Agenda
Minnetonka City Council
Regular Meeting, Monday, Feb. 26, 2018
6:30 p.m.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Calvert-Bergstedt-Wagner-Ellingson-Acomb-Wiersum
4. Approval of Agenda
5. Approval of Minutes: Feb. 5, 2018 regular council meeting
6. Special Matters:
   A. Retirement recognition for Fire Administrative Manager Sandra Streeter
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
   A. Bids for the 2018 Mill and Overlay project
      Recommendation: Award the contract (majority vote)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Ordinance regarding small wireless facilities in public right of way
    B. Request to the chief judge of Hennepin County District Court regarding charter
       commission appointment
    C. Resolution reaffirming previous preliminary and final plat approval of TONY’S
       ADDITION at 9597 Sandra Lane
    D. Resolution approving preliminary and final plats for SIMPSON PARK ADDITION at
       15617 Lake Street Extension
    E. Resolution for the 2018 Street Rehabilitation project, Woodhill Road area
    F. Labor agreement between the City of Minnetonka and Law Enforcement Labor
       Services, Inc. – Police Sergeants
11. Consent Agenda - Items Requiring Five Votes:

   A. Resolution approving a floodplain alteration permit, conditional use permit and setback variance for construction of a new home at 3533 and 3535 Orchard Lane

12. Introduction of Ordinances: None

13. Public Hearings:

   A. Temporary on-sale liquor license for Adath Jeshurun Congregation, 10500 Hillside Lane W.

       Recommendation: Hold the public hearing and grant the license (5 votes)

   B. Temporary on-sale liquor license for ICA Food Shelf, for use at 3739 Tonkawood Road

       Recommendation: Hold the public hearing and grant the license (5 votes)

   C. Items concerning a new restaurant, The Copper Cow, at 5445 Eden Prairie Road:

       1) Conditional use permit, with variances and an expansion permit, for a restaurant with outdoor seating area
       2) On-sale intoxicating liquor license for Copper Cow, LLC

       Recommendation: 1) Adopt the resolution approving the conditional use permit, with variances and expansion permit; and 2) Continue the public hearing and grant the license (5 votes)

   D. On-sale brewer’s taproom and Sunday liquor license, and off-sale liquor license (for growlers) for Brass Foundry Brewing Co., 5959 Baker Road

       Recommendation: Open the public hearing and continue to April 2, 2018 (4 votes)

14. Other Business:

   A. Items concerning iFly at 12415 Wayzata Blvd.:

       1) Amendments to the existing master development plan;
       2) Site and building plan review; and
       3) Sign plan review.

       Recommendation: Adopt the ordinance and resolution approving the requests (5 votes)

   B. Amendments to the design criteria for the Ridgedale Restaurant Properties at 12415 Wayzata Blvd.

       Recommendation: Adopt the resolution approving the request (4 votes)
C. Concept plan review for Solbekken Villas, a residential development at 5740 and 5750 Shady Oak Road

Recommendation: Discuss concept plan with the applicant. No formal action required.

15. Appointments and Reappointments:

A. Appointment of advisors for the 2018 Board of Appeal and Equalization

Recommendation: Approve appointments of the advisors (4 votes)

B. Appointment of Economic Development Advisory Commission vice chair

Recommendation: Approve the recommended appointment

16. Adjournment
Minutes
Minnetonka City Council
Monday, Feb. 5, 2018

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

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

4. Approval of Agenda

Bergstedt moved, Calvert seconded a motion to accept the agenda, with addenda to items 12A, 12B, 14A and 15A. Wiersum noted for item 15A he was nominating Charlie Yunker to chair the Economic Development Advisory Commission. All voted “yes.” Motion carried.

5. Approval of Minutes: Jan. 24, 2018 regular council meeting

Acomb moved, Calvert seconded a motion to approve the minutes of the Jan. 24, 2018 regular council meeting, as presented. Acomb, Calvert, Ellingson, and Wiersum voted “yes.” Bergstedt abstained. Motion carried.

6. Special Matters:

A. Proclamation declaring Feb. 15, 2018 “Not for Sale Day” to Raise Awareness About Sexual Exploitation

Acomb read the proclamation.

Jessica Melnick, from Girls United MN, presented information about the event.

Wiersum said the problem was a serious one and he appreciated the initiative of Melnick’s work.

7. Reports from City Manager & Council Members

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

8. Citizens Wishing to Discuss Matters not on the Agenda

Hennepin County Sheriff Rich Stanek provided an update on his office’s activities.
Wiersum said he appreciated Stanek coming to the meeting and the partnership between the county and the city. He noted the opioid crisis was a major issue and anything the city could do to help the sheriff’s office deal with the crisis was something he wanted to see happen.

Stanek said all the law enforcement agencies that helped with the Super Bowl did a great job. There were about 2,600 police officers countywide that helped police the event. He also praised Barone for her work on the transition of the dispatch services to the county.

9. Bids and Purchases:

10. Consent Agenda – Items Requiring a Majority Vote:

11. Consent Agenda – Items requiring Five Votes:

12. Introduction of Ordinances:

A. Items concerning iFly at 12415 Wayzata Boulevard:

   1) Amendment to the existing master development plan;
   2) Site and building plan review; and
   3) Sign plan review

City Planner Loren Gordon gave the staff report.

Acomb questioned if the signs as shown in the sketches complied with the city’s sign ordinance for the Ridgedale area. She said it appeared they did not. Gordon confirmed that was correct.

Acomb said she would like more information on the landscaping that would shield the mechanical area. Gordon said the design being proposed for the ground level wall would be a stone product, perhaps over brick, and would be very aesthetically pleasing. The trellises above the wall would add detail. He said for consistency, the same thing would occur on the backside of the restaurant pad. The mechanical equipment would be fully shielded.

Calvert said she shared the concern about the signage.

Bergstedt said at the concept plan review the council expressed concern about the noise that might impact the restaurants. Those concerns were addressed by the applicant. The council also expressed concern about the signage. He said the proposal was a first of its kind in Minnesota and could add energy and vibrancy to the Ridgedale Center.

Ellingson said he was very impressed by the presentation at the concept plan review.
Wiersum said it was an intriguing opportunity for the city. He said the discussion about the signage would be challenging. Clearly this was not an anchor tenant building but it was a new use. The challenge would be determining what was allowed by the sign ordinance and what was appropriate without creating too much upheaval in the ordinance.

Bergstedt moved, Ellingson seconded a motion to refer the ordinance amending the existing master development plan to the planning commission. All voted “yes.” Motion carried.

**B. Introduction of ordinance regarding small wireless facilities in public right of way**

City Attorney Corrine Heine gave the staff report.

Bergstedt said it seemed as if the city had little choice but adopt an ordinance.

Wiersum said the League of Minnesota Cities spent a lot of time on the issue. There was considerable concern the telephone companies would push through legislation that would remove all local control of any small scale wireless facility with no reimbursement. He said in talking with Barone earlier in the day, she indicated the ordinance didn't have everything staff would like in it, but it still was far better than what was initially proposed at the legislature.

Acomb moved, Calvert seconded a motion to approve the introduction of the ordinance. All voted “yes.” Motion carried.

**C. Ordinance repealing and replacing City Code 300.34, Telecommunication Facilities**

Gordon gave the staff report.

Wiersum said ordinance was much improved and flowed well.

Calvert moved, Acomb seconded a motion to approve the introduction of the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

**13. Public Hearings:**

**A. 2018 Community Development Block Grant funds**

Community Development Director Julie Wischnack gave the staff report.

Acomb noted that Wischnack indicated 85% of the funds were for small projects and 15% for public services. She asked if this was what staff was proposing or if the percentages were set by the CDBG program. Wischnack said the 15% was the maximum that could be used for public services. A lesser amount could be used. Acomb said there were funds that needed to be spent or else the city would lose them. She asked if there had been enough applications in order to
spend those funds effectively. Wischnack said occasionally the city will receive funds back like in a situation where the estimated award is higher than the actual award. Currently the city had money to spend that would be awarded on a first come, first serve basis.

Wiersum said the staff report included a lot of information about the city administering the program internally versus transitioning to have Hennepin County do so. He asked if the administrative fees had increased or remained the same. Wischnack said the fees had increased. City staff had struggled with keeping up with all the compliance requirements. If the city had kept the administrative duties, it was likely more staff time would have been needed for that purpose.

Bergstedt said things had been streamlined by having the county administer the program rather than requiring individual cities do a request for proposal. Wiersum agreed.

Wiersum opened the public hearing at 7:32 p.m. No one spoke. He closed the public hearing at 7:32 p.m.

Acomb moved, Ellingson seconded a motion to adopt resolution 2018-010 approving the proposed allocation for 2018 Urban Hennepin County Community Development (CDBG) program funds; authorize the negotiation and execution of a sub-recipient agreement with Urban Hennepin County and any third party agreements; and approve funding for HOME line in the amount of $5,200 from the Development Account for 2018. All voted “yes.” Motion carried.

14. Other Business:

A. Concept plan review for Ridgedale Active Adult Apartments at 12421 Wayzata Blvd.

Gordon gave the staff report.

Acomb asked for more information about the housing study and what it showed about housing in the city for people over the age of 55. Gordon said there were a couple of groups in the senior market. One group included housing without services for active adults. Acomb noted the study showed the city was about 200 units short for active adults. Wischnack said the study showed the city was short 659 units for all seniors.

Johnny Carlson with Trammell Crow showed photos of other projects the company had done. He presented details about the type of housing and how it differed from other types of senior housing. The project architect, Lukas Van Sistine, from ESG Architects, presented information about the design.

Bergstedt said one of the first questions asked at the planning commission meeting was how the six story building was arrived at. Carlson said the key thing was looking at how tall the other buildings in the area were. This was a Carlisle
 prototype being built in other parts of the country and was used to determine the right unit count. The site also was looked at to determine what was appropriate. Another factor was keeping the rents as low as possible.

Calvert said she watched the planning commission review and took to heart some of the questions that were asked. She asked if a rooftop amenity was being looked at. Carlson said if a market rate apartment building was being looked at rather than age restricted housing, a sky deck would be included. The goal in this case was to get all the amenities in one spot to create daily interaction between the residents. Creating a rooftop amenity with the others on the ground would bifurcate the space. He said a rooftop amenity would still be looked at as the plan moves forward.

Calvert said looking at where vehicles pull into the parking lot from the roundabout, there was an immediate turn into the parking area. She said she had some concern with this. Gordon said staff would like to study the intersection further. Calvert said she was really excited about the additional green space. She liked how Sistine had explained the inspiration for the exterior of the building. It was a lot of mass with a very smooth surface. It differed from a retail space. There was a visual breakup that broke up the mass.

Acomb asked if there was consideration for affordable units within the project. Carlson said affordable units had been incorporated in other Trammell Crow market rate buildings. He said this was a different rent check considering the different things residents would be paying for. Financially it would be difficult to include affordable units. Acomb said looking at other active adult projects like one in Edina, affordable units were included. Carlson said Edina had an ordinance requiring affordable units. He said while Minnetonka did not have a similar ordinance, the goal for this plan was to drive the rents as low as possible. Wischnack clarified Edina has a housing policy and not an ordinance requiring affordable units. Minnetonka has a housing resolution with similar language.

Calvert noted there was a demographic bubble throughout the country. The type of resident living in this building would be different in 10, 20 or 30 years. She asked if there had been any consideration given to the need for more parking and some of the other things that would change in 30 years when a younger demographic occupied the building. Carlson said this was being viewed as a building that could be converted to independent living in the future. The amenity space was more geared toward this than for a younger demographic.

Ellingson said it was an interesting concept. He noted currently this part of the parking lot often had few cars parked in it. He questioned if the mall needed the parking. Carlson said he was working with all the retailers, the anchors and General Growth. The current parking ratio was being looked at as well as where it was headed in the future. The least parking demand was in the southwest corner. He indicated the mall owners and the tenants supported the project.

Calvert asked Carlson if any of his projects had a sustainable building component including LEED certification. Carlson said Trammel Crow would
consider incorporating sustainability for this project. The certification typically is part of the design process. The goal in this case would be to deliver a sustainable project. Sometimes a project is designed using the LEED certification requirements but the actual certification is not pursued.

Acomb asked if there was any flexibility to the location, design, shape and size of the park area. Carlson said the original plan presented to staff had the building shifted to the east. The building was shifted west when staff indicated a city goal would be to have a park and change the roundabout access. The goal was to get the largest park possible and maximize the walkability to the park and to the mall. He said the shape of the park would likely continue to evolve through the process. Wischnack noted General Growth owned the eastern portion so that piece would have to be negotiated with them. Acomb said the location and size of the park didn’t fully meet the city’s vision. She said she spoke with Wagner and he shared that concern.

Bergstedt said over the last year, as the council looked at various projects, they had discussed the huge need for some type of park or open space. He said this was an opportunity to reach a piece of that goal. He didn’t think the city should be too prescriptive without considering all the options and ensuring the overall area flowed better. He said the park idea was great but it was a starting point. He thought the concept met some of the vision for the Ridgedale area with higher density, higher height and a quality development.

Acomb agreed and said she was thrilled to see density built in the parking lot. She was fine with the architecture and the setbacks. Her concern was related to affordability and wanting that to be included in the project.

Calvert said agreed with Bergstedt and Acomb. She was glad to see the higher height which was restricted in other parts of the Ridgedale area. She liked many things about the project but agreed with Acomb’s comments about including some affordable units. She was excited to see there was a possibility to include some LEED building practices. The added green space, whatever it ended up being, would be great.

Dr. Mark Stesin, 2000 Norway Pine Circle, said he was speaking on behalf of a coalition of five neighborhoods: his street, Dwight Lane, Austrian Pines, Sherwood Place and Sherwood Forest. The consensus was strong support for the city’s effort to bring in high density housing. The assumption was all the new buildings would be compliant with the comprehensive guide plan and also be sensitive to those who had lived in the city for the last 20 to 30 years. The coalition of neighbors support this concept plan. The project was very appropriate for the space. The park space and size of the building were appropriate. The physical density was not an issue. The more important issue was the activity density. With 165 units there would be a lot of activity on a relatively small space. He said the property was far enough away from the neighborhoods that the activity density would not be much of an issue.
Annette Bertelsen, 13513 Larkin Drive, said she and her neighbors liked the apartment concept quite a bit. As far as the density they support this level of density. She said there were many neighborhoods that were engaged in the discussion about the Ridgedale area. Now that there was the first housing proposal for the inner circle, the neighbors were very excited about the land use and proposed density. She said when the city first presented the Ridgedale vision study, residents saw vignettes of a park adjacent to the mall. This excited them. People began to brainstorm ideas about synergy between events at the mall and events at the park. As the discussion about the park continued, she would like to see pros and cons discussed about the location. She said it was easy to forget that Ridgedale wasn’t just a commercial hub. For many it was part of the fabric of their neighborhood. She suggested having neighborhood residents be part of the park committee along with councilmembers, planning commissioners and park board members. She volunteered to be the neighborhood representative.

Calvert said one of the things she really liked about the location of the building was that it was at the south end of the mall away from the freeway. She said it was a huge benefit to the building’s residents.

