said right of way, 173.57 feet, to its intersection with a line which bears North 50 degrees 06 minutes 52 seconds East from the point of beginning; thence South 50 degrees 09 minutes 52 seconds West, along said line, 42.72 feet to the point of beginning.
Hennepin County, Minnesota
Abstract Property
Many concerns remain prior to the re-approval of this Affordable Apartment Building. This neighborhood was established and has been as-is over the past 25 years. We all purchased our homes and have lived in quiet enjoyment accordingly. Introducing a PUD, as presented, would cause any taxpaying resident concerns of how this new building would function and be operated. We have identified the major concerns we still have, that we think are necessary to be answered, before the City Council takes another vote. They include:

1) Will there been an On-Site Manager available 24/7? If not, how will this building be managed?

2) What is the planned maximum number of occupants for the building?

3) Snow Storage where: With minimal parking, I would assume an area has been designated for the storage of snow. Where is the snow to be stored?

4) Play Area: Where on the exterior site, has a safe area been designated for children to play. I would assume the leasing people would be informing leasers of such a space.

5) Animal Area: Where will the tenants be directed to have their animals relieve themselves, and how often will this space be cleaned up by whom? Rodents thrive on animal waste.

6) Garbage Storage: Where will the garbage and recycles be stored (inside & exterior), and picked up how often?

7) Parking: Number of inside and exterior spaces. These spaces are designated how: Tenant & Visitor. Will overnight parking of trailers & Recreation Vehicles be allowed?

8) Back area retaining wall: What type of structural design with a warranty has been approved to ensure all structural integrity has been considered?

9) Tree Preservation: What type of study has been conducted to ensure only the necessary trees are removed versus the trees that would be nice to have removed?

We are still concerned about traffic through Beachside II, access from north bound Shady Oak Road traffic trying to turn into this Affordable Apartment, Pedestrian traffic to the Sundial Center from the Affordable Apartments, Headlights form the exterior parking being directed to the homes along Shady Oak Road, and Vehicles sliding down the north parking access into southbound Shady Oak Road.
As local residents, I believe these concerns should all be addressed by the City, prior to another vote. I’m thinking this is not a unique list, and if properly planned the answers should have already been considered. Please provide us these answers and re-consider our concerns. I will be at the meeting on January 9, 2016 and would like to hear these answers at that meeting or as a direct response to this request.

Larry Rose
5651 Sanibel Drive,
Minnetonka, MN 55343
Bob Ellingson suggested, I ask You, directly for answers to the following questions. Since our neighborhood has enjoyed a certain living style in an associated controlled method of operation, we are not excited to have such a large multi-level building complex being squeezed onto a very small building site, just across the roadway. We want to be assured these questions have responsible answers, so we know what to expect from potential neighbors and the management company.

The questions include:

#1) **PARKING:** What are the number of inside and exterior parking spaces and how are these spaces designated? How was this number determined? Tenant, Visitors, Handicap. Will overnight parking of trailers and recreation vehicles be allowed?

#2) **GARBAGE STORAGE:** Where will the garbage and recycling be stored (inside and exterior) and how often will the pick-up be scheduled? How will the exterior garbage and recycling containers be screened? Will the trash haulers be able to access the space driving straight into the storage area, or will the trucks have to back-up into the collection area from Shady Oak Road?

#3) **OCCUPANT NUMBERS:** What are the maximum number of occupants allowable in the building complex?

#4) **SNOW STORAGE:** With a minimal amount of exterior parking space and open area on this site, where will the designated snow storage space be directed?

#5) **PLAY AREA:** In the open area on the site, where will the children be directed to play?

#6) **DOG AREA:** In the open area, where will the dog defecating area be directed? Besides the dog owners, who is responsible for the area clean-up and how often will that be scheduled. Rodents thrive in this type of unattended feces.

I have earlier asked Bob Ellingson and the City Staff for answers to these and other questions. I would expect these answers before the January 23rd so we don’t have to take the time to re-ask those questions during the neighborhood comments.

Thank you for your prompt attention to these questions.

Larry Rose  
5651 Sanibel Drive  
Minnetonka, MN 55343
Music Barn Apartments aka. Minnetonka Affordable Apartments

The need to accommodate affordable housing for eligible individuals and families has become a goal of the City of Minnetonka. I understand and agree that this proposed project would satisfy, in part, the City’s goal. However, this is not the appropriate property for such intense site development. There are just too many site constraints, regardless of City approved attempts to ignore them, that will contribute to short and long term safety and management issues.

Recently I reviewed the plans submitted for building permit review. They pretty much reflect the plans approved in 2015, but in more detail [83 pages] and yet not final construction drawings and details. I understand there are conditions provided by the City that have yet to be satisfied for permit approval.

IN ADDITION TO THE ABOVE INTRODUCTION, THE FOLLOWING REMAIN CONCERNS REQUIRING FURTHER STUDY AND/OR RESPONSE:
Not listed in order of priority for consideration

1. PUD approval, relative to site preservation. There is not an alternative choice and the City abused this justification for rezoning.

2. Reduced building/retaining wall setback afforded by PUD. There is nothing on west side of Shady Oak from the beach to the Crosstown that even begins to resemble such a visual intrusion on traffic and existing residential across the road.

3. Has County approval of median changes to accommodate turning to garage drive been received?

4. CONSIDERING MINNESOTA WINTER WEATHER [snow and ice] AND GARAGE ACCESS
   -How will side hill parking on 4+% driveway be safe?
-How will residents be ensured with safe access to garage?
-How will garbage removal be handled safely and what is the frequency of pick up?
-How will garbage truck deal with parking/turning on Shady Oak?
-How will garage vehicles always have adequate traction?

5. Has the Barn attic been reviewed for structural integrity and ventilation?

6. Structural and material details for west retaining wall [10+’ tall in locations]

7. Snow removal and storage provisions, particularly with cars parked during heavy snowfalls?

8. Very limited open space for resident outdoor activities, i.e., children play safely, grilling, pet control, etc.

9. Project signage and site lighting.

10. Landscaping is not an issue, just a matter of filling the blanks. Why is no parking lot screening required?

Question I have. Is it possible that normal funding channels were not productive due in part to an unattractive, small project with too many hurdles? Perhaps it was recognized that there were going to be development and management issues. Please think about my concerns.

Respectfully,
David Kirsch
5664 Sanibel Dr.
Minnetonka, MN 55343
Supplement - Larry Rose email [January 13, 2017 @ 5:55 PM] to Jay Jensen

This email presents additional questions relating to the west retaining wall and should be considered as if included in the above email:

1. Type of retaining wall, materials, method of construction and site preservation, particularly up slope disturbance that would negatively impact tree preservation.
   
   *Retaining walls are rarely just ‘slipped’ in where you want/need one.*

2. Soil testing and subsurface exploration results relating to bearing capacity of wall support system and settlement; lateral at-rest and active earth pressures (surcharge);
   ground water including seasonal variations; and soil corrosion potential.

3. SAFETY relating to structural integrity and concern for unsupervised people (children) climbing/playing on wooded(?) slope above the wall.

Should you and other Council members wish to take the time, I suggest a thorough review of Resolution No. 2015-039. Many of the Council may now actually have difficulty justifying the Resolution as approved. The project does not belong in this established neighborhood. So many questions and concerns dealing with the negative impact of this project have been expressed.
and few, if any, have been publicly addressed by the City. Resolution Section 2.02, 7., contradictory as it is could certainly use some justification.

I trust you are in receipt of my January 6, 2017 email.

Thank you and please think responsibly.