Wiersum said this was an intriguing project. He appreciated the information about what an active adult apartment was and thought it was a niche that made sense in the community. He truly valued the social aspect for those who lived in the city but were looking to downsize. He agreed with the comments about the location of the building. He thought along with the improvements to Ridgedale Drive, this would be a very beautiful area of the city. Architecturally, he particularly liked the large windows that were shown. He thought the contemporary look and design would play very well. He said a park in Ridgedale was an important amenity. He spoke with Wagner earlier in the day and Wagner said one thing he wanted the others to be mindful of was the Sears location at the mall would redevelop in the fairly near future. The city could delay decisions and end up with nothing because it was always hoping for what may be available tomorrow. On the other hand, the council shouldn’t be too afraid of that and not aim as high as it could for the park. It was important to keep an open mind to the possibilities for a park in the Ridgedale area. He recommended Wagner be the council representative on the committee because this was in his ward, but given Wagner’s travel schedule that Acomb be appointed as the alternate.

15. Appointments and Reappointments:

   A. Appointments and reappointments to Minnetonka boards and commissions

   In addition to the appointments and reappointments listed in the council packet, Wiersum noted he was nominating Yunker to chair the EDAC.

   Wiersum moved, Bergstedt seconded a motion to approve the appointments and reappointments to various advisory boards, commissions and committees. All voted “yes.” *Motion carried.*
16. **Adjournment**

Calvert moved, Ellingson seconded a motion to adjourn the meeting at 8:38 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #6A  
Meeting of Feb. 26, 2018

**Brief Description:** Retirement recognition for Fire Administrative Manager Sandra Streeter

**Recommended Action:** Recognize her service

**Background**

Sandy Streeter has retired as the Administrative Manager for the Minnetonka Fire Department after 27 years of service to the city. She was hired on March 3, 1991 to work in the city’s assessing division as property data technician. While there, she became a licensed appraiser.

Sandy transferred over to the fire department in 1996 to become the department’s secretary and eventually administrative manager. At the fire department, her role surpassed being the administrative manager, as she also became a trained firefighter, first responder and a certified emergency manager.

In 2000, Sandy was presented the Spirit of Minnetonka Award, the city's “employee of the year” award. She received the Chief Kenny Johnson Award, the fire department’s highest honor, in 2009.

Sandy was a founding member and served on the board of directors as the North Star Women’s Firefighter Association, as well as several other committees and work groups.

Sandy was dedicated to the city and fire department, working hard as a firefighter and administrative manager. She always remained even-tempered and treated everyone with the same friendly attitude. We thank her for her service to the City of Minnetonka and wish her many happy years in retirement.

**Recommendation**

Recognize Sandra Streeter's service to the City of Minnetonka.

Submitted through:  
Geralyn Barone, City Manager

Originated by:  
John Vance, Fire Chief
Brief Description: Bids for the 2018 Mill and Overlay Project

Recommended Action: Award the contract

Background

The 2018 Mill and Overlay project consists of: Lindbergh Drive, Ford Road from Cedar Lake Road to Wayzata Boulevard, and Williston Road from north of Karyl Drive to north of Minnetonka Industrial Road. These streets were identified for improvement through the city’s pavement management program. Analysis of these roads indicated that while the pavement surfaces need rehabilitation, the pavement structures are in good condition. A mill and overlay of these pavements was therefore the recommended rehabilitation strategy as it provides a cost effective way to improve the surface and extend the roadway life.

The city boundary along Ford Road varies between Minnetonka and St. Louis Park. Both staffs held a number of discussions to coordinate paving the roadway as one project, and agreed that the City of Minnetonka should take the lead since their construction efforts were already scheduled to include this roadway in 2018. The City of St. Louis Park has agreed to reimburse the City of Minnetonka for their portion of Ford Road, half of the roadway for approximately 1,950 feet. A memorandum of understanding will be signed by both cities prior to beginning the work and will allow the City of Minnetonka to invoice the City of St. Louis Park. It will also outline long-term maintenance responsibilities of each city. The city attorney has reviewed this process and finds it acceptable.

Bid Opening

Bids were opened for the project on Jan. 18, 2018. Eight bids were received in response to the call for bids, and the results are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bituminous Roadways, Inc.</td>
<td>$596,843.20</td>
</tr>
<tr>
<td>Valley Paving, Inc.</td>
<td>$612,945.50</td>
</tr>
<tr>
<td>Northwest Asphalt, Inc.</td>
<td>$628,907.00</td>
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<tr>
<td>GMH Asphalt Corporation</td>
<td>$637,259.86</td>
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<tr>
<td>C.S. McCrossan Construction, Inc.</td>
<td>$646,371.00</td>
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<tr>
<td>Park Construction Company</td>
<td>$714,265.90</td>
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<tr>
<td>Hardrives Inc.</td>
<td>$729,760.03</td>
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</table>
The low bidder, Bituminous Roadways, Inc., has satisfactorily completed similar projects in Minnetonka.

**Estimated Project Cost and Funding**

<table>
<thead>
<tr>
<th>Budget Amount</th>
<th>Proposed Funding</th>
<th>Expense</th>
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</thead>
<tbody>
<tr>
<td>$700,000</td>
<td>$700,000</td>
<td>$700,000</td>
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</tbody>
</table>

The total estimated cost for this project, including construction, engineering, and contingency is $700,000. The attached “2018 Street Rehabilitation Funding Summary” provides a recap of estimated costs and funding sources for all 2018 street projects. As can be seen on the table, all costs for the 2018 Mill and Overlay project are estimated to be within budget for the various funding sources listed.

The proposed savings allow for an additional standalone project to be brought forward to council later this year for their consideration of a mill and overlay of Carlson Parkway, due to its current surface condition.

**Schedule**

If the recommended action is approved by council, construction is expected to begin mid-June, and be completed by late-August to ensure there is no interference with the start of school.

**Recommendation**

Award the contract for the 2018 Mill and Overlay Project No. 18407 to Bituminous Roadways, Inc. in the amount of $596,843.20.

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

Originated by:
Chris LaBounty, P.E., Engineering Project Manager
## 2018 Street Rehabilitation Funding Summary

<table>
<thead>
<tr>
<th>Funding Sources</th>
<th>2018 CIP</th>
<th>2017 Carryover</th>
<th>Estimated Funding Woodhill Road</th>
<th>Estimated Funding Burwell Street Parking</th>
<th>Estimated Funding 2018 Mill and Overlay</th>
<th>Estimated Funding Delton Avenue</th>
<th>Balance</th>
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<tbody>
<tr>
<td>Street Improvement Fund - Local Street Rehab</td>
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<td>Storm Sewer Fund</td>
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<td>-</td>
<td>$410,000</td>
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<td>Utility Fund</td>
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<td>Other Agency Funds¹</td>
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<tr>
<td><strong>Total Project Cost</strong></td>
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<td><strong>$700,000</strong></td>
<td><strong>$100,000</strong></td>
<td><strong>$1,758,000</strong></td>
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¹ Reimbursement from City of St. Louis Park
City Council Agenda Item #10A  
Meeting of Feb. 26, 2018

Brief Description: Ordinance regarding small wireless facilities in public right of way

Recommended Action: Adopt the ordinance

Background

The proposed ordinance amends the city’s right of way management ordinance, Section 1120 of the Minnetonka City Code, to address the installation of small wireless facilities within the public right of way. The amendment is necessary to conform the city code to state legislation enacted in 2017. The ordinance was introduced at the February 5, 2018 council meeting.

The state legislation establishes definitions for small wireless facility and related terms. As defined by the legislation, a small wireless facility must not exceed six cubic feet in size, and its related ground equipment (if any) must not exceed 28 cubic feet in size. In addition, the legislation sets procedural requirements, including a 90-day time limit for reviewing permits. The legislation sets parameters on the permit fees that cities can charge and also establishes maximum rental fees that a city may charge, if the small wireless facility is located on a city-owned support structure. In general, cities are required to allow small wireless facilities in all zoning districts, but cities may adopt separation requirements for facilities that are located in residential districts.

The proposed ordinance is substantially similar to the League of Minnesota Cities’ model right of way management ordinance. The key provisions of the proposed ordinance are taken directly from state law and are not subject to change. The fees in the proposed ordinance represent the city’s best estimate of costs and will be re-evaluated periodically based on actual experience. The rent fees are for use of city-owned poles in the right of way and are the maximum allowed by law.

This ordinance does not establish the minimum separation requirements for small wireless facilities located in residential districts. That requirement is addressed in a separate ordinance that amends the zoning code. The zoning ordinance is scheduled for a March 1 public hearing before the planning commission and will be on the March 19 city council agenda.

Recommendation

Adopt the ordinance.

Submitted through:
   Geralyn Barone, City Manager
   Will Manchester, City Engineer
   Merrill King, Finance Director
   Brian Wagstrom, Public Works Director

Originated by:
   Corrine Heine, City Attorney
Ordinance No. 2018-

An Ordinance amending sections 1120.015, 1120.035, 1120.045, 1120.055, and 1120.060 of the Minnetonka City Code, and adding a new section 1120.062, all relating to location of small wireless facilities within public right of way; amending section 710.005, paragraph 8, relating to permit fees for small wireless facilities

The City of Minnetonka Ordains:

Section 1. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding a new subdivision 4, to read as follows, and renumbering subsequent subdivisions (including those amended by sections 2 through 6 of this ordinance) accordingly:

4. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately or by the city or other governmental unit.

Section 2. Section 1120.015, subdivision 19 of the Minnetonka City Code, related to definitions, is amended to read as follows:

19. "Management costs" means the actual costs the city incurs in managing its rights-of-way, including the costs associated with registering right-of-way users; issuing, processing, and verifying right-of-way or small wireless facility excavation and obstruction permits; inspecting project work and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; enforcing and correcting non-complying project work; mapping of facilities located in the right-of-way; revoking right-of-way or small wireless facility permits; performing all other tasks required by this section; and managing matters described in this section. Management costs do not include: payment by a telecommunications right-of-way user for the use of the right-of-way; unreasonable fees of a third-party contractor used by the city, including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city; the fees and cost of litigation related to the interpretation of state law or this section; or the city costs related to appeals taken pursuant to this section.

Section 3. Section 1120.015, subdivision 23 of the Minnetonka City Code, related to definitions, is amended to read as follows:

23. "Permittee" means a person to whom an excavation or obstruction permit or small wireless facility permit has been issued by the city under this section.

Section 4. Section 1120.015, subdivision 26 of the Minnetonka City Code, related to definitions, is amended to read as follows:

The stricken language is deleted; the underlined language is inserted.
26. "Public right-of-way" or "right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Section 5. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding new subdivisions 32 and 33, to read as follows, and by renumbering subsequent subdivisions accordingly:

32. “Small wireless facility” means a wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

b. All other wireless equipment associated with the small wireless facility is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

33. “Telecommunications right-of-way user” means a person owning or controlling a facility in the right-of-way or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service or transporting telecommunication or other voice or data information. A cable communication system defined and regulated under Minn. Stat. Ch. 238, and telecommunication activities related to providing a natural gas or electric energy services, a public utility as defined in Minn. Stat. Ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Ch. 308A, are not telecommunications right-of-way users for purposes of this section except to the extent such entity is offering wireless service.

Section 6. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding new subdivisions 35, 36, 37, 38 and 39 to read as follows:

35. “Utility pole” means a pole that is used in whole or in part to facilitate telecommunications or electric service.

36. “Wireless facility” means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including
equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility. “Wireless facility” does not include: wireless support structures; wireline backhaul facilities; or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

37. “Wireless service” means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

38. “Wireless support structure” means a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

39. “Wireline backhaul facility” means a facility used to transport communication data by wire from a wireless facility to a communications network.

Section 7. Section 1120.035 of the Minnetonka City Code, subdivision 1, relating to registered right of way users, is amended to read as follows:

1. Information Required. The registrant must provide the following at the time of registration and must promptly notify the city of changes in such information:

   a. registrant’s name, address, telephone number, facsimile number and gopher one-call registration certificate number if required by state law;

   b. name, address, telephone number, email address, and facsimile number of the person responsible for fulfilling the obligations of the registrant;

   c. a certificate of insurance or self-insurance verifying the coverage required in this section;

   d. 24-hour emergency number;

   e. an acknowledgement by the registrant of the indemnification pursuant to section 1120.130; and

   f. if the registrant is a corporation, a copy of the certificate that is required to be filed under Minn. Stat. § 300.06 as recorded and certified to the Minnesota secretary of state;
g. a copy of the registrant’s order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the registrant is lawfully required to have such authorization or approval; and

f.h. such other information as the director may require.

Section 8. Section 1120.045 of the Minnetonka City Code is amended to read as follows:

1120.045. Permit Requirements.

1. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so. A public right-of-way user that owns or controls a facility within a public right-of-way, or any portion of it, on May 27, 2010 and that subsequently excavates or otherwise obstructs a public right-of-way, or any portion of it, must first obtain a permit as required under this section.

a. Excavation permit. An excavation permit is required by a registrant to excavate the part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities as described in the permit, to the extent and for the duration specified in the permit.

b. Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the part of the right-of-way described in the permit by placing equipment described in the permit on the right-of-way, to the extent and for the duration specified in the permit. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

c. Small wireless facility permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified in the permit, provided that the permit remains in effect for the length of time the facility is in use, unless lawfully revoked.

2. Routine Obstruction and Excavation. Routine excavations and obstructions are permitted without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that last less than a continuous eight hour period in duration between 7 a.m. and 7 p.m. Monday through Friday, excluding holidays, may, in the director’s discretion, be considered routine obstruction and excavation and include by way of example, switching, replacing fuses,
replacing transformers, placing line guards, animal protection, leak surveys, anode installations and inspections, or to repair facilities due to public damage or accident.

Section 9. Section 1120.055, subdivision 1 of the Minnetonka City Code, related to permit fees, is amended to read as follows:

1. Establishment. Permit fees for right-of-way permits will be established to recover the city management costs and, when applicable, restoration costs. Fees for small wireless facility permits will be established to recover the city’s management costs and, for facilities to be collocated on city-owned support structures, the city engineering, make-ready, and construction costs associated with collocation. The permit fees are specified in section 710.005 of the city code. No permit fee is refundable. No permit fee will be required for an obstruction or excavation permit issued to the city, although the city must be allocated its full portion of the city management costs in calculating the permit fees.

Section 10. Section 1120.060 of the Minnetonka City Code is amended to read as follows:

1120.060. Permit Issuance.

1. Issuance. Except as otherwise provided in section 1120.062, if the applicant has satisfied the requirements of this section and there are no reasons for denial under paragraph 3 below, the city will issue a permit within ten business days after receiving a completed application.