David Kirscht
5664 Sanibel Ave
Minnetonka, MN 55343
Hi Bob and Susan

My name is Kristy Egan and I am a Beachside resident. My home is on Sanibel Drive and across the street from the proposed apartment building on the Music Barn property. I have expressed my concern about this project from the very beginning to no avail. I understand the city's desire to have affordable housing and to bring in additional revenue but I do not feel this it the place. Simply put, the site is too small and inconvenient. Parking for residents and guests will be a problem and I do not look forward to overflow parking finding its way to the front of my house and people walking through my yard to visit their friends or park for the night. I do not look forward to the additional traffic down my street so that the residents and guests can make a proper turn on to the property. I walk my dog down this street and the traffic is challenging enough. We all know that it is not possible to make a direct south bound turn from the property and to get into the property from the south bound lane crosses a double yellow line and will compromise the turn lane into Lone Lake. I don't understand why the board does not see this as a problem. Build it now and worry about it later is not a solution.

It does nothing to enhance our neighborhood. I read that one of the goals of the city was to create little "towns" within the city. Quaint neighborhoods. Putting up an apartment in the middle of a residential neighborhood does not create this end. Look what happened in Glen Lake. It has been destroyed by the types and sizes of residences they have built around that neighborhood. My neighborhood is single ownership which means that there is a pride in ownership. We take care of our homes and abide by an association rule. Rental does not take the same care and looking at a building with junk on the deck and multicolored window coverings are all part of disrupting the ambiance of the neighborhood and devaluing a neighborhood.

Rumor has it that they were having trouble getting financing for this project. My fear is that many corners will be cut in order to get this affordable for their bank and we are going to end up with junk across the street.

Please take good care in reviewing this project again. It is wrong for our neighborhood. Add some townhomes that enhance the character of our neighborhood and provides the pride of ownership to the care for the property. Or let our neighborhood enjoy the nature and green aspect that is so quickly disappearing from our landscape. It is what drew me to this place.

Please vote to reject his project.

Thanks so much

Kristy

Kristy Egan Design
Residential Space Planning
Kitchens and Baths
Larry,

Thank you for your email. The answers to your questions are as follows:

1. There are 27 underground parking spaces (one per unit and one surface spot per unit) per code. The underground parking spaces are dedicated to each resident. There will not be any overnight parking of trailers or recreational vehicles.

2. The garbage will be stored in the garage – using a trash compactor system. It will be picked up once a week when the dumpster is picked up at the North end of the building on a cement pad. The dumpster area is screened off with bushes and a retaining wall. The garbage truck would drive directly into the garage driveway and empty the dumpster.

3. The maximum number of occupants is determined by the occupancy code and is one or two adults for one bedroom and the other bedroom(s) could be two children if they are of the same sex. Our experience has been around 2.5 people for a two bedroom apartment and 3.5 for a three bedroom unit. There are 18 two bedroom units and 9 three bedroom units.

4. There is snow storage on the south side of the site. We may need to haul away the snow from the garage driveway area as we have done on some of our other properties.

5. There will be a small play area to the south of the Music Barn. Having a large park within walking distance is a benefit to the residents.

6. Pets will not be allowed except for animals where an accommodated is needed for a handicapped resident.

For your information, the two bedroom rents will be around $1125 and the three bedroom rents around $1275 per month including one underground parking space.

Please let me know if you have any questions.

Thanks

Jay
From: Larry Rose [ ]
Sent: Friday, January 13, 2017 5:58 PM
To: Jay Jensen
Cc: Loren Gordon; Susan Thomas; Bob Ellingson
Subject: MUSIC BARN APARTMENTS Proposal

Bob Ellingson suggested, I ask You, directly for answers to the following questions. Since our neighborhood has enjoyed a certain living style in an associated controlled method of operation, we are not excited to have such a large multi-level building complex being squeezed onto a very small building site, just across the roadway. We want to be assured these questions have responsible answers, so we know what to expect from potential neighbors and the management company.

The questions include:

#1) PARKING: What are the number of inside and exterior parking spaces and how are these spaces designated? How was this number determined? Tenant, Visitors, Handicap. Will overnight parking of trailers and recreation vehicles be allowed?

#2) GARBAGE STORAGE: Where will the garbage and recycling be stored (inside and exterior) and how often will the pick-up be scheduled? How will the exterior garbage and recycling containers be screened? Will the trash haulers be able to access the space driving straight into the storage area, or will the trucks have to back-up into the collection area from Shady Oak Road?

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I have earlier asked Bob Ellingson and the City Staff for answers to these and other questions. I would expect these answers before the January 23rd so we don’t have to take the time to re-ask those questions during the neighborhood comments.

Thank you for your prompt attention to these questions.

Larry Rose
5651 Sanibel Drive
Minnetonka, MN 55343
Resolution No. 2017-

Resolution reaffirming previous site and building plan approval for the Music Barn Apartments at 5740 and 5750 Shady Oak Road

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

Section 1. Background.

1.01 On May 18, 2015, the city council adopted Resolution No. 2015-039, approving final site and building plans for the Music Barn Apartments at 5740 and 5750 Shady Oak Road. The properties are legally described on Exhibit A of this resolution.

1.02 The approval granted under Resolution No. 2015-039 expired on December 31, 2016.

1.03 Community Housing Corporation of America/Shelter Corporation has requested reaffirmation of the 2015 approval.

Section 2. Findings.

2.01 Reaffirmation of final site and building plan approval is appropriate for three reasons:

1. Other than changes required to meet conditions of Resolution 2015-039, there have been no substantive changes to the previously approved plans.

2. There have been no changes to city code or policy that would affect the previous approvals.

3. Reaffirmation of the previous approval is not anticipated to adversely affect the interests of neighboring property owners.
Section 3. City Council Action

3.01 Resolution 2015-039, including all findings and conditions, is reaffirmed.

3.02 This reaffirmed approval will expire on December 31, 2017 unless: (1) a building permit has been issued for the Music Barn Apartments; or (2) a time extension is granted.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 23, 2017.

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 January 23, 2017.

David E. Maeda, City Clerk
EXHIBIT A

Parcel 1:
That part of the East 30.00 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the Southwest corner of said Southeast Quarter of the Northeast Quarter, thence on an assumed bearing of South 87 degrees 06 minutes 28 seconds West a distance of 972.80 feet; thence North 2 degrees 03 minutes 45 seconds West a distance of 448.09 feet; said last described line if extended would intersect the North line of said Southeast Quarter of the Northeast Quarter at a point 1008.65 feet West of the Northeast corner of said Southeast Quarter of the Northeast Quarter; thence North 87 degrees 06 minutes 26 seconds East a distance of 97.56 feet to the point of beginning of the land to be described; thence South 26 degrees 34 minutes 09 seconds East a distance of 160.00 feet; thence North 63 degrees 25 minutes 51 seconds East a distance of 208.69 feet to the Southwesterly right of way line of County Road Number 61; thence Northwesterly along said right of way line to its intersection with a line bearing North 63 degrees 25 minutes 51 seconds East to the point of beginning; thence South 63 degrees 26 minutes 51 seconds West to the point of beginning.

Hennepin County, Minnesota
Abstract Property

Parcel 2:
That part of the East 30 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the East Quarter corner of Section 35, thence South 87 degrees 06 minutes 26 seconds West, assumed bearing, along the South line of said Southeast Quarter of the Northeast Quarter, 966.01 feet; thence North 1 degree 19 minutes 39 seconds West 386.02 feet; thence North 86 degrees 20 minutes 14 seconds East 12.89 feet, which point is marked by a Judicial Landmark; thence North 2 degrees 53 minutes 46 seconds West 460.27 feet to the point of beginning of the land to be described; which point is marked by a Judicial Landmark; thence South 2 degrees 53 minutes 46 seconds East, along the last described line, 460.29 feet; thence North 87 degrees 06 minutes 26 seconds East 97.56 feet; thence North 63 degrees 25 minutes 51 seconds East 160.14 feet to the Southwesterly right of way line of County Road 61 (also known as Shady Oak Road); thence North 34 degrees 35 minutes 25 seconds West, along said right of way, 248.72 feet; thence North 39 degrees 23 minutes 15 seconds West, along said right of way, 172.37 feet, to its intersection with a line which bears North 50 degrees 09 minutes 52 seconds East from the point of beginning; thence South 50 degrees 09 minutes 52 seconds West, along said line, 42.72 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property
City Council Meeting Agenda Item #14B
Meeting of January 23, 2017

Brief Description  Southwest Corridor Investment Framework
                  Cooperative Agreement

Recommendation  Approve the agreement

Background

On June 23, 2014, the city council accepted the Southwest Corridor Investment Framework related to the Southwest LRT. The Corridor Investment Framework identified a number of infrastructure projects needed at each station area in order to promote future transit oriented development and improve connectivity. At the time, funding sources were not yet identified, and projects had not been prioritized for implementation. The full Investment Framework document can be found at http://www.swlrtcommunityworks.org/southwest-corridor-investment-framework-0.