2. Conditions. The city may impose reasonable conditions upon the issuance of the permit to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

3. Denial or revocation. The city may deny or revoke a permit for any one or more of the following reasons:

   a. The applicant failed to meet the requirements and conditions of this section;

   b. The applicant failed to register pursuant to this section;

   c. The street surface was constructed or reconstructed at the proposed location within the preceding five years, unless the director determines that no other locations are feasible or when necessitated by emergency;

   d. The applicant is subject to revocation of a prior permit issued pursuant to this section;

The stricken language is deleted; the underlined language is inserted.
e. The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival or other similar event;

f. The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way;

g. The time schedule for the project conflicts with scheduled public improvement of the public right-of-way;

h. Businesses or residences in the vicinity will be unreasonably disrupted;

i. The applicant failed to meet a reasonable schedule to participate in a mandated joint trench operation with other applicants, and the additional work will unreasonably disrupt the restored right-of-way, businesses or residences;

j. The proposed project violates a provision of this code;

k. Environmental or seasonal conditions are unreasonable for the work; or

l. The proposed project is adverse to the public health, safety and welfare, by interfering with the safety and convenience of ordinary travel over the public right-of-way, or endangers the public right-of-way and its users, as reasonably determined by the city based on relevant factors that may include:

1) the extent of public right-of-way area available;

2) the competing public service demands for the particular proposed space in the public right-of-way;

3) the availability of other feasible locations in the public right-of-way or in other public rights-of-way for the facility(s) of the permit applicant;

4) the applicability of an ordinance or other regulation that affects the location of a facility in the public right-of-way;

5) the applicant's prior lack of compliance with the terms and conditions of its franchise, this section or other applicable ordinances and regulations;

6) the condition and age of the public right-of-way and the city's scheduled reconstruction of it; or
7) the costs of disruption to the public and damage to the public right-of-way balanced against the benefits to the public served by an expansion into additional parts of the public right-of-way.

4. Appeal. The applicant may appeal a denial to the city council by submitting a written request to the director. The city council may affirm, reverse or modify the director's decision.

Section 11. Section 1120 of the Minnetonka City Code, relating to right of way management, is amended by adding a new section 1120.062 as follows:

1120.062. Small Wireless Facility Permit Applications

1. Deadline for action. The city shall approve or deny a small wireless facility permit application within 90 days after the application is filed. The small wireless facility permit, and any associated building application, will be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

2. Consolidated applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the city, provided that all small wireless facilities in the application:

   a. are located within a two-mile radius;

   b. consist of substantially similar equipment; and

   c. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

3. Tolling of deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

   a. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In that case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of the extension.

   b. The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days
of receipt of the application. Upon submission of additional documents or information, the city will have ten days to notify the applicant in writing of any still-missing information.

c. The city and a small wireless facility applicant agree in writing to toll the review period.

4. Small wireless facility conditions. In addition to conditions imposed under section 1120.060, subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way is subject to the following conditions:

a. A small wireless facility must be collocated on the particular wireless support structure, under the attachment specifications and at the height as indicated in the applicable permit application.

b. Small wireless facilities must comply with applicable provisions of section 300 of this code, including, but not limited to, separate requirements.

c. No new wireless support structure installed within the right-of-way may exceed 50 feet in height without the city’s written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure that exceeds 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

d. No wireless facility may extend more than 10 feet above its wireless support structure.

e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of the structure.

f. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of the structure.

5. Denial or revocation. A small wireless facility permit may be denied or revoked for one or more of the reasons in section 1120.060, subdivision 3. The denial or revocation of a small wireless facility permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within
three business days after its decision to deny or revoke a permit. If an application is
denied, the right-of-way user may address the reasons for denial identified by the city
and resubmit its application. If the application is resubmitted within 30 days of receipt of
the notice of denial, no additional application fees may be imposed. The city must
approve or deny the resubmitted application within 30 days after submission.

6. Small wireless facility agreement. A small wireless facility may not be collocated on a
small wireless support structure owned or controlled by the city, or on any other city
asset in the right-of-way, unless the applicant has executed a standard small wireless
facility collocation agreement with the city. The standard collocation agreement is in
addition to, and not in lieu of, the required small wireless facility permit; provided,
however, that the applicant is not required to also obtain a license or franchise in order
to collocate. Issuance of a small wireless facility permit does not supersede, alter or
affect any then-existing agreement between the city and the applicant.

Section 12. Section 710.005, paragraph 8 of the Minnetonka City Code, relating to permit
fees for engineering and street items, is amended to read as follows:

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<th>para. no.</th>
<th>description</th>
<th>amount</th>
<th>code section</th>
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<td>engineering and street items</td>
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<td>excavation within boulevard</td>
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<td>open cut trench</td>
<td>$50.00 for first 100 linear</td>
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<td>$0.50/foot over 100 feet</td>
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<td>small wireless facility</td>
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<td>Rent to occupy space on a city-owned wireless support structure</td>
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<td>Maintenance associated with space occupied on a city-owned</td>
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<td>100 max watts OR actual costs,</td>
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The stricken language is deleted; the underlined language is inserted.
Section 13. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 14. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

**Action on this Ordinance:**

Date of introduction:
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:

The stricken language is deleted; the underlined language is inserted.
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

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

David E. Maeda, City Clerk
City Council Agenda Item #10B
Meeting of Jan. 26, 2018

Brief Description: Request to the chief judge of Hennepin County District Court regarding charter commission appointment

Recommended Action: Direct staff to send a letter to the chief district judge recommending the appointment of Brad Wiersum to the charter commission

Background
The Minnetonka charter commission is allowed by law to have from seven to 15 members, but in the past decade or more, has been comprised of nine members. Due to recent changes in the commission makeup, the city attorney recommends that the city council formally request the Hennepin County District Court chief judge to appoint Mayor Brad Wiersum to the charter commission.

By state law, the chief judge of Hennepin County District Court makes appointments to the charter commission. The city council is allowed to make an appointment only where the chief judge fails to do so. State law also allows the city council or the charter commission to recommend eligible persons to the chief judge for appointment.

In recent history the charter commission has had nine members, but in 2017 the membership dropped to eight when a member did not seek reappointment. In addition, due to former mayor Terry Schneider’s decision not to seek reelection in 2017, the charter commission no longer has a current council member on the commission. Former mayor Terry Schneider remains a member of the charter commission, because his term as mayor and his term as charter commission member are independent from each other.

For at least the past 20 years, at least one member of the city council has served concurrently on the charter commission. Members of the charter commission discussed the issue at the November 9, 2017 charter commission meeting, and there was a general consensus that the commission would benefit from having a council member appointed. Mayor Brad Wiersum has expressed an interest in serving on the charter commission.

Staff has prepared a letter to the chief district judge for the council’s consideration.

Recommendation
Direct staff to send a letter to the chief district judge recommending the appointment of Brad Wiersum to the charter commission.

Submitted through:
  Geralyn Barone, City Manager

Originated by:
  Corrine Heine, City Attorney
February 27, 2018

The Hon. Ivy Bernhardson
Chief Judge of Hennepin County District Court
300 South Sixth Street
Minneapolis, MN 55487

RE: Minnetonka Charter Commission

Dear Judge Bernhardson:

This letter is sent on behalf of the Minnetonka city council, pursuant to Minn. Stat. § 410.05, subd. 3. The council nominates and requests appointment of Brad Wiersum to the Minnetonka charter commission. Mr. Wiersum is the mayor of Minnetonka.

At the present time, the Minnetonka charter commission has only eight members. Former member Al Thomas did not seek reappointment when his term expired in March 2017. The appointment of Brad Wiersum would bring the commission to a complement of nine members.

For at least 20 years, and perhaps longer, the Minnetonka city charter commission has benefited by having a member of the Minnetonka city council also serve as a member of the charter commission. Since 2007, that member has been Terry Schneider, who served as a city council member and as mayor while also serving on the charter commission. Terry Schneider did not seek reelection in 2017. Although Mr. Schneider will continue to serve out his term on the charter commission, there is no currently-sitting city council member serving on the charter commission.

Mr. Wiersum has lived in Minnetonka for 26 years. He has served on the city council since 2003 and was elected mayor in 2017. Mr. Wiersum knows the community and understands the workings of a city -- not only of Minnetonka specifically, but also the broader interplay of local and state government operations. He currently sits on the League of Minnesota Cities board of directors and has previously served as president of Metro Cities. His knowledge, experience and judgment give him a perspective that will serve the charter commission and the public well.

Thank you for your consideration of this request.
Sincerely,

Brad Wiersum
Mayor

Deb Calvert
Council Member at Large – A

Patty Acomb
Council Member at Large - B

Bob Ellingson
Council Member – Ward 1

Tony Wagner
Council Member – Ward 2

Tim Bergstedt
Council Member – Ward 4
Brief Description
Resolution reaffirming previous preliminary and final plat approval of TONY’S ADDITION at 9597 Sandra Lane

Recommendation
Adopt the resolution reaffirming the previous preliminary and final plat approval

Background

On Jan. 23, 2017, the city council approved the TONY’S ADDITION preliminary and final plats. The previously approved plats would 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. As outlined in city code and the adopted resolution, the preliminary and final plat approval would be void if: (1) a final plat was not recorded by Jan. 23, 2018; and (2) the city council did not approve a time extension by Jan. 23, 2018.

Neither of these tasks were completed by the required deadline. As such, the applicant, James Yacoub, is now requesting reaffirmation of the previously approved preliminary and final plats.

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) there have been no changes to city code or policy that could affect the previous approvals; and (3) reaffirmation would not adversely affect the interests of neighboring property owners. Staff finds that reaffirmation of the previous approval is reasonable, as:

1. The plat continues to meet all minimum zoning and subdivision ordinance standards;
2. Reaffirmation would not adversely impact the surrounding area.

Recommendation

Staff recommends the city council adopt the resolution reaffirming the previous preliminary and final plat approval of TONY’S ADDITION.

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

Originated by:
Drew Ingvalson, Planner
Location Map

Project: TONY'S ADDITION
Address: 9597 Sandra Lane
Drew Ingvalson

From: James Yacoub <jyacoub@northstarrealesstates.com>
Sent: Friday, February 02, 2018 2:48 PM
To: Drew Ingvalson
Subject: Re: 9597 Sandra Lane

Drew, We would like to reaffirm the Resolution No. 2017-010 for 9597 Sandra lane. Please get us on the agenda for the next City Council meeting. Thanks and let me know if you need anything else.

Thanks,
James Yacoub, Broker
Northstar Real Estate Associates
- Cell
- Office
- Fax
750 South Plaza Dr #221
Mendota Heights, MN 55120

On Thu, Jan 4, 2018 at 2:39 PM, Drew Ingvalson <dingvalson@eminnetonka.com> wrote:

James,

Good afternoon. I am following up with you to see if you ever filed the final plat at the county for the Tony’s Addition Plat. It appears that the county hasn’t updated the property with the new property lines or descriptions yet.

Thanks.

Drew Ingvalson | Planner
City of Minnetonka | eminnetonka.com
14600 Minnetonka Blvd. | Minnetonka, MN 55345
Office: 952-939-8293
This cover sheet is now a permanent part of the recorded document.
Resolution No. 2017-010

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) Rain gardens 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: Allendorf
Seconded by: Wiersum
Voted in favor of: Wagner, Ellingson, Allendorf, Acomb, Wiersum, Schneider
Voted against:
Abstained:
Absent: Bergstedt
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
approved in 2003 and it was unfair that there has been no talk or public comment opportunity about the project for 14 years. She said she moved into the area in 2010 and first found out about the project last summer when a work crew cleared a path along the shoreline. The biggest concern was the eight foot wide asphalt trail that will come within 90 some feet of the shoreline. The negative effects of asphalt on waterways has been proven again and again. Oils, heavy metals, and other chemicals have adverse effects. Asphalt also heats up the planet. Natural vegetation was always best for the environment. She said another concern was the impact on the wildlife. She truly believes the harm will outweigh any benefit the trail might provide. The neighbors were asking the project be put on hold until there could be more review.

Barone noted the trail was part of the civic center campus master plan. Much of the plan was completed but there were some trails that were not completed partly due to the recession. The plan has been part of the CIP for the past five years. She said there were some approvals still needed before the trail would be built. The Minnehaha Creek Watershed District has to provide their approvals. The planning commission also would hold a public hearing due to the wetland crossings.

Rick Bruce, 3310 Hazelwood West, said it was his understanding that there wasn’t any more public comment period because it was decided in 2003. Schneider said the master plan was approved in 2003. The funding for the project was approved through the capital improvements program but it still needed approvals by the watershed district and to be reviewed by the planning commission. Bruce said he thought it was unconscionable that the approval occurred 14 years ago before many of the current residents lived in the area. Wiersum said that although the project was approved in 2003, there still would be a public process before the trail was constructed. Barone said the details related to the construction of the trail was what will be reviewed and discussed. The trail has already been approved.

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**

   Wagner noted there were residents present who wished to speak on the item so he asked that it be pulled from the consent agenda.

   City Planner Loren Gordon reviewed the planning commission discussion and the recommendation for an easement.
Karin Flynn, 9607 Ann Lane, said she was concerned about the easement because of the Sandra Lane and Ann Lane loop. She said the thought was this was going to be a walking trail but the truth was, as a planning commissioner stated, this was an easement to nowhere. She has never seen people walking back the other way with bags from Cub or Target. There was a recommendation that this might become a bus stop but it was much easier to go to the existing bus stop on Minnetonka Boulevard. She said there have been thefts from the two houses that sit along the walk where the easement is supposed to go. Cars have also been broken into. She asked the easement not be put in.

Amy Franklin, 9602 Sandra Lane, said she sees kids on bikes and walkers but you don’t see families and people taking strolls on the trail. She noted the planning commission discussed walkability, which she has no qualms about, but the question is who are the people using the trail and where they are going to. She noted cash and gaming were taken from the house that was broken into and not the diamond necklace and wallet sitting out in the open. This indicated kids might be involved. She didn’t consider cutting through two homes into a townhouse lot to be about walkability. The people are not coming back with shopping bags but rather it was about how one could get through and get through fast.

Bergstedt was excused for the rest of the meeting at 6:52 p.m.

Wagner said the planning commission discussed the easement which was asked for by Metro Transit so the assumption was the neighbors had asked for it. This was counter to what Flynn and Franklin said. He had heard no advocacy for the easement and the question was if an easement was done this far why not do the easement all the way or not do it at all. Even if an easement was done, there was little chance anything would be done given it being on the border with St. Louis Park and the private property involved.

Schneider said the fact the city could get the easement at no cost as part of a planning process was the reason it was being suggested.

Wiersum asked staff’s comments on phase two of the easement if Metro Transit decided to build a path for connectivity. What was the vision for the trail in the future if it ever got built? Gordon said staff discussed what the optimum alignment would be if the trail was desired. Ideally work would be done with the townhome property owner to do a better trail.

Wagner said the neighbors didn’t see the need for connectivity to the neighborhood. The city typically liked to see connectivity to transit stops.
but the reality was he gave this one a less than one percent chance of being built and even there was an easement, the city had the right to determine if it wanted a trail there. The city usually does not turn down the opportunity for an easement. Given participation would be needed from St. Louis Park and the landowners for a trail to be built, he wasn’t as concerned about the easement.

Wiersum said even if an easement was not put in now, it would not mean a trail could not be built sometime in the future. It would mean taxpayer money would probably be needed to purchase the access as opposed to getting the easement now for free.

Schneider said there was a long standing philosophy that when there was an opportunity to provide a legitimate connection and/or easement for trails or in some cases right-of-way, without any significant negative impact, that the city just did it. The planning process was about projecting what might happen 50 years from now. While it might be unsettling for the neighbors to think the trail would be built, it was unlikely to happen in the near term. Even if Metro Transit decided to move ahead it would need city approval.

Wagner said the action the council was taking was more of a paperwork process than active planning to build a trail.

Allendorf moved, Wiersum seconded a motion to adopt resolution 2017-010 approving the preliminary and final plat for TONY’S ADDITION at 9597 Sandra Lane. All voted “yes.” Motion carried.

B. Amended and restated subscription agreements with WGL Energy Systems, Inc.

Allendorf moved, Acomb seconded a motion to 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 and to 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. All voted “yes.” Motion carried.