In February 2015, the city council approved a similar Cooperative Agreement with the Hennepin County Housing and Redevelopment Authority (HRA). The cooperative agreement enabled the Hennepin County HRA to fund and/or participate in projects within the city. At the time that the agreement was approved, the funding sources for projects through Southwest Community Works were not yet identified. The Southwest Community Works project funding is now coming from Hennepin County, rather than through the Housing and Redevelopment Authority; therefore, Hennepin County is requesting the approval of an additional cooperative agreement. The agreement satisfies the statutory requirement for the use of Community Works funding.

Recommendation

Staff recommends the city council approve the Cooperative Agreement with Hennepin County for future projects related to the goals of the Corridor Investment Framework and authorize the mayor and city manager to execute the agreement, including subsequent non-material changes as approved by the city manager and community development director in a form acceptable to the city attorney.

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

Originated by:
   Alisha Gray, Economic Development and Housing Manager
COOPERATIVE AGREEMENT BETWEEN HENNEPIN COUNTY AND CITY OF MINNETONKA

This Agreement is between the County of Hennepin, State of Minnesota ("COUNTY"), 300 South Sixth Street, A2300, Minneapolis, MN 55487, and the City of Minnetonka ("CITY"), 14600 Minnetonka Blvd., Minnetonka, MN 55345.

WHEREAS, COUNTY and CITY have each provided municipal approval for the Green Line Extension Project ("Green Line Extension") pursuant to state law; and

WHEREAS, COUNTY and CITY have each approved the Southwest Corridor Investment Framework ("Framework") dated December 2013 through respective resolutions Hennepin County Resolution 14-0490, and acceptance by the CITY on June 23, 2014; and

WHEREAS, the COUNTY and CITY agree that there are financial and strategic benefits of working together to further the goals of the Green Line Extension and the Framework ("Goals") and wish to document that understanding in a cooperative agreement; and

WHEREAS, COUNTY and CITY plan to develop one or more projects ("Project or Projects") to further the Goals; and

WHEREAS, a cooperative agreement and future Projects fit within the criteria of a multijurisdictional reinvestment program authorized under Minnesota Statutes §383B.79; and

WHEREAS, COUNTY and CITY have the authority to participate in a cooperative agreement and Project pursuant to Minnesota Statutes §§383B.79 and 471.59 and other applicable law.

THEREFORE, the parties agree as follows:

1. Furtherance of Goals. Pursuant to Minnesota Statutes, Section 383B.79, COUNTY and CITY enter into this cooperative agreement, and agree to work with each other to further the goals of the Green Line Extension and the Framework by attempting to develop one or more Projects subject to the following requirements:

a. That the CITY retains its jurisdiction over all issues of local concern relating to zoning, land usage, building code requirements and compliance with all applicable city codes and ordinances.

b. That the full faith and credit of the CITY will not be pledged as a source of payment or repayment of said Project financial obligations owed by Hennepin County.
This agreement shall commence on January 1, 2017 and expire on December 31, 2020.

2. **Merger and Modification.**

   a. The entire Agreement between the parties is contained in this Agreement and supersedes all oral agreements between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

   b. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties.

3. **Notices.** Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator at the address stated in the opening paragraph of the Agreement. Notice to the CITY shall be sent to the address stated in the opening paragraph of the Agreement.

4. **Audits.** The books, records, documents, and accounting procedures and practices of the each party relevant to this agreement are subject to examination by the any party and either Legislative Auditor or the State Auditor for a period of six years after the effective date of this Agreement.

5. **Termination.** This Agreement terminates when the Projects, and the funding therefor, have been completed.
COUNTY BOARD AUTHORIZATION

HENNEPIN COUNTY
STATE OF MINNESOTA

Reviewed by the County Attorney’s Office

By: ________________________________
    Chair of Its Board
    Date: ________________________________

ATTEST: ________________________________
    Deputy/Clerk of County Board
    Date: ________________________________

Recommended for Approval:

______________________________
    Director, Community Works
    Date: ________________________________

CITY OF MINNETONKA

By: ________________________________
    Its: City Manager

City Department Review:

______________________________
    Its: Community Development Director

Approved as to form:

______________________________
    City Attorney
City Council Agenda Item #14C
Meeting of January 23, 2017

Brief Description
Items concerning THE ENCLAVE AT REGAL OAK, at 3639 Shady Oak Road and 3627 Regal Oak Lane:

1) Ordinance rezoning the properties from R-1 to PUD;
2) Master development plan; and
3) Preliminary and final plats

Recommendation
Adopt the resolution denying the requests.

Proposal
Airborne Construction One, LLC has submitted applications for subdivision of the properties at 3639 Shady Oak Road and 3627 Regal Oak. As proposed, the two properties would be divided into five lots. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and four new homes would be constructed. The new homes are intended to provide single-level living design at a price point of approximately $600,000. The resulting lots would range in size from 15,000 square feet to over 46,000 square feet. To accommodate the proposed range in lot size, the applicant requests the properties be rezoned to planned unit development (PUD) zoning.

The applicant did consider R-1A zoning. However, R-1A zoning may only be used if either: (1) more than 60% of the existing lots in the area are less than 22,000 square feet in size; or (2) the new lots are served by a new street. As neither criteria are met, the proposal would not qualify for R-1A zoning.

Planning Commission Hearing
The planning commission considered the request on October 6, 2016. The commission report and associated plans are attached. Staff recommended denial of the proposal for three reasons:

1. The proposed subdivision would not result in a significant public benefit warranting use of PUD zoning. Rather, it would simply result in creation of five lots on an area where four lots could otherwise be achieved.

2. The city is legally obligated to allow reasonable use of a property; it is not obligated to allow maximum use. As currently configured, there are two residential lots on the east side of Regal Oak each containing a single-family home. This constitutes reasonable use of the site. In the event that a subdivision were proposed that met
existing R-1 zoning standards, as well as the provisions of the tree protection ordinance, that too would constitute reasonable use of the properties.

3. The proposal would result in removal of, or significant impact to, 55 percent of the high-priority trees located outside of the sites’ woodland preservation area. This would exceed the 35 percent allowed under the tree protection ordinance.

At the meeting, the applicant suggested a willingness to control home design and size within the subdivision. The four new lots would be limited to:

- One-story rambler design, with lookout or walkout options.
- Maximum floor area ratio of 0.22–0.24 depending on lot size, consistent with the limitations of the R-1A zoning district.

Following the applicant presentation, a public hearing was opened to take comment. Four residents addressed the commission. Three opposed the proposed subdivision, generally indicating that the resulting density and level of site disturbance would be too great. One resident spoke in support of the proposal. The commission then asked questions and discussed the proposal. The commission concurred with the staff recommendation.

**Planning Commission Recommendation**

On a 6-0 vote, the commission recommended the city council deny the requests. Meeting minutes are attached.

**Since Planning Commission Hearing**

Several things have happened since the October 2016 planning commission hearing:

1. Home Design. The applicant has reiterated a willingness to impose design and size restrictions on the new homes within the proposed subdivision. The applicant provided a letter from a local realtor noting that within the Minnetonka housing market there is currently a lack of newer, single-level living homes priced under $750,000. The letter is attached.

2. Grading. The applicant provided a revised grading plan in an attempt to preserve a greater number of trees. After reviewing the plan staff determined that it would still result in a significant impact to natural topography and trees. Staff then commissioned an engineering firm – different than that being used by the applicant – to take a “fresh” look at the proposed subdivision and offer general plan improvements. The general plan provided by the city’s consultant, which is attached, would increase preservation of significant trees and an existing wooded area east of the proposed home sites. It would not necessarily increase preservation of high-priority trees. The general plan includes:

- Full basement or lookout design on the two southerly lots;
• Individual rain gardens rather than one, large ponding area; and
• Retaining walls.

Staff presented the general plan to the applicant, who is amenable to making the changes suggested by the plan.

**Summary Comments**

Staff appreciates the willingness of the applicant to restrict new homes to single story homes with moderate floor area ratios and staff commends the applicant's openness to grading plan suggestions. Nevertheless, staff does not believe the proposal warrants the use of PUD zoning.

Under the ordinance, PUD zoning may be considered when it would result in a public benefit. Of the roughly 13,520 single-family homes currently within Minnetonka, 5,432 are single-level, rambler-style homes with a total market value at or under $600,000.

<table>
<thead>
<tr>
<th>In Minnetonka</th>
<th>Number of Homes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family Homes</td>
<td>13,520</td>
</tr>
<tr>
<td>Of the above, 1-story Homes</td>
<td>5,766</td>
</tr>
<tr>
<td>Of the above, Total Market Value** of ≤ $600,000</td>
<td>5,432</td>
</tr>
<tr>
<td>Of the above, Effective Date* 2000 to present</td>
<td>245</td>
</tr>
</tbody>
</table>

*construction date or remodeled date

**lot and home

Staff acknowledges that the new homes proposed by the applicant may be attractive to buyers. However, in staff’s opinion, the provision of four new, single-level living homes at a price point of approximately $600,000 does not constitute a public benefit.

**Staff Recommendation**

Staff recommends the city council adopt the attached resolution denying the request associated with THE ENCLAVE AT REGAL OAK.

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

Originator:  
Susan Thomas, AICP, Assistant City Planner
Supporting Information

PUD Zoning

The current PUD ordinance was adopted in 2014. Since that time, the city has rezoned property to PUD on five occasions:

<table>
<thead>
<tr>
<th>Development</th>
<th>PUD Public Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applewood Pointe</td>
<td>• Providing a property type not available – senior co-op</td>
</tr>
<tr>
<td></td>
<td>• Providing affordable housing – 10%</td>
</tr>
<tr>
<td></td>
<td>• Redeveloping an outdated, commercial property</td>
</tr>
<tr>
<td>Cherrywood Pointe</td>
<td>• Preserving a greater amount of wooded, steep slope than could otherwise be achieved</td>
</tr>
<tr>
<td></td>
<td>• Providing affordable housing – 10%</td>
</tr>
<tr>
<td>Lecesse/RiZe at OPUS</td>
<td>• Providing affordable housing – 10% of units</td>
</tr>
<tr>
<td></td>
<td>• Redeveloping an under-utilized, vacant property.</td>
</tr>
<tr>
<td>Music Barn Apartments</td>
<td>• Providing affordable housing – 100% of units</td>
</tr>
<tr>
<td>Williston Woods West</td>
<td>• Restricting home size, providing for smaller, new construction</td>
</tr>
<tr>
<td></td>
<td>• Providing for transitional use between existing commercial and residential land uses</td>
</tr>
</tbody>
</table>

Trees

The properties at 3639 Shady Oak Road and 3627 Regal Oak have a combined total of 31 high-priority trees located outside of the woodland preservation area. These trees include four oaks, and several walnut, cherry and pine trees. Some of the 31 trees are also elm and boxelder classified as high-priority due to their location relative to the paved roadway. The original plans submitted and reviewed by the planning commission resulted in the removal/significant impact to 17, or 55 percent, of the site’s high-priority trees. The revised plan submitted reduced this impact to 10, or 32 percent, of the high-priority trees. The general plan submitted by a staff consultant would likely increase the loss of high-priority elm and boxelder, but decrease the loss of significant trees located in the wooded area along the east property line.

Possible R-1 Subdivision.

City staff put together a basic R-1 subdivision sketch for the subject properties. The sketch illustrates that the combined site could be divided into a total of four lots – one occupied by an existing home and the other three occupied by three new homes – meeting all minimum R-1 standards. On each lot, the sketch shows the footprint of an actual rambler walkout recently constructed at 3600 Orchard Way. This existing home has a first floor footprint of roughly 3,055 square feet (including garage) and lower level area of roughly 2,280 square feet. According to the Hennepin County website, the home sold for
$735,000. The sketch does not include proposed grading or stormwater management. Staff anticipates that the level of tree removal/impact under an R-1 subdivision would be similar to that under PUD.

In putting together the R-1 sketch, and specifically using a recently built home, staff intended to illustrate that the applicant’s desire to build single-level living homes at or under a certain price point could be achieved without the use of PUD zoning.

**Voting Requirements**

An affirmative vote of a simple majority is required to adopt the resolution denying the request. Similarly, a simple majority vote is required to approve the rezoning from R-1 to PUD, the master development plan, and preliminary plat.

In the event that the council wishes to approve the applicant’s proposal, staff would suggest that the council make a motion directing staff to draft an ordinance and resolutions to that effect for consideration at an upcoming council meeting. Staff would further suggest that such approval be subject to conformance with preservation provisions of the tree ordinance.
MINNETONKA PLANNING COMMISSION
October 6, 2016

Brief Description

Items concerning The Enclave at Regal Oak, at 3639 Shady Oak Road and 3627 Regal Oak Lane:

1) Ordinance rezoning the properties from R-1 to PUD;
2) Master development plan; and
3) Preliminary and final plats

Recommendation

Recommend the city council adopt the resolution denying the requests.

Introduction

Airborne Construction One, LLC has submitted applications for subdivision of the properties at 3639 Shady Oak Road and 3627 Regal Oak. As proposed, the properties would be divided into five lots. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and four new homes would be constructed.

Proposal Summary

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

- **Existing Site Conditions.** The subject properties are located near the northeast corner of the Shady Oak Road/Regal Oak intersection. The 3639 Shady Oak Road property is roughly 2.2 acres in size. The existing home, constructed in 1960, is located near the highest point of the lot. Grade falls in all directions from this point; there is a 50-foot change in elevation from the highest to lowest point on the property. The 3627 Regal Oak property, on which a home was constructed in 1986, is 0.4 acres in size. It too contains a 50-foot change in elevation, with grade falling from south to north. In addition to mature oak, elm, and boxelder trees, both properties contain a mesic oak forest woodland preservation area (WPA).

- **Proposed Lots.** The applicant proposes to divide the two existing properties into five, residential lots. The proposed five lots would range in size from 15,000 square feet to over 46,000 square feet. To accommodate the proposed range in lot size, the applicant requests the properties be rezoned to planned unit development (PUD) zoning.
• **Site impacts.** Significant grading would occur to accommodate construction on the proposed lots and installation of required utilities and stormwater management facilities.

**Primary Questions and Analysis**

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

• **Is the use of PUD zoning appropriate?**

  No. Under their current R-1 zoning classification, the 3639 Shady Oak Road and 3627 Regal Oak properties could likely be divided into a total of four lots. This number is based solely on possible lot area and configurations. It does not take into account grading, tree removal, and installation of utilities and stormwater management practices. The applicant is requesting that the properties be rezoned to PUD to allow for smaller lots and reduced setbacks. By city code, PUD zoning may be considered when the city finds that its use would result in one of several public benefits. The applicant suggests that the proposed subdivision would result in public benefit. However, staff disagrees with this assessment.

  **Preservation.** The applicant indicates they will place a significantly sloped, WPA in conservation easement. As proposed, the entirety of the 3639 Shady Oak Road site would be graded out and the vast majority of trees removed or significantly impacted. In staff’s opinion, given the configuration of the site, the proposed PUD would not preserve trees in a greater amount or extent than would an R-1 subdivision. Further, a conservation easement could be dedicated under either PUD or R-1 zoning.