C. Ordinance amending permit fees, land use application fee and mechanical contractor licenses

Allendorf moved, Acomb seconded a motion to adopt ordinance 2017-03. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None
City Council Agenda Item #10A  
Meeting of January 23, 2017

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
MINNETONKA PLANNING COMMISSION  
January 5, 2017

<table>
<thead>
<tr>
<th>Brief Description</th>
<th>Preliminary and final plat of TONY’S ADDITION at 9597 Sandra Lane</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>Recommend the city council adopt the resolution approving the plats</td>
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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:

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<tr>
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<th>REQUIRED</th>
<th>LOT 1</th>
<th>LOT 2</th>
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<tbody>
<tr>
<td>Lot area</td>
<td>22,000 sf</td>
<td>64,127 sf</td>
<td>78,214 sf</td>
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<td>Width at ROW</td>
<td>80 ft</td>
<td>104.8 ft</td>
<td>80 ft</td>
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<tr>
<td>Width at setback</td>
<td>110 ft</td>
<td>118.6 ft</td>
<td>110 ft</td>
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<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

Location Map

City of minnetonka

This map is for illustrative purposes only.
PRELIMINARY PLAT OF: TONY'S ADDITION

EXISTING LEGAL DESCRIPTION:
Lot 2, Block 1, Lemoe's Addition, Hennepin County, Minnesota

TO BE PLATTED AS:
Lots 1 and 2, Block 1, TONY'S ADDITION, Hennepin County, Minnesota

SUBDIVISION SUMMARY:
The total number of lots is equal to 2. The total area is 146,340 square feet.

PROPOSED AREA:
The area Lot 1, Block 1, TONY'S ADDITION equals 56,277 square feet in 1.072 acres.
The area Lot 2, Block 1, TONY'S ADDITION equals 89,683 square feet in 1.766 acres.

BUILDABLE AREA:
The area Lot 1, Block 1, TONY'S ADDITION equals 48,790 square feet in 1.046 acres.
The area Lot 2, Block 1, TONY'S ADDITION equals 48,646 square feet in 1.052 acres.

GENERAL NOTES:
The County owner is included in Lemoe's Addition.

The site is developed in a standard manner, and the proposed plat is in accordance with the County's standards for such development.

The site is being developed under the County's regulations and guidelines for residential development.

The proposed plat is in accordance with the County's zoning regulations and the approved plat.

Preliminary Plat of TONY'S ADDITION

FOR:

HARMS TAKER

SITEL:
DANAS LANE

MINNEAPOLIS, MINNESOTA

HENNEPIN COUNTY

SURVEYOR:
Rory S. Johnson Co., Inc.

ADDRESS:
3007 Sibley Lane

EDINA, MINNESOTA 55435

NOTE:
This plat is based on the Approved Plat of TONY'S ADDITION.

The site is developed in a standard manner, and the proposed plat is in accordance with the County's standards for such development.

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The site is developed in a standard manner, and the proposed plat is in accordance with the County's standards for such development.

The site is being developed under the County's regulations and guidelines for residential development.

The proposed plat is in accordance with the County's zoning regulations and the approved plat.
My name is Nancy Kallestad. I am the property owner at 9602 Ann lane. When I first moved in back in apprx 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.

Respectfully 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.**
Resolution No. 2018-

Resolution reaffirming the previous preliminary and final plat approval 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 On Jan. 23, 2017, the city council adopted Resolution No. 2017-10, approving the preliminary and final plats of TONY’S ADDITION.

1.02 The previously approved plats would subdivide 9597 Sandra Lane into two single-family residential lots. The subject property is legally described as follows:

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

1.03 The approval granted under Resolution No. 2017-10 expired on Jan. 23, 2018.

1.04 The applicant, James Yacoub, is requesting reaffirmation of the previously approved preliminary and final plats.

Section 2. Findings.

2.01 Reaffirmation of the preliminary and final plat approval is appropriate for three reasons:

1. There have been no changes to the previously approved preliminary and final plats.

2. There have been no changes to city code or policy that would affect the previous approval. The plat meets all minimum zoning and subdivision ordinance standards.

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

Section 3. Council Action.
The TONY’S ADDITION preliminary and final plat approval is hereby reaffirmed, subject to the following conditions:

1. Approval is subject to the conditions outlined in Resolution No. 2017-10.

2. This approval will be void if: (1) a final plat is not recorded by Feb. 26, 2019; and (2) the city council has not received and approved a written application for a time extension by Feb. 26, 2019.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent: Allendorf
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 Feb. 26, 2018.

David E. Maeda, City Clerk
City Council Agenda Item #10D  
Meeting of Feb. 26, 2018

**Brief Description**  
Resolution approving preliminary and final plats of SIMPSON PARK ADDITION at 15617 Lake Street Extension

**Recommendation**  
Adopt the resolution approving the preliminary and final plats

**Background**

The applicants, James and Sheri Simpson, have submitted an application to subdivide an existing 1.6-acre property into three lots. An existing home and accessory structure would be removed in order to accommodate three new homes.

**Planning Commission Hearing**

The planning commission considered the proposal on Feb. 1, 2018. The staff report from that meeting and various plans and documents describing the proposal are attached. Staff recommended approval of the subdivision noting:

1) The proposed lots would meet or exceed minimum R-1 lot standards.

2) As proposed, the project would meet the tree ordinance requirements.

At the planning commission meeting, a public hearing was opened to take comment. No one from the public spoke regarding the proposal.

**Planning Commission Recommendation**

On a 6-0 vote, the commission recommended that the city council approve the requests. Meeting minutes are attached. There have been no changes to the proposal.

**Staff Recommendation**

Staff recommends the city council adopt the resolution approving the preliminary and final plats for SIMPSON PARK ADDITION at 15617 Lake Street Extension.

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

Originator:  
Drew Ingvalson, Planner
MINNETONKA PLANNING COMMISSION
Feb. 1, 2018

**Brief Description**  Preliminary and final plat approval for SIMPSON PARK ADDITION, a three-lot subdivision at 15617 Lake Street Extension

**Recommendation**  Recommend the city council adopt the resolution approving the plats

---

**Introduction**

The 1.6-acre subject property is located at 15617 Lake Street Extension and is currently improved with a 1,315 square foot single-family home and a detached garage. The home was originally constructed in 1920.

The property gradually slopes upward from the north side of the property to the southwest side of the property, with an increased slope near the southern property line. The subject home is located on a high elevation point of the property. Additionally, there is a two-tiered retaining wall system in the right-of-way north of the subject property (Lake Street Extension). This retaining wall is constructed of lumber and is owned by the city. The total combined height of the two retaining walls is approximately 10 feet. (See attached).

There are 28 high priority trees and 25 significant trees on the subject property. The majority of the high priority trees are located on the north side of the site and the bulk of the significant trees are located in the center of the property.

**Proposal**

The applicants, James and Sheri Simpson, have submitted an application to subdivide the existing property into three lots. The existing home and accessory structure would be removed in order to accommodate three new homes.

The three lots would meet minimum lot area requirements for properties zoned R-1, as outlined in the subdivision ordinance. (See below).

<table>
<thead>
<tr>
<th></th>
<th>Required by ordinance</th>
<th>Lot 1</th>
<th>Lot 2</th>
<th>Lot 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total area</strong></td>
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<tr>
<td><strong>Width at ROW</strong></td>
<td>80 ft</td>
<td>110 ft</td>
<td>118 ft</td>
<td>117 ft</td>
</tr>
<tr>
<td><strong>Width at setback</strong></td>
<td>110 ft</td>
<td>110 ft</td>
<td>118 ft</td>
<td>117 ft</td>
</tr>
<tr>
<td><strong>Lot depth</strong></td>
<td>125 ft</td>
<td>206 ft</td>
<td>206 ft</td>
<td>206 ft</td>
</tr>
</tbody>
</table>

**Primary Questions and Analysis**

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines both the primary questions associated with the primary subdivision and staff's findings.
Meeting of Feb. 1, 2018

Subject: Simpson Park Addition, 15617 Lake St. Ext.

- **Are the proposed lots reasonable?**

  Yes. The city’s subdivision ordinance outlines minimum area and dimensional standards for single-family residential lots. The proposed lots would meet and exceed minimum R-1 lot standards.

- **Would the proposal meet the tree ordinance?**

  Yes. As proposed, the applicant would be removing nine of the 28 high priority trees (32 percent), which is below the 35 percent that can be removed by ordinance. Additionally, the applicant would be removing 19 of the 25 significant trees on the property (76 percent). If approved, the applicant may be required to mitigate for some of the trees removed during home construction. However, mitigation requirements would be determined based on actual grading associated with the building permit submittal.

**Staff Recommendation**

Recommend the city council adopt the resolution approving the preliminary and final plat for SIMPSON PARK ADDITION.

Originator:  Drew Ingvalson, Planner
Through:  Loren Gordon, AICP, City Planner
Meeting of Feb. 1, 2018
Subject: Simpson Park Addition, 15617 Lake St. Ext.

### Supporting Information

<table>
<thead>
<tr>
<th><strong>Project No.</strong></th>
<th>17028.17a</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Property</strong></td>
<td>15617 Lake Street Extension</td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>James and Sherri Simpson</td>
</tr>
<tr>
<td><strong>Surrounding</strong></td>
<td>The properties to the north, east, and west are single-family residential homes.</td>
</tr>
<tr>
<td><strong>Land Uses</strong></td>
<td>The property to the south is Wilson Park (owned by the City of Minnetonka). All properties are zoned R-1 and guided for low density residential.</td>
</tr>
</tbody>
</table>
| **Planning**    | Guide Plan designation: Low density residential  
                 Zoning: R-1 |
| **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 permits. |
| **Retaining Wall** | There is a two-tiered retaining wall within the Lake Street Extension right-of-way to the north of the property. The life of the retaining wall is unknown. In the future, the retaining wall will require maintenance in the form of reconstruction or removal. To prepare for this, staff is requesting an easement over a northern portion of the property. |
| **Stormwater**  | Stormwater management would be required for each of the new homes to provide for infiltration, water quality and rate control for all impervious surfaces. Each of the homes would provide individual stormwater management, which would be reviewed at the time of a building permit. |
| **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. |
| **Neighborhood Comments** | The city sent notices to 57 area property owners and received no comments to date. |
Meeting of Feb. 1, 2018
Subject: Simpson Park Addition, 15617 Lake St. Ext.

Pyramid of Discretion

This Proposal

Motion Options
The planning commission has three options:

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

Deadline for Decision
April 14, 2018
Location Map
Project: Simpson Park Addn
Applicant: James & Sheri Simpson
Address: 15617 Lake St Ext
PRELIMINARY PLAT OF SIMPSON PARK ADDITION

LEGAL DESCRIPTION:
Hennepin County, Minnesota

SCOPE OF WORK & LIMITATIONS:
1. Surveying the length and direction of boundary lines of the legal description listed above. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct and that any numbers of record, such as assessments, that you wish to be included on the survey have been shown.
2. Showing the location of existing improvements we deem necessary for the survey.
3. Setting survey markers or verifying existing survey markers to establish the corners of the property.
4. Showing elevations on the site at selected locations to give some indication of the topography of the site. We have also provided a benchmark for your use in determining elevations for construction on this site. The elevations shown relate only to the benchmark provided on this survey. Use the benchmark and check at least one other framing on the survey to establish the elevations of this site or any building construction.
5. The subject property contains 71,270 Sq. Ft.
6. Note that all building dimensions and building toe dimensions to the property lines, are taken from the siding and/or stoops of the building.
7. While we show a proposed location for this home on this site, we are not as familiar with your proposed plans as you, your architect, or the builder site. Review the proposed location of the improvements and proposed yard grades carefully, to verify that they match your plans before construction begins. Also, we are not as familiar with local codes and minimum requirements as the local building and zoning officials in your community are. Be sure to show this survey to said officials, or any other officials that may have jurisdiction over the proposed improvements and obtain their approval before beginning construction or planning improvements to the property.
8. While we show the building setback lines per the City of Minnetonka web site, we suggest you show this survey to the adjacent city officials to be sure that the setback lines are shown correctly. Do this BEFORE you use this survey to design anything for this site.

STANDARD SYMBOLS & CONVENTIONS:

- Denotes item survey marker set, unless otherwise noted.

LEGEND

PROPOSED LOT 1 (LOOK OUT)

PROPOSED ELEVATIONS
FIRST FLOOR/SECOND FLOOR: 988.00
TOP OF FOUNDATION: 998.00
GRADING ALONG: 1008.00
GARAGE FLOOR: 1018.00

PROPOSED LOT 2 (LOOK OUT)

PROPOSED ELEVATIONS
FIRST FLOOR/SECOND FLOOR: 950.00
TOP OF FOUNDATION: 958.00
GRADING ALONG: 968.00
GARAGE FLOOR: 978.00

PROPOSED LOT 3 (LOOK OUT)

PROPOSED ELEVATIONS
FIRST FLOOR/SECOND FLOOR: 915.00
TOP OF FOUNDATION: 925.00
GRADING ALONG: 935.00
GARAGE FLOOR: 945.00

PROPOSED LOT 4 (LOOK OUT)

PROPOSED ELEVATIONS
FIRST FLOOR/SECOND FLOOR: 935.00
TOP OF FOUNDATION: 943.00
GRADING ALONG: 953.00
GARAGE FLOOR: 963.00

LEGAL DESCRIPTION:
15617 LAKE STREET EXTENSION
MINNETONKA, MN

Advance
Surveying & Engineering, Co.

EXHIBIT: OCTOBER 31, 2017
CONTRACTOR: DECEMBER 12, 2017
171180 TB
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There will be a study session with the city council, planning commission, park board, and economic development authority commission on Feb. 12, 2018.

6. **Report from Planning Commission Members**

Schack thanked staff for the work being put into the informative comprehensive guide plan meetings. She invited citizens wanting to be more involved to attend the meetings.

Schack provided that the State of the City address will be given Feb. 7, 2018 at 7:30 a.m. at city hall.

7. **Public Hearings: Consent Agenda**

No items were removed from the consent agenda for discussion or separate action.

*Powers moved, second by Schack, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:*

A. Amendment to the Minnetonka Corporate Center sign plan as it pertains to the building at 12701 Whitewater Drive.

Adopt the resolution amending the Minnetonka Corporate Center sign plan as it pertains to the building at 12701 Whitewater Drive.

*Powers, Schack, Sewall, Knight, O’Connell, and Kirk voted yes. Motion carried and the items on the consent agenda were approved as submitted.*

8. **Public Hearings**

A. Preliminary and final plat for Simpson Park Addition, a three-lot subdivision at 15617 Lake Street Extension.

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.

In response to Chair Kirk’s question, Colleran identified which trees would be removed.

Jim Simpson introduced himself and his son, Tom Simpson. Jim Simpson explained that he and his wife purchased the lot and intend to build a house for Tom Simpson in 2018. The other two houses would be built over time.

The public hearing was opened. No testimony was submitted and the hearing was closed.
Schack asked if replacing the retaining wall in the future would create an issue. Colleran explained that replacing the retaining wall would cause removal of trees. The retaining wall would need to be replaced regardless if the proposal would be completed or not.

_O’Connell moved, second by Knight, to recommend that the city council adopt the resolution approving the preliminary and final plat for Simpson Park Addition._

_Powers, Schack, Sewall, Knight, O’Connell, and Kirk voted yes. Motion carried._

Chair Kirk stated that this item is tentatively scheduled to be reviewed by the city council on Feb. 26, 2018.

B. **Conditional use permit with variances and an expansion permit for a restaurant with outdoor seating area at 5445 Eden Prairie Road.**

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

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

Schack asked staff to compare parking for the proposal with the Station Pizza and Gold Nugget sites. Thomas provided a chart detailing parking for Ike’s, People’s Organic, and Gold Nugget.

Sewall asked where off-site parking could be located. Thomas answered that there is an office building on the south side that has different peak hours of operation, a bank on the north side, and there are some churches in the area that are being considered. The restaurant’s staff would typically be the ones required to park off-site. The conditional use permit would require a parking agreement to be in place between the property owners.

In response to Chair Kirk’s question, Thomas noted that the site is currently at its hard-surface coverage maximum.

Chris Bjorling and Danielle Bjorling, applicants, introduced themselves. Mr. Bjorling stated that:

- He appreciated Thomas explaining the project so well.
- The proposal is looking at redeveloping the space in the Glen Lake neighborhood to continue the revitalization that is happening there.
- The Copper Cow is intended to be a very family-friendly, neighborhood restaurant selling burgers, fries, salads, and sandwiches. There would be a pick-up window and walk-up counter with ice cream.
- He has been working to maximize the parking and is in negotiations with the property owner across the street to lease additional parking. Employee and over-flow parking is being considered at another site.
Resolution No. 2018-

Resolution reaffirming the previous preliminary and final plat approval 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 On Jan. 23, 2017, the city council adopted Resolution No. 2017-10, approving
the preliminary and final plats of TONY’S ADDITION.

1.02 The previously approved plats would subdivide 9597 Sandra Lane into two
single-family residential lots. The subject property is legally described as follows:
Lot 2, Block 1, Lohman’s Amhurst 4th Addition, Hennepin County, Minnesota

1.03 The approval granted under Resolution No. 2017-10 expired on Jan. 23, 2018.

1.04 The applicant, James Yacoub, is requesting reaffirmation of the previously
approved preliminary and final plats.

Section 2. Findings.

2.01 Reaffirmation of the preliminary and final plat approval is appropriate for three
reasons:

1. There have been no changes to the previously approved preliminary and
final plats.

2. There have been no changes to city code or policy that would affect the
previous approval. The plat meets all minimum zoning and subdivision
ordinance standards.

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

Section 3. Council Action.
3.01 The TONY’S ADDITION preliminary and final plat approval is hereby reaffirmed, subject to the following conditions:

1. Approval is subject to the conditions outlined in Resolution No. 2017-10.

2. This approval will be void if: (1) a final plat is not recorded by Feb. 26, 2019; and (2) the city council has not received and approved a written application for a time extension by Feb. 26, 2019.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

__________________________________________
Brad Wiersum, Mayor

Attest:

__________________________________________
David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent: Allendorf
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 Feb. 26, 2018.

__________________________________________
David E. Maeda, City Clerk
Brief Description: Resolution for the 2018 Street Rehabilitation project, Woodhill Road area

Recommended Action: Adopt the resolution

Background

On Oct. 9, 2017, the city council adopted a resolution authorizing the preparation of plans and specifications for the 2018 Street Reconstruction project, Woodhill Road area. This project is located on Woodhill Road from Excelsior Boulevard north to Highway 7 and proposes to correct deficiencies of the underlying utilities – aged watermain, as well as reconstruct and resurface the roadway, and provide a new pedestrian trail.

Proposed Improvements

Street and Sidewalk/Trail
Full roadway replacement with new curb and gutter is proposed from Highway 7 south to Tree Street. The width of the existing roadway surface is typically 39-feet, and is proposed to be reduced to accommodate the addition of an off road multi-use trail on the west side of the roadway within the existing street footprint. This will minimize impacts to trees, driveways, and landscaping. The width of the proposed roadway will meet or exceed the city’s standard section of 26-feet wide throughout the project, ranging from 26-feet to 39-feet. This will provide shoulder widths of 2-feet to 4-feet throughout the corridor as well as provide an additional northbound left turn lane from Quigley Road to the Highway 7 South Frontage Road.

A partial roadway reclamation is proposed from Tree Street south to Excelsior Boulevard. This will consist of spot curb and gutter replacement and reclamation of the road, which consists of grinding up the existing pavement to gravel and repaving. The new roadway surface will remain within the existing footprint, and minimize impacts to the streetscape improvements that were installed in 2008 which enhanced pedestrian facilities and street lighting.

Sidewalk/Trail
The 8-foot existing sidewalk on the west side of Woodhill Road from Excelsior Boulevard to Tree Street is proposed to remain.

North of Tree Street, the existing 5-foot wide concrete sidewalk is proposed to be replaced with a new 8-foot wide bituminous trail adjacent to the back of the curb, on the
west side of Woodhill Road from Tree Street north to Atrium Way. A new 8-foot wide bituminous trail will then be constructed further north in this area from Atrium Way to the existing sidewalk on the south side of the Highway 7 South Frontage Road.

Grading, tree removal, and impacts to landscaping of adjacent properties are necessary for the new trail, however by reducing the shoulder width of the roadway, these impacts will be minimized to the greatest extent feasible. Individual meetings with adjacent property owners to discuss project impacts occurred over recent months.

Utilities
Water main is proposed to be replaced throughout the project, including water services to the right-of-way line. The project will include the replacement of a 36-inch diameter transmission water main, the replacement of a smaller 8-inch distribution water main between Highway 7 and Westgate Road (south), and the construction of a new distribution main south of Westgate Road. The new distribution water main will allow for the removal of private services off the larger transmission line, to improve service reliability in the future.

Sanitary sewer is in fairly good condition and only isolated areas have been identified for repair. Additionally, manhole castings will be replaced to eliminate inflow and infiltration at all locations.

Storm sewer improvements include additional surface drains where needed in the roadway and new pipe to improve conveyance of storm water. Sediment collection structures have been included to improve water quality near outlet locations. Overall drainage patterns are proposed to remain the same as the current conditions. Where feasible, modifications to the drainage system have been made to improve private drainage concerns brought up at the neighborhood meeting.

The existing Xcel Energy maintained street lights in the project area on Woodhill Road will be replaced, including on Woodhill Road north of Tree Street, Atrium Way, and Beacon Hill Road north of Tree Street. The Xcel Energy agreement with actual costs for this work will be included at the time of council bid consideration in April. Also, the city will be replacing city maintained street lights on Tree Street and Beacon Hill Road south of Tree Street, which follow the Glen Lake Village Center theme. This lighting replacement will be completed by a separate city contract in late summer, which allows the city to take advantage of its tax-exempt status in purchasing the lighting units and materials separately. No improvements are proposed to the existing street lights south of Tree Street that were installed in 2008.

The project also proposes burial of overhead utility lines along the east side of Woodhill Road; however, the transmission lines on the west side of the roadway are not proposed to be buried as Xcel Energy does not bury these higher voltage lines. In an effort to coordinate and complete this work as efficiently as possible, Xcel Energy crews
began work earlier this month ahead of the project contract award as approved by council on Jan. 24, 2018. This work included very isolated areas of tree removal.

**Easement Acquisition**
Currently, permanent easement acquisition is not necessary with this project; however, city staff has worked with some individual property owners to obtain small temporary easements that will allow for isolated project improvements, such as drainage corrections and wall replacements. All temporary easements will be donated by the benefiting individual property owners.

**Public Input**
An informational meeting was held with the affected neighborhood on Sept. 28, 2017. Approximately 80 residents out of 449 invited households attended and staff presented a concept layout that incorporated proposed streets, storm sewer, utility work, and new trail. Staff discussed rehabilitation projects of this type, which require open cut excavations that are very intensive and disruptive to access in and out of the neighborhood, due to the extent of the excavations required. Also, the project will require tree removal and disruptions to utility service. Residents were generally supportive of the project.

Much of the resident questions and discussion involved the width of the proposed roadway and the side of the street the trail was proposed to be constructed. Specific concerns were raised regarding if parking would be restricted as a result of the narrower street. Parking is not proposed to be restricted as part of the project, but staff acknowledged at the meeting that shoulders would be reduced. Parking on Woodhill Road does not appear to be commonplace today, and when parking was observed in the project area traffic was able to be accommodated even when parked vehicles encroached the drive lane. When asked if parking on Woodhill Road was common or a problem, the general consensus of neighbors at the meeting was that parking is not common and special accommodations for a designated parking area are not necessary.

At the meeting, staff further presented information on the different ways to stay informed during construction. Staff has been using various strategies to provide updates for other city projects including: signage, text alerts, email updates, citizen alerts, and newsletters.

**Estimated Project Costs and Funding**
The total estimated construction cost, including engineering, administration, and contingency is $10,300,000. The budget amount for the project is shown below and is included in the 2018 – 2022 Capital Improvements Program (CIP). Fund balances currently can support the estimated increase in costs, but will be dependent on actual bids received.
As shown in the attached funding summary, current cost projections indicate there will be savings from the 2017 Street Rehabilitation Project, which may provide the additional funding needed for this project, dependent on actual bids received.

<table>
<thead>
<tr>
<th>Budget Amount</th>
<th>Proposed Funding</th>
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<tbody>
<tr>
<td>Construction Costs</td>
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<td>Contingencies</td>
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<td>Engineering, Administration, and Indirect Costs</td>
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<td>Overhead Power Burial</td>
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<td>Street Lighting Replacement</td>
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<td>Easements</td>
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<td>Street Improvement Fund</td>
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<tr>
<td>Utility Fund</td>
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<tr>
<td>Storm Sewer Fund</td>
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<tr>
<td>Electric Franchise Fund</td>
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<tr>
<td><strong>Total Budget</strong></td>
<td><strong>$10,150,000</strong></td>
<td><strong>$10,300,000</strong></td>
</tr>
</tbody>
</table>

**Schedule**

If the recommended actions are approved by council, staff is planning to open bids on April 5 with intentions of council consideration to award the contract on April 16.

Roadway and utility construction will likely begin in late April or early May. The project is planned to be completed in four phases to provide residents better access during construction, with substantial completion in late October.

**Recommendation**

Adopt the attached resolution accepting plans and specifications and authorizing the advertisement for bids for the 2018 Street Reconstruction, Woodhill Road area Project No.18401.

Submitted through:
  Geralyn Barone, City Manager
  Will Manchester, PE, Director of Engineering

Originated by:
  Chris LaBounty, PE, Engineering Project Manager
RESOLUTION NO. 2018-
Resolution accepting plans and specifications and authorizing the advertisement for bids for the 2018 Street Rehabilitation Project, Woodhill Road area

Be It Resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. Pursuant to city council authorization on Oct. 9, 2017, plans and specifications have been prepared by and/or under the direction of the city engineer who is a Licensed Professional Engineer in the State of Minnesota for the 2018 Street Rehabilitation Project, Woodhill Road area.

1.02. The plans and specifications for the construction of the aforementioned project have been presented to the city council for approval.

Section 2. Council Action.

2.01. The plans and specifications, copies of which are on file in the engineering department, are hereby accepted upon the recommendation of the city engineer.

2.02. The city clerk shall prepare and cause to be inserted in the official newspaper and in Finance & Commerce an advertisement for bids for the making of such improvements under such approved plans and specifications. The advertisement shall specify the work to be done, shall state that bids will be opened and read aloud at 2:00 p.m., local time, on April 5, 2018, in the Council Chambers at the Minnetonka City Hall, and that no bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier's check, bid bond or certified check made payable to the city clerk for five (5) percent of the amount of the bid.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

__________________________________________
Brad Wiersum, Mayor

ATTEST:

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

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent: Allendorf
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 Feb. 26, 2018.

__________________________________
David E. Maeda, City Clerk
# 2018 Street Rehabilitation Funding Summary

<table>
<thead>
<tr>
<th>Funding Sources</th>
<th>2018 CIP</th>
<th>2017 Carryover</th>
<th>Estimated Funding Woodhill Road</th>
<th>Estimated Funding Burwell Street Parking</th>
<th>Estimated Funding 2018 Mill and Overlay</th>
<th>Estimated Funding Delton Avenue</th>
<th>Balance</th>
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<tr>
<td>Street Improvement Fund - Local Street Rehab</td>
<td>$3,500,000</td>
<td>$1,300,000</td>
<td>$3,800,000</td>
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<td>$622,000</td>
<td>$100,000</td>
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<td>Storm Sewer Fund</td>
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<td>$450,000</td>
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<td>$4,600,000</td>
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<td>$1,100,000</td>
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<tr>
<td>Electric Franchise Fund</td>
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<tr>
<td>Other Agency Funds¹</td>
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<tr>
<td><strong>Total Project Cost</strong></td>
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<td>$700,000</td>
<td>$100,000</td>
<td>$1,758,000</td>
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</tbody>
</table>

¹ Reimbursement from City of St. Louis Park
Woodhill Road Reconstruction

2018 Street Rehabilitation

This map is for illustrative purposes only.
City Council Agenda Item #10F  
Meeting of Feb. 26, 2018

Brief Description: Labor agreement between the City of Minnetonka and Law Enforcement Labor Services, Inc. – Police Sergeants

Recommended Action: Approve the agreement

Background

Staff has negotiated a labor agreement with Law Enforcement Labor Services, Inc. (LELS), which represents the city’s police sergeants.

City staff and LELS representatives have reached agreement on a three-year contract for 2018 – 2020, the union employees have ratified it, and the city council is requested to approve it. Major changes to the existing labor agreement are described below, and all amendments can be found more specifically in the attached agreement.

Article XVIII. Health Insurance
The city’s contribution to the employee’s monthly cafeteria benefits program increased in 2018 from $925 to $970 dollars for those electing single coverage; $1,050 to $1,100 for those electing Employee plus Spouse; $1,050 to $1,205 for Employee plus Child(ren) coverage; and $1,150 to $1,250 for Family Coverage. The health insurance portion of the contract remains open for negotiating 2019 and 2020 contributions.

Article XXVII. Wellness/Fitness
The wellness and fitness component of the contract is a voluntary program. The sergeants program is administered by the police chief and currently utilizes a nationwide program called the cooper standard that incorporates age and gender differences to determine the various fitness criteria. The goal of this program is to incent a higher level of fitness to better perform the functions of the position and to help reduce workers compensation claims. By meeting established fitness goals an employee is eligible to earn 0.50% of base pay in additional compensation. By exceeding those fitness goals, an employee is eligible to earn an additional 1.50%, up from the previous contract of 1.0% of base pay. This program article now allows up to 2.0% additional compensation and is now aligned with the current officer’s contract.

Appendix A – Wages
In 2018, the base wage increase is 1.50%, and as part of the city’s MERIT program, a market analysis is conducted annually. If rates are found to be lower than the market comparison group, employees receive a market adjustment. In 2018, the market adjustment is 4.29%, for a total wage increase of 5.79%. In 2019 and 2020, the base wage increase is 1.50% each year plus any applicable market adjustments.

Additional Amendments
Several amendments are made to reflect the change in exclusive representation of the sergeant group to LELS and to remove references that affect the communication manager position and
the dispatch functions which were eliminated in the PSAP conversion to Hennepin County. Other minor housekeeping amendments have been made to reflect current practices such as the probationary periods and the MERIT pay program.