  **Main Floor Living/Price Point.** The applicant indicates they will encourage main-floor living in at least three of the four new homes and intend a home price of roughly $600,000. In staff’s opinion, while good-intentioned, this encouragement will not ensure such construction.

  **Energy Conservation.** The applicant indicates they will require use of geothermal systems in two of the four new homes. While interesting, staff does not believe the inclusion of such system warrants the additional lot that would be “gained” under PUD zoning.

  **Stormwater Management.** The applicant proposes the use of infiltration basins and rain gardens. Staff notes that these stormwater practices are used throughout the community and would be a requirement of any development of the site under any zoning designation. These are “typical” stormwater management technics, not an “innovative approach” as described in the developer’s project narrative.
• Would denial of rezoning deny reasonable use of the properties?

No. The city is legally obligated to allow reasonable use of a property; it is not obligated to allow maximum use. As currently configured, there are two residential lots on the east side of Regal Oak each containing a single-family home. This constitutes reasonable use of the site. In the event that a subdivision were proposed that met existing R-1 zoning standards, as well as the provisions of the tree protection ordinance, that too would constitute reasonable use of the properties.

Summary Comments

Staff recognizes that the 3639 Shady Oak Road property is significantly larger than other properties in the area and, given this, staff anticipates that the property will be subdivided at some time. However, the applicant’s specific proposal to rezone the site and create a total of five lots is not reasonable. The proposal would not result in a significant public benefit. Rather, it would simply result in creation of five lots on an area where four lots could otherwise be achieved.

Staff Recommendation

Recommend the city council adopt the resolution denying the requested rezoning, master development plan, and preliminary and final plats.

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

Surrounding Uses  The subject properties are surrounded by single-family residential lots.

Surrounding Lots  The properties within 400 feet of the subject properties and 1000 feet along Shady Oak Road have a mean average size of 27,635 square feet and a median average size of 23,079 square feet.

Planning  
Guide Plan designation: low-density residential
Existing Zoning: R-1, low-density residential

Concept Plan  In July 2016, the city council conducted concept plan review for subdivision of the existing residential properties at 3639 Shady Oak Road and 3627 Regal Oak Lane. The plan contemplated division of the properties into six, single-family lots ranging in size from 8,600 square feet to 29,000 square feet. The council generally expressed that while single-level living was needed in the community, the proposed number of lots was too high.

City Actions  The proposal requires:

- **Rezoning.** The subject properties are currently zoned R-1. The applicant requests that the properties be rezoned to PUD.

- **Master Development Plan.** By city code, review and approval of a master development plan is required in conjunction with a rezoning to PUD.

- **Preliminary and Final Plats.** The unplatted property would require platting to achieve the five proposed lots.

Proposed Lots  The PUD ordinance does not establish minimum lots sizes or dimensions. The following chart is for informational purposes only.

<table>
<thead>
<tr>
<th>Lot</th>
<th>Area (sq.ft.)</th>
<th>Width</th>
<th>Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Buildable</td>
<td>Right-of-way</td>
</tr>
<tr>
<td>Lot 1</td>
<td>16,145</td>
<td>5,765</td>
<td>105</td>
</tr>
<tr>
<td>Lot 2</td>
<td>15,020</td>
<td>7,360</td>
<td>90</td>
</tr>
<tr>
<td>Lot 3</td>
<td>15,045</td>
<td>6,365</td>
<td>85</td>
</tr>
<tr>
<td>Lot 4</td>
<td>22,285</td>
<td>9,430</td>
<td>90</td>
</tr>
</tbody>
</table>
**Grading**

Significant grading would occur to accommodate the proposed home sites and installation of utilities and stormwater management practices. Up to twelve feet of excavation would occur on the southerly portion of the development and up to eight feet of fill in the northerly portion.

**Stormwater**

As proposed, runoff from the site would be directed to one of three stormwater management areas, two raingardens which would be constructed adjacent to Regal Oak or an infiltration basin constructed along the northeast property line. It should be noted that staff has several concerns about this larger area. As designed, it would be taking run-off from Arbor Lane to the east. This road runoff would be considered “public runoff” and, as such, the area would need to consider a “public” facility. Access to the facility would have to be given over the proposed development site. However, given the significant topography, access would be extremely difficult.

**Utilities**

Public water, sanitary, and storm sewer facilities are available to the site from both Shady Oak Road and Regal Oak.

**NR Ordinances**

The city has several natural resource protection ordinances, including: shoreland, wetland, and tree protection, and steep slope regulations. These ordinances attempt to balance the community benefit of preserving natural resources with private development rights. The properties are subject to the tree ordinance. The ordinance regulates tree removal and mitigation. The highest level of protection is provided to woodland preservation areas (WPA) and high-priority trees during subdivision of property. In such cases, just 25 percent of WPA and 35 percent of high-priority trees may be removed or impacted. The proposal would result in removal of, or substantial impact to 15 percent of the WPA. It would result in removal of, or damage to the critical root zones of, 55 percent of the high-priority trees located outside of the WPA. This would be exceed the allowable standard of the tree protection ordinance.

**Outside Agencies**

The applicant’s proposal has been submitted to various outside agencies for review, including Hennepin County and Minnehaha Creek Watershed District.
Motion Options

The planning commission has four options:

1. Concur with the staff recommendation. In this case a motion should be made recommending the city council adopt the denying the proposal.

2. Disagree with staff’s recommendation. In this case, a motion should be made recommending the city council approve the requested rezoning, master development plan, and final site and building plans. This motion should include a statement as to why approval is recommended.

3. Concur with some of staff’s recommendations and disagree with the others. In this case a motion should be made recommending approval of the some and denial of the others. This motion must include a statement as to why denial is recommended.

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

Neighborhood Comments

The city sent notice to 116 area property owners and has received one written comment.

Deadline for Action

December 5, 2016 Applicant has since waived the 120-day statutory deadline.
Location Map

Project: Enclave at Regal Oak
Applicant: Airborne Construction One LLC
Address: 3639 Shady Oak Rd
Project No. 16007.16b

City of minnetonka

This map is for illustrative purposes only.
CONCEPT PLAN
Enclave At Regal Oak - Concept Plan

Setbacks:
- Front: 20'
- Side: 10'
- Rear: 35'

Lot 1: 0.36 AC
Lot 2: 0.24 AC
Lot 3: 0.20 AC
Lot 4: 0.24 AC
Lot 5: 0.54 AC
Conservation Easement: 0.67 AC

May 16, 2016
Larry Barenbaum, a partner at Big Top Liquors in Ridge Square, clarified that the business pays rent on over 8,500 square feet, not 5,000 as the previous speaker mentioned. Total Wine has changed the scope of the business for the better. The consumer benefits by the incredible operation that he has witnessed. There have been improvements over the years to address safety concerns caused by traffic. America provides a competitive retail world. Haskell's is a good retailer in this city and knows how to compete to make it better for their customers. He has a high level of regard for everyone he has dealt with at Total Wine.

The public hearing was closed.

Wiersum moved, Berqstedt seconded a motion to continue the public hearing to September 12, 2016. All voted “yes.” Motion carried.

14. Other Business:

A. Concept plan review for The Enclave at Regal Oak, 3639 Shady Oak Road

City Planner Loren Gordon provided the staff report.

In response to Wagner’s question, Gordon answered that the surrounding lot sizes are generally the same as the standard for an R-1 single-family lot.

Roger Anderson, owner of Anderson Engineering representing the applicant, stated that he likes the site because it has a flow to it. The utilities are there, it is a nice street, and the drainage would work. The product is one that buyers want. Residents love to stay here. Housing to allow downsizing is needed for empty nesters and those who travel south for the winter. The basements would generally be lookouts with a bedroom for the grandchildren. There would be a snow and mow association. The grading and storm water on individual sites would be done to allow capture of roof drainage and minimize the size of the pond. There is an existing gully that could route runoff to a pond to control erosion.

Michael Halley, builder for the applicant, stated that the proposed houses would be from 1,400 square feet to 1,700 square feet on the main floor. The average buyer would be in their 70s and have lived in the city 30 years. Three of the five houses would be geothermal. Large trees would be planted to provide privacy. He has met with neighbors who live on Regal Oak. If the property would be divided into three lots, then the amount of square footage created would be equal to what would be created by the proposal of five smaller houses. There are not a lot of
Schneider disclosed that he previously worked with Anderson Engineering on projects.

Allendorf’s first reaction was that the proposal would not fit. Then he considered the need for diversity of housing types. The proposal would provide needed housing.

Bergstedt had a reaction similar to Allendorf’s reaction. Councilmembers and planning commissioners felt the original proposal’s 10 lots would be too dense. There is a need for this type of housing and diversification. He still has a problem with five lots. He would be more comfortable with four lots so that the subdivision would fit in better with the surrounding area and provide diversified housing.

Wagner acknowledged that the one-level housing type is needed. An 11,000-square-foot lot would make him pause. The concept is good. The conservation easement and storm water management would be great.

Ellingson thought that a floor-area ratio (FAR) requirement might be appropriate. Providing housing for young families is a priority. A house priced at $650,000 seemed high to be considered affordable. He did not see a real justification for a planned unit development. Five lots would not fit in the neighborhood.

Schneider sees a need for single-floor living for seniors. The conservation easement reduces the overall size of the lots. An 8,600-square-foot lot is probably pushing too hard to make the proposal work. He could see four lots. The lot to the northwest would be significantly larger than the rest. The fivelot proposal would be a hard sell.

Allendorf heard from seniors who want single-story living in Minnetonka. It is a needed housing type.

Cheryl Smith, 3624 Arbor Lane, stated that the size of the lots would be out of character with the neighborhood. She moved here because she loves the wildlife. There are currently a lot of water issues. There is a hill between Lots three and four. Her lot is downhill of the proposal and has a drainage pipe. The houses on her side of the street sell for $350,000. She requested councilmembers consider the proposal carefully.
FORMAL
APPLICATION
PROJECT NARRATIVE
FOR
“ENCLAVE” AT REGAL OAK
Minnetonka, MN

Development Narrative

As the developer and land owner of the proposed “Enclave” at Regal Oak, we offer the following information to assist in your plan review. We propose to develop the property into a four-lot single family home development in accordance with the City of Minnetonka’s Planned Unit Development (PUD) Zoning ordinance. The following information is for the City’s consideration:

I. Four (4) single family homes are proposed on the 2.25 acre parcel. An area of 0.75 acres is proposed to be preserved with a conservation easement so that the existing woodlands may remain intact.

   The conservation easement dedication meets the City of Minnetonka Code of Ordinances Chapter 3 Zoning Regulations, Section 300.22 PUD item #2A “Greater preservation of existing natural resources, in number or quality, than would otherwise be provided under non-PUD development”.

II. The developer hopes to achieve diversity of curb appeal consistent with the City of Minnetonka’s existing varied housing styles rather than a monotone look. This will also allow prospective homeowners a range of options for the exterior design of their home.

III. In consideration of the concept plan as proposed, the developer will encourage that at least three of the four homes be designed and built with a main floor master bedroom. As the City is aware, main floor living design for new construction in Minnetonka is in short supply. The preliminary market research indicates a need for homes that will be purchased by “empty nesters” looking to downsize to a home that meets a lifestyle of minimal maintenance, one-story living, with room for the relatives on occasion, and the ability to have the home unattended when owner travels. This may include a “snow and mow”: type of a homeowner association to provide the most efficient services.

In effort to keep the neighborhood housing type uniform, the proposed PUD is intended to moderate housing builds. 3639 Shady Oak Road lays within an R1 neighborhood. With the present R1 zoning requirements, three $1,000,000 would likely be constructed
and these homes would be out of place within the established neighborhood. Nearby homes within the adjacent cul-de-sac have property values between $250,000 and $600,000 while the homes bordering the proposed development on the west side of the site have property values in the range of $175,000 - $300,000. The proposed PUD is intended for $600,000 homes for high income retirees, as these homes conform to the established economical neighborhood.

The target housing market meets the City of Minnetonka City of Ordinances Chapter 3 Zoning Regulations, Section 300.22 PUD item #2C “Provision of a housing type or target housing price that is desirable to the city” and item #2E “Development that is compatible with existing, surrounding development type and intensity that is no longer allowed in other existing zoning districts”.

IV. Recognizing that every efficiency is a city priority, and in consideration of the four-lot design, the developer will require that energy conservation items not be limited to code required items, but we will encourage builders and buyers to construct homes with geothermal heating and cooling systems, networked energy monitoring and control systems, and other energy reducing items. Two of the four homes will be required to have geothermal systems.

The energy conservation provisions meet the City of Minnetonka Code of Ordinances Chapter 3 Zoning Regulations, Section 300.22 PUD item #2F “Greater energy conservation through building and site design than would otherwise be achieved under non-PUD development”.

V. The developer offers an innovative approach to the management of stormwater. We are intending to minimize the use of ponding and reduce grading by constructing a bioretention basin for storm water treatment. The infiltration area will handle the specified storm events and was designed to provide needed rate control for large storm flows. This will also provide for periodic ponding to attract wildlife, a request of the neighbors during the concept plan review.

We also have provided small infiltration basins in the front yard areas to manage roof and front yard drainage entering the street. These areas will be “rain gardens” and appear to be mulch landscape areas, but with a hidden function of infiltrating storm water runoff.

VI. The developer intends to maintain control of the designs, orientation, size and exterior finishes of the homes by limiting the selection of builders. We will control review and approval of all proposed building plans, and insure the construction is maintained to the standards shown in the attached concept house plans.

In conclusion, we request that the City consider the multiple creative benefits proposed by the developer of this project during your discussion and review of the plans.
**Preliminary Development Data**

**Existing Zoning:**
Zoning: R-1

**Proposed Design Parameters:**
Zoning: PUD (with R-1A requirements)
Setbacks:
- Front: 25'
- Side: 10'
- Rear: 35'

<table>
<thead>
<tr>
<th>Lot</th>
<th>Total Square Feet</th>
<th>Total Acres</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Lot 2</td>
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<tr>
<td>Lot 4</td>
<td>22,289</td>
<td>0.51</td>
</tr>
<tr>
<td>Lot 5</td>
<td>46,111</td>
<td>1.06</td>
</tr>
</tbody>
</table>

**Proposed Conservation Easement:**
- 32,826 Square Feet
- 0.75 Acres

**Total:**
- 114,621 Square Feet
- 2.63 Acres
RE: ENCLAVE AT REGAL OAK DEVELOPMENT

Additional Information for Planning Commission Meeting October 6, 2016

City of Minnetonka Planning Commission,

After speaking with prospective home buyers and reviewing zoning provisions and staff comments, the Developer would like to include additional requirements on future housing development at the Enclave at Regal Oak project. We believe these provisions will provide additional support for the public benefit of the project.

Our goal in this development was to provide a small neighborhood with similar style homes for a variety of users, but perhaps using the “empty nesters” as a model. We feel the restrictions listed below will help achieve this goal.

Floor Area Ratio (FAR)

The model for the lots in the PUD is based on the R1-A zoning code provisions. The City of Minnetonka zoning ordinance for R1-A lots includes a maximum FAR ratio of 0.24 for lots less than 17,500 square feet, and a maximum FAR ratio of 0.22 for lots greater than 17,500 square feet. We propose to meet the R1-A ratio on the four new lots. This will definitely restrict house square footage, and help limit the price point.

Housing Style

A rambler style house (i.e. one-story house above grade) will be constructed on the four new lots, with each home having an optional lookout or walkout basement feature. Prospective buyers and market trends show an increased desire for a modern single story home. Two story homes will not be allowed. A rambler home appeals to all age groups, from young families to the elderly. See the attached sample rendering and housing floor plan for the four new lots.