**Recommendation**

The city council is requested to approve the 2018 – 2020 labor agreement between the City of Minnetonka and Law Enforcement Labor Services, Inc. – Police Sergeants. This agreement allows the city to maintain a competitive salary and benefit package, focus on retaining sergeants with high levels of experience and training, as well as keep benefits standardized across employee groups.

Submitted through:
   Geralyn Barone, City Manager

Originated by:
   Perry Vetter, Assistant City Manager
LABOR AGREEMENT

BETWEEN

CITY OF MINNETONKA
MINNETONKA, MN AND

MINNESOTA TEAMSTERS PUBLIC AND
LAW ENFORCEMENT EMPLOYEES' UNION LOCAL #320
LAW ENFORCEMENT LABOR SERVICES, INC.

Representing
POLICE SERGEANTS

December 18, 2015 through December 14, 2017
December 15, 2017 through December 24, 2020
LABOR AGREEMENT
between
CITY OF MINNETONKA
and
MINNESOTA TEAMSTERS PUBLIC AND
LAW ENFORCEMENT EMPLOYEES' UNION, LOCAL NO. 320
LAW ENFORCEMENT LABOR SERVICES, INC.

ARTICLE I. PURPOSE OF AGREEMENT

This Agreement is entered into between the City of Minnetonka, hereinafter called the EMPLOYER, and the Teamsters Local No. 320 Law Enforcement Labor Services, Inc. representing the Minnetonka Police Sergeants hereinafter called the UNION.

It is the intent and purpose of this Agreement to:

1.1 Assure sound and mutually beneficial working and economic relationships between the parties hereto;

1.2 Establish procedures for the resolution of disputes concerning this Agreement's interpretation and/or application;

1.3 To set forth herein the basic and full agreement between the parties concerning rates of pay, hours, and other conditions of employment.

The EMPLOYER and the UNION through this Agreement shall continue their dedication to the highest quality police service and protection to the residents of Minnetonka. Both parties recognize the Agreement as the pledge of this dedication.

ARTICLE II. RECOGNITION

The EMPLOYER recognizes the UNION as the exclusive representative under Minnesota Statutes, Section 179A.03, Subd. 8, for all Police Sergeants and Communications Manager. The UNION agrees that it does not represent the Chief, the Captains or any other supervisory or confidential employees.

ARTICLE III. DEFINITIONS

3.1 Union means the Teamsters Local No. 320 Law Enforcement Labor Services, Inc. representing the Minnetonka Police Sergeants.

3.2 Employee means a member of the bargaining unit as defined in Article II.

3.3 Department means the Minnetonka Police Department.
3.4 Employer means the City of Minnetonka.
3.5 Chief means the Chief of the Minnetonka Police Department.
3.6 Compensatory Time means time off in lieu of pay.
3.7 Emergency means a situation or condition as so defined by the Chief.
3.8 Union Officer means officers elected or appointed by the Teamsters Local No. 320.
3.9 Basic Monthly Rate means the employee's monthly rate of pay or salary exclusive of any incentive, special or overtime pay.
3.10 Scheduled Work Day means a consecutive work period, including rest breaks and lunch breaks.
3.11 Shift means an employee's scheduled work days and days off.

ARTICLE IV. DISCRIMINATION

Neither the EMPLOYER nor the UNION shall discriminate against any employee covered by the Agreement because of the employee's membership or non-membership in the UNION.

ARTICLE V. EMPLOYER SECURITY

The UNION agrees that during the life of this Agreement they will not cause, encourage, participate in or support any strike. Violations of the Article shall be grounds for disciplinary action up to and including discharge without recourse to the Grievance Procedure of this contract.

ARTICLE VI. EMPLOYER AUTHORITY

The EMPLOYER and the UNION agree that certain hours, salaries and conditions of employment are established by City ordinances, City resolutions, and rules and regulations of the Minnetonka Police Department. This Agreement supplements hours, salaries, and other conditions of employment to the extent to which they are not in conflict. If in conflict, the law, ordinance, resolution or rule or regulation shall prevail.

The EMPLOYER retains the full and unrestricted right to operate and manage all manpower, facilities, and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules, and to perform any inherent managerial functions not specifically limited by this Agreement.

Any terms and conditions of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the EMPLOYER to modify, establish or eliminate.
ARTICLE VII. SPECIAL MEETINGS

The EMPLOYER and the UNION agree to meet and confer on matters of interest to both parties upon the request of either party. Special meetings shall be held within ten (10) calendar days after receipt of the request. Employee representatives of the UNION will not be paid extra compensation, if the meeting is called by the UNION.

ARTICLE VIII. HOURS OF WORK

8.1 The sole authority for work schedules is the EMPLOYER.

8.2 The normal work week in the Police Department is an averaged forty (40) hours.

ARTICLE IX. WAGES AND SALARIES

9.1 During the term of this Agreement, the EMPLOYER shall pay to members of the UNION wages in accordance with the salary schedule attached as Exhibit A.

9.2 Employee assignments are made at the sole discretion of the Chief of Police. Employees in the following assignment shall be paid a differential as follows:

Sergeant assigned to the Investigative Division $290/month

An employee assigned special duties under the Professional Development Program and who is no longer eligible for holiday pay pursuant to Article XIV, Sections 14.1 and 14.3 of this Agreement shall be paid a differential of $290/month for the duration of the assignment unless otherwise specified in this Agreement.

ARTICLE X. ADDITIONAL HOURS

10.1 Except as specified in the Labor Agreement, the Police Sergeant pay rates established in Exhibit A include compensation for overtime, call back time, standby time and management duties.

10.2 Employees may be compensated for special off duty details at a rate of one and one-half (1-1/2) times the base hourly rate of pay.

10.3 Effective July 1, 1996, employees required by the EMPLOYER to work assigned supervisory coverage as an extension of their scheduled shift or as an additional shift for which no adjustment in the schedule is made will receive either compensation or compensatory time at a rate of one and one-half (1-1/2) times the base hourly rate of pay at the discretion of the employee.

10.4 COURT TIME. Employees who are required at the direction of the City Attorney, County Attorney, the Attorney General's Office, or other appropriate authority, to appear in court during off duty hours shall receive a minimum of two and one-half (2-1/2) hours of pay at one and one half (1-1/2) times their normal basic hourly rate of pay either in
Reporting early for a scheduled work day or an extension of a work day for court duty does not qualify for this minimum.

10.5 Employees who are required to stand by for court appearances shall receive a minimum of two and one-half (2-1/2) hours straight time either in cash or compensatory time, for all time they are directed to stand by. If notification of court cancellation is not given by 5:00 p.m. of the preceding business day, the employee will receive two and one-half (2-1/2) hours pay at their normal basic hourly rate of pay, either in cash or in compensatory time, at the option of the employee.

10.6 If a court appearance is required of an employee during the employee’s off-duty time and the court appearance is canceled, the employee will be given a notice of cancellation by 5:00 p.m. of the preceding business day. If notification is not given by 5:00 p.m. of the preceding business day, the employee will receive two and one-half (2-1/2) hours pay at one and one-half (1-1/2) times their normal basic hourly rate of pay either in cash or in compensatory time, at the option of the employee.

10.7 CALL-BACK TIME. Employees who are called back to duty during off duty hours shall receive a minimum of two (2) hours pay at one and one-half (1-1/2) times their normal basic hourly rate of pay, either in cash or in compensatory time, at the option of the employee.

Employees called back for unscheduled, scheduled work day changes within a 48 hour period shall receive two (2) hours of pay at one and one-half (1-1/2) times their normal basic hourly rate of pay, either in cash or in compensatory time, at the option of the employee.

An extension of, or early reporting for, a scheduled work day, does not qualify for call-back time minimum if that time is paid as overtime.

ARTICLE XI. UNIFORMS

11.1 Sergeant(s) assigned to the Investigative Unit:

A. Uniform allowances for the Sergeants assigned to the Investigative Unit, except if assigned only for training purposes, will be at the annual rate of nine hundred and fifty dollars ($950). Uniform allowances for the Communications Manager will be at the annual rate of five hundred dollars ($500).

B. Sergeant assigned to the Investigative Unit shall maintain a full uniform.

C. Clothing damaged in the line of duty, through no fault of the employee, shall be replaced or repaired by the EMPLOYER at the discretion of the Chief.

11.2 The City shall provide each Sergeant with a complete uniform and shall provide replacement for elements of the uniform as necessary. The components of the uniform, procedures for provision of the uniform and for replacement of the uniform shall be
governed by policies established by the City. The City will also provide maintenance of the uniforms in accordance with policies established by the Department. These policies may be modified at the City's discretion.

11.3 The EMPLOYER shall provide each employee with a City-owned approved service firearm and pay the cost of normal maintenance and repair of each employee's approved service weapon.

ARTICLE XII. PERFORMANCE MANAGEMENT PROGRAM

Employees with one year of service shall receive performance pay as follows:

12.1 ORGANIZATIONAL MERIT PERFORMANCE PAY. The focus of the organizational MERIT performance pay is achievement of organization-wide goals as established by the City Council. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the grade achieved by the organization as follows: for a grade of 4.0, each employee will be awarded $500; for a grade of less than 4.0, the award will be pro-rated based on the actual percentage achieved (e.g., 3.8 grade is 95% of 4.0, so 95% of $500 = $475; 3.5 grade is 87.5% of 4.0, so 87.5% of $500 = $437.50, etc.).

12.2 DEPARTMENTAL MERIT PERFORMANCE PAY. The focus of the departmental MERIT performance pay is achievement of department-wide goals and performance indicators as established and evaluated annually by a representative group of EMPLOYER, UNION and other Police Department employees. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the percentage of goals/indicators achieved by the department as follows: 100% achievement will be awarded 2.5% (two and one-half percent) of base pay; achievement less than 100% shall be pro-rated based on the actual percentage achieved (e.g., 97% achievement = 97% of 2.5% base pay; 92% achievement = 92% of 2.5% base pay, etc.).

12.3 Compensation for organizational and departmental performance pay will be paid in lump sums at the same time it is awarded to non-organized personnel. Adjustments in pay for overtime hours earned during the year to account for these performance payments will be paid at the end of the year.

ARTICLE XIII. LIABILITY INSURANCE

The EMPLOYER shall procure and maintain a policy of commercial general liability insurance, including errors and omissions, at its expense, insuring employees from all claims covered by such policy or policies in the sum of two million dollars ($2,000,000) per occurrence.

ARTICLE XIV. HOLIDAYS

14.1 All employees assigned to the Patrol Division shall receive two (2) floating holidays which may be taken as a holiday on any day throughout the year at the election of the employee, with the approval of the Chief of Police. Employees assigned to the Patrol Division shall receive ten (10) days pay in lieu of additional holidays or eight (8) hours of compensatory time for additional holidays to be scheduled with the EMPLOYER.
14.2 Employees assigned to the Investigative Unit or other administrative assignments shall receive two (2) floating holidays and the following days off:

Holidays are designated as:

New Year's Day January 1
Martin Luther King's Day Third Monday in January
Presidents Day Third Monday in February
Memorial Day Last Monday in May
Independence Day July 4
Labor Day First Monday in September
Veterans Day November 11
Thanksgiving Day Fourth Thursday in November
Thanksgiving Friday Day after Thanksgiving
Christmas Day December 25

14.3 Employees who are required to work on a holiday shall be paid at time and one-half (1-1/2) their base hourly wage rate for all of the hours of any shift that begins on a designated holiday, as noted in Article XIV, 14.2.

ARTICLE XV. VACATIONS

15.1 Regular full-time employees hired prior to January 1, 1998 shall be eligible for earned vacation leave of the following basis:

From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (5/6) of a day per month or ten (10) working days per year.

From the beginning of the sixth (6th) year and on through the fifteenth (15th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1-1/4) days per month or fifteen (15) working days per year.

From the beginning of the sixteenth (16th) year and on through the twentieth (20th) year, each employee shall earn vacation at the rate of twenty (20) working days per year.

From the beginning of the twenty-first (21st) year, each employee shall earn twenty-five (25) days.

15.2 Regular full-time employees hired after January 1, 1998 shall be eligible for earned vacation leave on the following basis:

From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (5/6) of a day per month or ten (10) working days per year.

From the beginning of the sixth (6th) year through the tenth (10th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1-1/4)
days per month or fifteen (15) working days per year. During each of the following years of continuous employment, each employee shall earn vacation at the rates as specified:

- 11th yr: one and one-third (1-1/3) days per month or sixteen (16) working days per year.
- 12th yr: one and two-fifths (1-2/5) days per month or seventeen (17) working days per year.
- 13th yr: one and one-half (1-1/2) days per month or eighteen (18) working days per year.
- 14th yr: one and three-fifths (1-3/5) days per month or nineteen (19) working days per year.
- From the fifteenth (15th) year of continuous service and on, each employee shall earn one and two-thirds (1-2/3) days per month or twenty (20) working days per year.

15.3 Employees may accrue vacation leave not to exceed the following based on the employee's rate of vacation earned.

<table>
<thead>
<tr>
<th>Rate Earned</th>
<th>Maximum Accrual</th>
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<tbody>
<tr>
<td>80 hours/yr</td>
<td>200 hours</td>
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<tr>
<td>120 hours/yr</td>
<td>225 hours</td>
</tr>
<tr>
<td>128-160 hours/yr</td>
<td>250 hours</td>
</tr>
<tr>
<td>200 hours/yr</td>
<td>275 hours</td>
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No employees shall be permitted to waive vacation leave for the purpose of receiving double pay.

ARTICLE XVI. GRIEVANCE PROCEDURE

16.1 This grievance procedure is established for the purpose of resolving disputes involving the interpretation and/or application of this Agreement.

16.2 Employees with a grievance may choose to be represented by the UNION.

16.3 The EMPLOYER will recognize UNION members selected by the UNION as the grievance representatives of the bargaining unit. The UNION shall notify the EMPLOYER in writing of the representative and of their successors, when so named.

16.4 A grievance is defined as a dispute over the interpretation or application of this Agreement.

16.5 Grievances shall be resolved in the following manner:

**STEP 1.** An employee claiming a violation concerning the interpretation or application of this Agreement shall, within ten (10) business days after such alleged violation, present such grievance to the employee's immediate supervisor designated by the EMPLOYER. The EMPLOYER shall give a final answer to such Step 1 grievance within ten (10) business days. If a grievance is not resolved in Step 1, such grievance shall be placed in writing by the UNION referred to in Step 2 within ten (10) business
days after the EMPLOYER’S final answer in Step 1.

STEP 2. The written grievance shall be presented to the Minnetonka Chief of Police by the UNION. The Chief of Police shall give the employee the EMPLOYER’S Step 2 answer within ten (10) business days after receipt of such Step 2 grievance. If a grievance is not resolved in Step 2, such grievance shall be referred to Step 3 within ten (10) business days following the EMPLOYER’S final Step 2 answer.

STEP 3. The written grievance shall be presented to the City Manager or other EMPLOYER representative by the UNION. The City Manager or other EMPLOYER representative shall give the EMPLOYER’S answer within fifteen (15) business days after receipt of such Step 3 grievance. If a grievance is not resolved in Step 3, such grievance shall be referred to Step 4 by the UNION within ten (10) business days following the EMPLOYER’S final Step 3 answer.