Thank you, and we look forward to seeing you at the meeting.
RE: ENCLAVE AT REGAL OAK DEVELOPMENT

Additional Information for Planning Department

City of Minnetonka Planning Commission,

Per the most recently attended planning commission meeting, October 6, 2016, a few items were unclear and needed additional clarification and field work. The items below have been addressed, and we feel the proposed development meets the City Ordinance criteria.

Tree Preservation

Per comments from the City, we have updated our tree inventory. Currently on the property there are 31 High Priority (HP) trees within the developable area. We are proposing to remove 10 HP trees with an overall HP tree removal percentage of 32.3% (10 of 31 removed), which meets the 35% threshold set forth by the City. All of the trees are located within the Basic Tree Removal Area (BRA), as defined by the City. The species of trees to be removed are Walnut (5), Hackberry (1), Arbor Vitae (1), Cherry (1), Pine (1), and Boxelder (1). Reference the attached plans for additional information and details.

The required tree replacement is computed to be 54” DBH, and we propose to meet and exceed the requirement for a 56” DBH replacement. Also, we propose to replace similar trees species as those removed, as approved by City staff. No more than 25% of one species will be planted, unless approved by City staff. Trees will not be planted within 15’ from back-of-curb on deciduous trees, and not within 20’ for coniferous trees as requested by the City. Replacement trees will be planted after home construction.

Tree preservation was completed by using creative design, custom grading, minor retaining walls, and establishing the building pad and driveway locations. Trees along the eastern property line will be protected and a dedicated conservation easement is proposed along the Mesic Oak Forest boundary. Trees identified to be saved will have perimeter fencing during construction activities.

Steep Slopes

The provisions of the steep slope ordinance have been reviewed and we find the ordinance does not apply to the development. As indicated on the attached memo “Minnetonka Steep Slope Ordinance as Applicable to the Enclave at Regal Oaks”, the steep slopes are present at the north end of the properties, but the proposed development does not encroach within the steep slopes. See the enclosed memo for additional clarification.
Stormwater Management

Treatment of stormwater and controlling runoff rates plays a major factor in any development. We propose to maintain the “feel and look” of the property by minimizing grading efforts and precisely locating stormwater facilities for maximum efficiency and minimal removals.

Per direction and recommendation from the City, we have revised our storm water management plan approach to offsite drainage as follows:

- **Onsite drainage**: Onsite drainage for the development will be treated with a combination of bioinfiltration basins and grassy swales. The proposed northern bioinfiltration basin will treat a majority of the development, while a secondary bioinfiltration basin will be constructed on the south end of the property to provide additional treatment. The combination of the stormwater BMP’s will exceed the standards set forth by the City for runoff rate control and water quality treatment of total phosphorus (TP) and total suspended solids (TSS).
- **Offsite drainage**: We will not capture and treat for water quality the existing stormwater conveyance from Arbor Lane, and will let the stormwater path continue as it is today. The area around the existing energy dissipater outlet will be reinforced to prevent additional erosion and required maintenance.

*Reference the attached “Stormwater Management Plan” for details regarding the stormwater approach and proposed design.*

Maintenance Access to Stormwater Treatment Basins

Per comments from the City, we have defined an access route to each stormwater treatment facility. Access to the northern basin is provided between proposed lots 3 and 4. The D&U easement has been expanded to a width of 14 feet. The average slope along the path is 4:1, which can be easily maneuvered with maintenance vehicles. Access to the southern basin is accessible from the City right-of-way. Access easements will be documented on title work for future homeownership knowledge. No trees or utilities will be installed along the maintenance access routes. *See the enclosed drawings for additional information.*

Thank you, and we look forward to speaking with you soon.
November 14, 2016

To: Roger Anderson

RE: Ramblers at Regal Oak

As we discussed, I have reviewed the market demand for the 4 lots you are proposing at Regal Oak and Shady Oak Road. Here are my findings and conclusion:

- The City of Minnetonka has a population just in excess of 50,000.
- As of today, there are 266 homes listed for sale within Minnetonka.
- Within those listings, you have asked me to research homes meeting the following criteria:
  - Rambler Style
  - Built within the last 10 years
  - Listing price of $750,000 or less
- The number of listings meeting these requirements is 0.

Here is a breakdown of rambler-style homes available for sale in Minnetonka priced under $750,000 broken down by the year built in 10 year increments:

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<tr>
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<tr>
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As a Realtor who works in the area and as a recent resident of Minnetonka, I’m amazed that nothing exists to meet what I feel is a substantial demand for single-level living at a reasonable price range. The number of Minnetonka residents looking for that style home at a price range in the general range of their departure residence is nearly unlimited. **New construction at that price would definitely meet a strong need in Minnetonka.**

Feel free to contact me with any further questions about this topic.

Sincerely,
Dane J. Swenson
Realtor
Keller Williams Integrity Edina
Deacon II
9’ Ceiling Ht.; *11’ Ceiling Ht.

Main Level
1707 Sq. Ft.

Optional Finished Lower Level
924 Sq. Ft.

Total Finished: 2631 Sq. Ft.
REVISED PLAN

NOTE
1. THE construction shall occur when
   weather permits.
2. THE construction shall occur when
   weather permits.
3. THE construction shall occur when
   weather permits.
4. THE construction shall occur when
   weather permits.
5. THE construction shall occur when
   weather permits.
6. THE construction shall occur when
   weather permits.
7. THE construction shall occur when
   weather permits.
8. THE construction shall occur when
   weather permits.
REVISED PLAN

TREE SUMMARY

Tree Inventory and Removal Plan

The Enclave at Regal Oaks
Minnetonka, Minnesota

Anderson Engineering, Inc.

TREE SUMMARY

<table>
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<td>Maple</td>
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Legend:
- LP: Low Priority
- HP: High Priority

Tree Inventory and Removal Plan

The Enclave at Regal Oaks
Minnetonka, Minnesota

Anderson Engineering, Inc.

C6
STAFF-DRAFTED R-1 SKETCH

Rambler walkout,心
Roughly 3.055 sq.ft. footprint, including garage
Roughly 2.280 sq.ft. walkout level
As constructed at 3600 Orchard Way
C. Items concerning The Enclave of Regal Oak at 3639 Shady Oak Road and 3627 Regal Oak Lane.

Chair Kirk introduced the proposal and called for the staff report.

Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Chair Kirk clarified that the proposal would make two lots into five lots with one existing house that would remain.

Odland confirmed with Thomas that the item could be tabled. Chair Kirk added that the applicant could revise the proposal before it will be reviewed by the city council. Thomas stated that feedback from commissioners would be beneficial.

Thomas reviewed the suggestions provided by the applicant. Roger Anderson, engineer representing the applicant, stated that:

- The six-lot concept laid out nicely.
- Councilmembers stated that they would prefer four lots.
- The proposal would meet R-1A requirements, but that would not work because the proposal does not include building a street as required by R-1A.
- Three R-1 lots could meet ordinance requirements, but the idea is to make the houses provide one-floor living.
- The floor area ratio (FAR) would comply with R-1A requirements and the applicant is happy with that size. It would restrict the size of the houses somewhat and keep the price point around $600,000.
- He compared the proposal to Cherrywood Pointe. The public benefit of the proposal would be providing a home for seniors. It is harder to see the public benefit for a 4-unit proposal than 99-unit proposal.
- The proposed type of housing is unavailable in Minnetonka right now. Large lots would support large houses. The proposed houses with floor area restrictions with 1,800-square-foot to 2,000-square-foot main floors and no second floors. That would provide a public benefit.
- Almost two thirds of an acre would be dedicated in a conservation easement.
- A pipe that directs water to the proposed property would be fixed, rain gardens would be installed, and geothermal would be used.
The impact to the environment would be the same for four R-1A houses or three R-1 houses. The amount of grading would be approximately the same.