STEP 4. Unresolved grievances are subject to the arbitration provisions of Minnesota Statutes, Section 179A.21. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this AGREEMENT. The arbitrator shall consider and decide only the specific issues submitted in writing by the EMPLOYER and the UNION and shall have no authority to make a decision on any other issue not so submitted to the arbitrator. The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator shall submit the decision in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be based solely upon the arbitrator’s interpretation or application of the express terms of this AGREEMENT and on the facts of the grievance presented.

16.6 All documents, communications and records dealing with a grievance shall be filed separately from the personnel files of the involved employees.

16.7 Any grievance not referred in the prescribed manner by the UNION or the employee within the specified time limits stated for each grievance step shall be considered waived.

16.8 The time limits established in the Article may be extended by mutual consent of the EMPLOYER and the UNION and shall be in writing.

16.9 All fees and expenses for the arbitrator’s services and proceedings shall be borne equally by the EMPLOYER and the UNION, provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be charged equally.

16.10 With respect to Statutes under the jurisdiction of the United States Equal Employment Opportunity Commission, an employee pursuing a statutory remedy is not precluded from also pursuing an appeal under this grievance procedure.
ARTICLE XVII. PROBATIONARY PERIOD

All original appointments shall be probationary and subject to a probationary period of 2,080 hours after appointment. All promotional appointments shall be probationary and subject to a probationary period of 1,040 hours. Any extended leave periods will extend the probationary period by the amount of the leave. During the probationary period, the City may remove demote an employee whose performance does not meet the required work standards. Such removals demotions are not subject to Article XVI.

ARTICLE XVIII. INSURANCE

18.1 HEALTH.
For each benefit-earning employee electing health insurance coverage through the EMPLOYER-sponsored cafeteria benefits program, the EMPLOYER’S monthly contribution toward that employee’s benefits program is eight hundred eighty dollars ($880) per month in plan year 2016; nine hundred seventy ($970) for those electing Single Coverage; one thousand one hundred ($1,100) for Employee plus Spouse Coverage; one thousand two hundred five ($1,205) for Employee plus Child(ren) Coverage; or one thousand two hundred fifty ($1,250) for Family Coverage in plan year 2018.

Each benefit-earning employee electing health insurance coverage through the EMPLOYER sponsored cafeteria benefits program and who participates in the EMPLOYER sponsored health initiative program receives $100 per month. Each benefit-earning employee who opts out of the EMPLOYER sponsored cafeteria benefits program who participates in the EMPLOYER sponsored health initiative program receives $50 per month in the plan year.

The Insurance Article is open for negotiations in 2017, 2019 and 2020.

18.2 LIFE.
The EMPLOYER agrees to pay the full cost of a thirty-five thousand dollar ($35,000) life insurance policy for each employee covered by this Agreement covered in the policy.

18.3 In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to a penalty, tax or fine, the Union and the Employer will meet immediately to bargain over alternative provisions.

18.4 LONG TERM DISABILITY.
The EMPLOYER will provide employees with long term disability insurance provided that a sufficient number of employees enroll to meet the Insurer’s eligibility requirements. The cost of the insurance will be paid through deductions in each employee’s accrued sick leave account of hours of time sufficient to provide for the payment of premiums.
ARTICLE XIX. RETIREE HEALTH SAVINGS PLAN

19.1 All employees are required to participate in the Retiree Health Savings Plan (RHSP).

19.2 EMPLOYER CONTRIBUTION. All employees will receive an annual contribution by the Employer equal to 0.5% of base pay. The deposit will occur in the month of December at a time to be determined by the Personnel Division.

ARTICLE XX. POST LICENSE FEE

EMPLOYER will pay for each employee the license fee for that license required by MSA 626.046, Subd.1.

ARTICLE XXI. SAVINGS CLAUSE

This Agreement is subject to the laws of the United States, the State Of Minnesota and the signed municipality. In the event any provision of this Agreement shall be held to be contrary to law by a court of competent jurisdiction from whose final judgment or decree no appeal has been taken within the time provided, such Provisions shall be voided. To the extent a provision of the contract is declared to be contrary to law by a court of final jurisdiction or administrative ruling or is in violation of legislation or administrative regulations, said provision shall be voided and of no effect. All other provisions shall continue in full force and effect. The voided provision may be renegotiated at the request of either party.

ARTICLE XXII. DUES CHECK OFF

The EMPLOYER shall deduct each payroll period an amount sufficient to provide the payment of regular dues established by the UNION from the wages of all employees authorizing such deduction in writing, and remit such deductions to the appropriate officer designated by the UNION. The UNION agrees to indemnify and hold the City of Minnetonka harmless against any and all claims, suits, order or judgments brought or issued against the City as a result of any action taken or not taken by the City under the provisions of this Article.

ARTICLE XXIII. DISCIPLINE

23.1 The EMPLOYER will discipline, suspend or discharge employees only for just cause. Discipline may be in one or more of the following forms:

A. Oral reprimand;
B. Written reprimand;
C. Suspension;
D. Demotion; or
E. Discharge.

23.2 Suspensions, demotions, and discharges will be in written form.

23.3 Written reprimands, notice of suspensions, and notice of discharge, which are to become part of an employee’s personnel file, shall be read and acknowledged by
signature of the employee. Employees will receive a copy of such reprimand and/or notices.

23.4 Employees may examine their own individual personnel files at reasonable times and under the direct supervision of the EMPLOYER.

23.5 An employee who is the subject of an investigation that may result in a disciplinary action to that employee may have a member of the UNION present during questioning. It will be the responsibility of the employee to make a request for a representative. An employee's waiver of union representation shall be in writing.

23.6 Discharges will be preceded by a five (5) day suspension without pay.

23.7 Grievances relating to this Article shall be initiated by the UNION in Step 2 in the grievance procedure under Article XVI.

ARTICLE XXIV. SENIORITY

24.1 Seniority shall be determined by the employee's length of continuous employment with the police department and posted in an appropriate location. Seniority rosters may be maintained by the Chief on the basis of time in grade and time within specific classifications.

24.2 During the probationary period a newly promoted employee may be demoted at the sole discretion of the Employer. During the probationary period, a promoted employee may be placed in his/her previous position at the sole discretion of the Employer.

24.3 Classification seniority is determined by date of promotion.

24.4 Patrol division sergeants will bid shifts by seniority.

ARTICLE XXV. LAYOFF

25.1 Except in those instances where senior employees are not qualified to perform remaining work, seniority shall determine the order of layoff.

25.2 Layoff shall be by classification within the department in inverse order of classification seniority. However, an employee about to be laid off shall have the right to bump (displace) the least senior employee in the applicable police officers or dispatchers unit, provided the Employer determines the employee exercising bumping rights has previously held the position and is adequately qualified to perform the duties of the classification into which s/he is moving and s/he has greater seniority than the bumped employee.

25.3 Recall from layoff shall be by inverse order of layoff. An employee's name shall be retained on the recall list for two (2) years, at which time all rights to recall shall terminate.
ARTICLE XXVI. SEVERANCE POLICY

26.1 To be eligible for severance pay, employees must be regular employees on the date of termination, and have a total of 10 years of continuous service as a regular employee. Severance pay is granted to eligible employees when they leave the municipal service in good standing for one of the following reasons:

26.11 Elimination of their classification or position by the City.

26.12 Separation from City employment with the employee is eligible, based on age and/or service requirements, for an annuity from the Public Employees Retirement Association whether or not the employee starts receiving those benefits.

26.13 Mandatory retirement or termination of employment due to health reasons, service-connected injury, or illness. A letter from a physician is required to indicate an employee’s inability to perform essential functions of the job.

26.2 Employees shall be entitled to severance pay equal to the greater of:

26.21 Four weeks of appropriate pay plus one additional week of appropriate pay for each year of service beyond 10 years, not to exceed a total of 13 weeks appropriate pay or

26.22 One-third of the employee’s accumulated sick leave at the appropriate pay rate.

26.3 Employees eligible for severance pay in accordance with Section 26.1 who submit a written notice of separation from City employment at least three months prior to that separation and who do not revoke it will receive the amount of severance pay pursuant to the policy plus an additional ten percent of that amount.

ARTICLE XXVII. WELLNESS/FITNESS

Each employee who voluntarily chooses to participate in this wellness/fitness program and meet employer established goals annually by October 31st of each year will receive 0.5% of base pay in additional compensation. Employees who exceed fitness goals by October 31st of each year will receive an additional 1.0% - 1.50% of base pay in additional compensation. Payment of the additional wellness/fitness compensation will be made no later than the last pay period of the year. The program will be administered by the Chief and will be in compliance with all local, state and federal laws governing discrimination based on gender, race or age.

ARTICLE XXVIII. LEADERSHIP PROGRAM

The Leadership Incentive Pay Program is a voluntary program under the direction of the Police Chief designed to enhance leadership skills, promote personal growth and performance for all employees who have successfully completed the applicable probationary period. Employees who successfully complete the requirements of the program will receive 1.9% of base pay in additional compensation. The program will operate on an annual basis, from the first payroll date of the year to October 31st of each year and payment for this compensation will be made
no later than the last pay period of the year. Since the program is voluntary, employees will not be compensated for off duty time in which they are involved in researching, planning or preparing for components of the program. The program will be directed by the Chief and will be in compliance with all local, state and federal laws.

ARTICLE XXIX. DURATION

The Agreement shall be effective as of December 15, 2015 and shall remain in full force and effect until December 24, 2020, or until a successor Agreement is reached, whichever is later.

In witness thereof, the parties hereto have executed this Agreement on this day of , 2016.

FOR THE CITY OF MINNETONKA

Terry Schneider, Mayor

Geralyn Barone, City Manager

Perry Vetter, Asst. City Manager

Date

FOR TEAMSTERS LOCAL NO. 320 LAW ENFORCEMENT LABOR SERVICES, INC.

Brad Wiersum, Mayor

Mike Kopp, Business Agent

Jessica Mabin, Business Agent

David Riegert, Union Steward

Date
EXHIBIT A AND MARKET ADJUSTMENT

2016-2018 a 4.00% 1.50% base pay rate increase and a 0.77% 4.29% market adjustment for a total of 1.77% 5.79% total wage increase as calculated in Exhibit A.

A one and one-half percent (1.50%) base pay rate increase in 2017 2019 plus any applicable market adjustments and a one and one-half (1.50%) base pay rate increase in 2020 of the Labor agreement plus any applicable market adjustments. Market adjustments will be calculated according to the following methodology and wage schedule:

POLICE SERGEANTS PAY RATES - City of Minnetonka Start
92% of 2 yr rate
6 mos = 94% of 2 yr rate
1 yr = 97% of 2 yr rate

<table>
<thead>
<tr>
<th>Sergeant - 2016</th>
<th>Start</th>
<th>6 Months</th>
<th>1 Year</th>
<th>2 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual</td>
<td>$86,236.80</td>
<td>$88,129.60</td>
<td>$90,937.60</td>
<td>$93,745.60</td>
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<tr>
<td>Monthly</td>
<td>$7,186.40</td>
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<td>$7,578.13</td>
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<tr>
<td>Hourly</td>
<td>$41.46</td>
<td>$42.37</td>
<td>$43.72</td>
<td>$45.07</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Sergeant - 2017</th>
<th>Start</th>
<th>6 Months</th>
<th>1 Year</th>
<th>2 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual</td>
<td>$87,547.20</td>
<td>$89,460.80</td>
<td>$92,310.40</td>
<td>$95,160.00</td>
</tr>
<tr>
<td>Monthly</td>
<td>$7,295.60</td>
<td>$7,455.07</td>
<td>$7,692.53</td>
<td>$7,930.00</td>
</tr>
<tr>
<td>Hourly</td>
<td>$42.09</td>
<td>$43.01</td>
<td>$44.38</td>
<td>$45.75</td>
</tr>
</tbody>
</table>

COMMUNICATIONS MANAGER PAY RATES - City of Minnetonka Start =
92% of 2 yr rate
6 mos. = 94% of 2 yr rate
1 yr = 97% of 2 yr rate

<table>
<thead>
<tr>
<th>Communications Manager - 2016</th>
<th>Start</th>
<th>6 Months</th>
<th>1 Year</th>
<th>2 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual</td>
<td>$68,577.60</td>
<td>$70,075.20</td>
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<td>Monthly</td>
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<td>Hourly</td>
<td>$32.97</td>
<td>$33.69</td>
<td>$34.76</td>
<td>$35.84</td>
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</table>

<table>
<thead>
<tr>
<th>Communications Manager - 2017</th>
<th>Start</th>
<th>6 Months</th>
<th>1 Year</th>
<th>2 Years</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$71,136.00</td>
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<tr>
<td>Sergeants - 2018</td>
<td>Start</td>
<td>6 Months</td>
<td>1 Year</td>
<td>2 Years</td>
</tr>
<tr>
<td>-----------------</td>
<td>--------</td>
<td>----------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>Annual</td>
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<td>$44.89</td>
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<td>$47.33</td>
<td>$48.79</td>
</tr>
<tr>
<td>Sergeants - 2019</td>
<td>Start</td>
<td>6 Months</td>
<td>1 Year</td>
<td>2 Years</td>
</tr>
<tr>
<td>Annual</td>
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</tr>
<tr>
<td>Monthly</td>
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<td>Hourly</td>
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</tr>
<tr>
<td>Sergeants - 2020</td>
<td>Start</td>
<td>6 Months</td>
<td>1 Year</td>
<td>2 Years</td>
</tr>
<tr>
<td>Annual</td>
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<td>$104,540.80</td>
</tr>
<tr>
<td>Monthly</td>
<td>$8,014.93</td>
<td>$8,188.27</td>
<td>$8,450.00</td>
<td>$8,711.73</td>
</tr>
<tr>
<td>Hourly</td>
<td>$46.24</td>
<td>$47.24</td>
<td>$48.75</td>
<td>$50.26</td>
</tr>
</tbody>
</table>

**Market Adjustment**

There are two (2) components to the City's MERIT system. The performance management program described in Article XII ensures performance is recognized and compensated over and above the base pay rate. The market adjustment outlined below ensures that Minnetonka's pay scale keeps pace with comparable cities.

For 2016-2019, the top 2015-2018 base pay rate for Minnetonka sergeants will be multiplied by the negotiated base pay increase. Using 2015-2018 League of Minnesota Cities salary data for the cities of Brooklyn Park, Burnsville, Eagan, Eden Prairie, Edina, Lakeville, Maple Grove, Plymouth, St. Louis Park and Woodbury, the average weighted mean of these cities (excluding Minnetonka) will be multiplied by the negotiated base pay increase for 2016-2019. These two rates will be compared, and the higher of the two will be the 2016-2019 top pay rate for Minnetonka. If a city has not reported data by September 1, 2015-2018, the city of Minnetonka will contact the city directly to obtain the data. The remaining steps will be adjusted to maintain rates at 92%, 94% and 97% of the top hourly rate.

This same process will be repeated using 2016-2019 data to determine if there is a 2017-2020 market adjustment.

The communications manager will receive the same base pay percentage increase as the sergeants in accordance with the above-noted language.
MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF MINNETONKA AND
MINNESOTA TEAMSTERS PUBLIC
AND LAW ENFORCEMENT EMPLOYEES’ UNION, LOCAL NO. 320
LAW ENFORCEMENT LABOR SERVICES, INC.