- The best plan is the proposed PUD for ramblers with walkouts and lookouts. The proposal would provide a public benefit by providing new, single-level living houses.

Hanson asked if the existing house on Lot 5 was included in a previous review of the proposal. Mr. Anderson explained that the property owner is a joint applicant who reached an agreement with the original applicant.

Powers asked for the size and price of houses that would be built with R-1 zoning. Mr. Anderson answered that he has received inquiries from buyers who want to build a 6,000-square-foot house.

The public hearing was opened.
Cheryl Smith, 3625 Arbor Lane, thanked Thomas for her responses to her emails. She stated that:

- She did not support the proposal.
- She saw a pileated woodpecker and owls on the site.
- She was concerned with stormwater drainage and the city having access to the retention pond to keep it clean.
- The land would be decimated and the woods would no longer soak up water.

Grace Sheely, 14325 Grenier Road, thought this would be a great opportunity to utilize R-1A zoning. She encouraged thinking long term. She was concerned that there would be a tax base loss due to the next generation not wanting to purchase the current houses. R-1A zoning may be able to save some of the woods, but she did not know. She suggested more stormwater drainage improvements to help the residents downhill.

Vanessa Green, 3632 Arbor Lane, stated that:

- She agreed with the other speakers.
- A river would form in her backyard when she was a kid when it rained. She was concerned that cutting down the trees would cause huge runoff.
- She was concerned with the extensive grading.
- Her neighborhood is all single-level living houses. One of those could be renovated.
Greg Bartholomew, 3653 Shady Oak Road, stated that:

- He had concerns with lot size and density.
- He was concerned with the target market.
- There are ramblers in the neighborhood.
- He asked if landscaping and tree replacement would be required.
- There is a steep grade.
- It would be helpful to see a rendering of what the site would look like. The change in the view would be dramatic.

No additional testimony was submitted and the hearing was closed.

Chair Kirk asked staff to compare PUD and R-1A zoning for the site. Thomas explained that rezoning to R-1A would not require the public benefit, which was necessary when rezoning from R-1 to a PUD. R-1A zoning standards have no control over house design, but there would be some control over house size. The tree ordinance applies to every type of zoning classification. In order to be zoned R-1A, 60 percent of the lots in the area must be less than 22,000 square feet in size or a new public street must be created. Neither of those applies to this proposal.

Dietrich explained the stormwater management requirements which are usually worked out at the time of the grading permit.

Colleran pointed out where grading and tree loss would occur.

In response to Chair Kirk’s question, Thomas estimated that tree loss would be similar whether the site would be zoned PUD, R-1A, or R-1. The grading permit would only be issued if all requirements would be met.

Powers noted the steepness and was concerned with the runoff. Mr. Anderson stated that a grading plan, stormwater management plan, and stormwater calculations have been submitted. The proposal meets all requirements. A pond would be built where a neighbor requested a pond to be built. Right now, there is no control of the stormwater. The proposal would pay to manage the stormwater and meet city requirements. A stormwater management system takes up room and causes more grading. The proposal would place a conservation easement over most of the significant trees. The grading plan would fix a three-foot gully to make it function properly. A maintenance agreement would be made with the city to service the pond and stormwater management system.
In response to Knight’s question, Mr. Anderson explained that a 3:1 slope is similar to the slope from the front of yard to the back yard of a house with a walk-out basement. Lawn mowers can be ridden on the slope just fine. The maintenance agreements would be recorded on each title.

Calvert agreed that diversified housing stock is needed. She opposed the proposal because it would result in too much tree loss.

Powers liked the developer’s ability to present the proposal. He favored three lots instead of four. He is less concerned about the overall size of the houses. He is not concerned with homeowners wanting to downsize to a single level. The overall feeling of the area is better suited for fewer houses.

Odland agreed. Fewer houses would have less impact on the wildlife.

Hanson recalled commissioners asking the applicant to reduce the number of houses from five to four at the concept plan review. He commended the applicant for doing that. Fine tuning needs to be done with the stormwater management. Four new houses could fit the site, but the details need to be more thought out.

Chair Kirk noted that new housing is lacking in Minnetonka. He agreed that the proposal is not ready for approval. The character of the neighborhood should also be taken into consideration.

Calvert appreciated Mr. Anderson’s presentation. She did not think the proposal was ready.

*Odland moved, second by Calvert, to recommend that the city council adopt the resolution denying the requested rezoning, master development plan, and preliminary and final plats (see pages A18-A21 of the staff report).*

*Odland, Powers, Calvert, Hanson, Knight, and Kirk voted yes. O’Connell was absent. Motion carried.*
Resolution No. 2017-

Resolution denying rezoning, master development plan, and preliminary and final plat requests for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak

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

Section 1. Background.

1.01 Airborne Construction One, LLC has proposed subdivision of the properties at 3639 Shady Oak Road and 3627 Regal Oak. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and four new homes would be constructed. The new homes would be limited to single-story design, with lookout or walkout option, and floor area ratios of 0.22–0.24. The homes are intended to be priced at approximately $600,000.

1.02 The proposal requires approval of:

1. Rezoning from R-1, low-density residential, to PUD, planned unit development;
2. Master development plan;
3. Preliminary and final plats

1.03 The properties are legally described on EXHIBIT A of this resolution.

1.04 On October 6, 2016, the planning commission held a hearing on the applicant’s 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 deny the various requests.

Section 2. General Standards.

2.01 The lots sizes, lot dimensions, and structural setbacks of the proposed subdivision can be obtained only through PUD zoning or variance.

2.02 By City Code §300.22 Subd.2, PUD zoning may be considered by the city when it would result in one of the following public benefits:

1. Greater preservation of existing natural resources, in number or quality, than would otherwise be provided under non-PUD development;

2. Provision of affordable housing;

3. Provision of a housing type or target housing price that is desirable to the city;

4. A mix of land use types;

5. Development that is compatible with existing, surrounding development type and intensity that is no longer allowed in other existing zoning districts;

6. Greater energy conservation through building and site design than would otherwise be achieved under non-PUD development; or

7. Other public benefits as recognized by the city.

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

3.01 As with any rezoning, the decision to rezone a property to PUD is a policy decision that the city council may make in its legislative capacity.

3.02 The proposed subdivision would not result in a public benefit as outlined in City Code §300.22 Subd.2
   1. The proposal would not result in home construction of a different type or price than could occur under R-1 zoning.
   2. The proposal would not preserve trees in a greater amount or extent than would subdivision under the existing R-1 zoning classification.

3.03 The proposed subdivision would not meet the variance standards as outlined in City Code §300.07 Subd. 1. There are no practical difficulties preventing the applicant from meeting subdivision and setback standards under the existing properties’ existing R-1 zoning. Rather, the applicant’s request is based on a desire to create five lots where four lots may otherwise be achieved.


4.01 The applicant’s proposal is hereby denied. Denial is based on the findings outlined in section 3 of this resolution.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 23, 2017.

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 January 23, 2017.

______________________________
David E. Maeda, City Clerk
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.
- Darin Ellingson as the Minnetonka City Council’s appointed representative to the Bennett Family Park Board.
- Sara Woeste as the Minnetonka City Council’s appointed representative to the Minnetonka School District Community Education Advisory Council.
- Dave Johnson as the Minnetonka City Council’s appointed representative to the Music Association of Minnetonka.
- Brad Wiersum as the Minnetonka City Council representative to the West Hennepin Affordable Housing Land Trust (Homes Within Reach).
- Alisha Gray as the Minnetonka City Council’s appointed representative to the Wayzata Schools Community Collaboration Council.
Meeting of January 23, 2017
Subject: Appointment of representatives to various advisory boards, commissions, etc.

Submitted through:
   Terry Schneider, Mayor
   Geralyn Barone, City Manager

Originated by:
   Pat Schutrop, Administrative Assistant
## City of Minnetonka
### 2017 Council Representatives/Staff Participant or Contact

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Revised January 2017