As agreed during contract negotiations for 2016-2017 2018-2020 contract, the Union and the City agree on the following item:

SEVERANCE PAY

Employees eligible for severance pay who elect to have their dollars allocated to employer paid health insurance premiums in lieu of receiving cash may direct 50% of unused sick leave for said premiums. For employees who select this option in lieu of a cash payment, the cash value of 33% of unused sick leave will be taxed before being made available for payment of insurance premiums. In the event an employee electing this benefit chooses to discontinue health insurance coverage, the difference between the cash value of 33% of unused sick leave (after taxes) and the premiums paid to date shall be made to the employee. The employee shall forfeit the remaining cash balance, future rights and coverage of this benefit, and the right to reenter the City’s insurance plan. All other provisions of the Personnel Policy regarding the application of these premiums must be followed. Employees who choose this option and also submit a three-month written notice of separation as noted in Article 26.3, Separation Policy, will receive 50% of unused sick leave plus an additional ten percent (10%) of that amount to be used for health insurance premiums.

FOR THE CITY OF MINNETONKA  FOR TEAMSTERS LOCAL NO. 320
LAW ENFORCEMENT LABOR SERVICES, INC.

________________________  __________________________
Terry Schneider Brad Wiersum, Mayor  Mike Kopp Jessica Mabin, Business Agent

________________________
Geralyn Barone, City Manager  David Riegert, Union Steward

Perry Vetter, Asst. City Manager

Date ____________________________  Date ____________________________
LABOR AGREEMENT

BETWEEN

CITY OF MINNETONKA
MINNETONKA, MN

AND

LAW ENFORCEMENT LABOR SERVICES, INC.

Representing
POLICE SERGEANTS

December 15, 2017 through December 24, 2020
LABOR AGREEMENT
between
CITY OF MINNETONKA
and
LAW ENFORCEMENT LABOR SERVICES, INC.

ARTICLE I. PURPOSE OF AGREEMENT

This Agreement is entered into between the City of Minnetonka, hereinafter called the EMPLOYER, and Law Enforcement Labor Services, Inc. representing the Minnetonka Police Sergeants hereinafter called the UNION.

It is the intent and purpose of this Agreement to:

1.1 Assure sound and mutually beneficial working and economic relationships between the parties hereto;

1.2 Establish procedures for the resolution of disputes concerning this Agreement's interpretation and/or application;

1.3 To set forth herein the basic and full agreement between the parties concerning rates of pay, hours, and other conditions of employment.

The EMPLOYER and the UNION through this Agreement shall continue their dedication to the highest quality police service and protection to the residents of Minnetonka. Both parties recognize the Agreement as the pledge of this dedication.

ARTICLE II. RECOGNITION

The EMPLOYER recognizes the UNION as the exclusive representative under Minnesota Statutes, Section 179A.03, Subd. 8, for all Police Sergeants and Communications Manager.

The UNION agrees that it does not represent the Chief, the Captains or any other supervisory or confidential employees.

ARTICLE III. DEFINITIONS

3.1 Union means Law Enforcement Labor Services, Inc. representing the Minnetonka Police Sergeants.

3.2 Employee means a member of the bargaining unit as defined in Article II.

3.3 Department means the Minnetonka Police Department.

3.4 Employer means the City of Minnetonka.

3.5 Chief means the Chief of the Minnetonka Police Department.

3.6 Compensatory Time means time off in lieu of pay.
3.7 Emergency means a situation or condition as so defined by the Chief.

3.8 Union Officer means officers elected or appointed by the Teamsters Local No. 320.

3.9 Basic Monthly Rate means the employee's monthly rate of pay or salary exclusive of any incentive, special or overtime pay.

3.10 Scheduled Work Day means a consecutive work period, including rest breaks and lunch breaks.

3.11 Shift means an employee's scheduled work days and days off.

ARTICLE IV. DISCRIMINATION

Neither the EMPLOYER nor the UNION shall discriminate against any employee covered by the Agreement because of the employee's membership or non-membership in the UNION.

ARTICLE V. EMPLOYER SECURITY

The UNION agrees that during the life of this Agreement they will not cause, encourage, participate in or support any strike. Violations of the Article shall be grounds for disciplinary action up to and including discharge without recourse to the Grievance Procedure of this contract.

ARTICLE VI. EMPLOYER AUTHORITY

The EMPLOYER and the UNION agree that certain hours, salaries and conditions of employment are established by City ordinances, City resolutions, and rules and regulations of the Minnetonka Police Department. This Agreement supplements hours, salaries, and other conditions of employment to the extent to which they are not in conflict. If in conflict, the law, ordinance, resolution or rule or regulation shall prevail.

The EMPLOYER retains the full and unrestricted right to operate and manage all manpower, facilities, and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules, and to perform any inherent managerial functions not specifically limited by this Agreement.

Any terms and conditions of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the EMPLOYER to modify, establish or eliminate.

ARTICLE VII. SPECIAL MEETINGS

The EMPLOYER and the UNION agree to meet and confer on matters of interest to both parties upon the request of either party. Special meetings shall be held within ten (10) calendar days after receipt of the request. Employee representatives of the UNION will not be paid extra compensation, if the meeting is called by the UNION.
ARTICLE VIII. HOURS OF WORK

8.1 The sole authority for work schedules is the EMPLOYER.

8.2 The normal work week in the Police Department is an averaged forty (40) hours.

ARTICLE IX. WAGES AND SALARIES

9.1 During the term of this Agreement, the EMPLOYER shall pay to members of the UNION wages in accordance with the salary schedule attached as Exhibit A.

9.2 Employee assignments are made at the sole discretion of the Chief of Police. Employees in the following assignment shall be paid a differential as follows:

Sergeant assigned to the Investigative Division $290/month

An employee assigned special duties under the Professional Development Program and who is no longer eligible for holiday pay pursuant to Article XIV, Sections 14.1 and 14.3 of this Agreement shall be paid a differential of $290/month for the duration of the assignment unless otherwise specified in this Agreement.

ARTICLE X. ADDITIONAL HOURS

10.1 Except as specified in the Labor Agreement, the Police Sergeant pay rates established in Exhibit A include compensation for overtime, call back time, standby time and management duties.

10.2 Employees may be compensated for special off duty details at a rate of one and one-half (1-1/2) times the base hourly rate of pay.

10.3 Effective July 1, 1996, employees required by the EMPLOYER to work assigned supervisory coverage as an extension of their scheduled shift or as an additional shift for which no adjustment in the schedule is made will receive either compensation or compensatory time at a rate of one and one-half (1-1/2) times the base hourly rate of pay at the discretion of the employee.

10.4 COURT TIME. Employees who are required at the direction of the City Attorney, County Attorney, the Attorney General's Office, or other appropriate authority, to appear in court during off duty hours shall receive a minimum of two and one-half (2-1/2) hours of pay at one and one half (1-1/2) times their normal basic hourly rate of pay either in cash or in compensatory time, at the option of the employee.

Reporting early for a scheduled work day or an extension of a work day for court duty does not qualify for this minimum.

10.5 Employees who are required to stand by for court appearances shall receive a minimum of two and one-half (2-1/2) hours straight time either in cash or compensatory time, for all time they are directed to stand by. If notification of court cancellation is not given by 5:00 p.m. of the preceding business day, the employee will receive two and one-half (2-
1/2) hours pay at their normal basic hourly rate of pay, either in cash or in compensatory time, at the option of the employee.

10.6 If a court appearance is required of an employee during the employee’s off-duty time and the court appearance is canceled, the employee will be given a notice of cancellation by 5:00 p.m. of the preceding business day. If notification is not given by 5:00 p.m. of the preceding business day, the employee will receive two and one-half (2-1/2) hours pay at one and one-half (1-1/2) times their normal basic hourly rate of pay either in cash or in compensatory time, at the option of the employee.

10.7 CALL-BACK TIME. Employees who are called back to duty during off duty hours shall receive a minimum of two (2) hours pay at one and one-half (1-1/2) times their normal basic hourly rate of pay, either in cash or in compensatory time, at the option of the employee.

Employees called back for unscheduled, scheduled work day changes within a 48 hour period shall receive two (2) hours of pay at one and one-half (1-1/2) times their normal basic hourly rate of pay, either in cash or in compensatory time, at the option of the employee.

An extension of, or early reporting for, a scheduled work day, does not qualify for call-back time minimum if that time is paid as overtime.

ARTICLE XI. UNIFORMS

11.1 Sergeant(s) assigned to the Investigative Unit:

A. Uniform allowances for the Sergeants assigned to the Investigative Unit, except if assigned only for training purposes, will be at the annual rate of nine hundred and fifty dollars ($950). Uniform allowances for the Communications Manager will be at the annual rate of five hundred dollars ($500).

B. Sergeant assigned to the Investigative Unit shall maintain a full uniform.

C. Clothing damaged in the line of duty, through no fault of the employee, shall be replaced or repaired by the EMPLOYER at the discretion of the Chief.

11.2 The City shall provide each Sergeant with a complete uniform and shall provide replacement for elements of the uniform as necessary. The components of the uniform, procedures for provision of the uniform and for replacement of the uniform shall be governed by policies established by the City. The City will also provide maintenance of the uniforms in accordance with policies established by the Department. These policies may be modified at the City's discretion.

11.3 The EMPLOYER shall provide each employee with a City-owned approved service firearm and pay the cost of normal maintenance and repair of each employee's approved service weapon.
ARTICLE XII. PERFORMANCE MANAGEMENT PROGRAM

Employees with one year of service shall receive performance pay as follows:

12.1 ORGANIZATIONAL MERIT PAY. The focus of the organizational MERIT pay is achievement of organization-wide goals as established by the City Council. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the grade achieved by the organization as follows: for a grade of 4.0, each employee will be awarded $500; for a grade of less than 4.0, the award will be pro-rated based on the actual percentage achieved (e.g., 3.8 grade is 95% of 4.0, so 95% of $500 = $475; 3.5 grade is 87.5% of 4.0, so 87.5% of $500 = $437.50, etc.).

12.2 DEPARTMENTAL MERIT PAY. The focus of the departmental MERIT pay is achievement of department-wide goals and performance indicators as established and evaluated annually by a representative group of EMPLOYER, UNION and other Police Department employees. On an annual basis, employees shall be awarded performance pay in the lump sum amount based on the percentage of goals/indicators achieved by the department as follows: 100% achievement will be awarded 2.5% (two and one-half percent) of base pay; achievement less than 100% shall be pro-rated based on the actual percentage achieved (e.g., 97% achievement = 97% of 2.5% base pay; 92% achievement = 92% of 2.5% base pay, etc.).

12.3 Compensation for organizational and departmental performance pay will be paid in lump sums at the same time it is awarded to non-organized personnel. Adjustments in pay for overtime hours earned during the year to account for these performance payments will be paid at the end of the year.

ARTICLE XIII. LIABILITY INSURANCE

The EMPLOYER shall procure and maintain a policy of commercial general liability insurance, including errors and omissions, at its expense, insuring employees from all claims covered by such policy or policies in the sum of two million dollars ($2,000,000) per occurrence.

ARTICLE XIV. HOLIDAYS

14.1 All employees assigned to the Patrol Division shall receive two (2) floating holidays which may be taken as a holiday on any day throughout the year at the election of the employee, with the approval of the Chief of Police. Employees assigned to the Patrol Division shall receive ten (10) days pay in lieu of additional holidays or eight (8) hours of compensatory time for additional holidays to be scheduled with the EMPLOYER.

14.2 Employees assigned to the Investigative Unit or other administrative assignments shall receive two (2) floating holidays and the following days off:

Holidays are designated as:

<table>
<thead>
<tr>
<th>Holiday</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Year's Day</td>
<td>January 1</td>
</tr>
<tr>
<td>Martin Luther King's Day</td>
<td>Third Monday in January</td>
</tr>
<tr>
<td>Presidents Day</td>
<td>Third Monday in February</td>
</tr>
</tbody>
</table>
Memorial Day Last Monday in May
Independence Day July 4
Labor Day First Monday in September
Veterans Day November 11
Thanksgiving Day Fourth Thursday in November
Thanksgiving Friday Day after Thanksgiving
Christmas Day December 25

14.3 Employees who are required to work on a holiday shall be paid at time and one-half (1-1/2) their base hourly wage rate for all of the hours of any shift that begins on a designated holiday, as noted in Article XIV, 14.2.

ARTICLE XV. VACATIONS

15.1 Regular full-time employees hired prior to January 1, 1998 shall be eligible for earned vacation leave of the following basis:

From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (5/6) of a day per month or ten (10) working days per year.

From the beginning of the sixth (6th) year and on through the fifteenth (15th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1-1/4) days per month or fifteen (15) working days per year.

From the beginning of the sixteenth (16th) year and on through the twentieth (20th) year, each employee shall earn vacation at the rate of twenty (20) working days per year.

From the beginning of the twenty-first (21st) year, each employee shall earn twenty-five (25) days.

15.2 Regular full-time employees hired after January 1, 1998 shall be eligible for earned vacation leave on the following basis:

From the beginning of continuous employment through the fifth (5th) year of continuous employment, each regular full-time employee shall earn vacation at the rate of five-sixths (5/6) of a day per month or ten (10) working days per year.

From the beginning of the sixth (6th) year through the tenth (10th) year of continuous employment, each employee shall earn vacation at the rate of one and one-fourth (1-1/4) days per month or fifteen (15) working days per year. During each of the following years of continuous employment, each employee shall earn vacation at the rates as specified:

- 11th yr: one and one-third (1-1/3) days per month or sixteen (16) working days per year.
- 12th yr: one and two-fifths (1-2/5) days per month or seventeen (17) working days per year.
- 13th yr: one and one-half (1-1/2) days per month or eighteen (18) working days per year.
14th yr: one and three-fifths (1-3/5) days per month or nineteen (19) working days per year.

From the fifteenth (15th) year of continuous service and on, each employee shall earn one and two-thirds (1-2/3) days per month or twenty (20) working days per year.

15.3 Employees may accrue vacation leave not to exceed the following based on the employee's rate of vacation earned.

<table>
<thead>
<tr>
<th>Rate Earned</th>
<th>Maximum Accrual</th>
</tr>
</thead>
<tbody>
<tr>
<td>80 hours/yr</td>
<td>200 hours</td>
</tr>
<tr>
<td>120 hours/yr</td>
<td>225 hours</td>
</tr>
<tr>
<td>128-160 hours/yr</td>
<td>250 hours</td>
</tr>
<tr>
<td>200 hours/yr</td>
<td>275 hours</td>
</tr>
</tbody>
</table>

No employees shall be permitted to waive vacation leave for the purpose of receiving double pay.

ARTICLE XVI. GRIEVANCE PROCEDURE

16.1 This grievance procedure is established for the purpose of resolving disputes involving the interpretation and/or application of this Agreement.

16.2 Employees with a grievance may choose to be represented by the UNION.

16.3 The EMPLOYER will recognize UNION members selected by the UNION as the grievance representatives of the bargaining unit. The UNION shall notify the EMPLOYER in writing of the representative and of their successors, when so named.

16.4 A grievance is defined as a dispute over the interpretation or application of this Agreement.

16.5 Grievances shall be resolved in the following manner:

STEP 1. An employee claiming a violation concerning the interpretation or application of this Agreement shall, within ten (10) business days after such alleged violation, present such grievance to the employee's immediate supervisor designated by the EMPLOYER. The EMPLOYER shall give a final answer to such Step 1 grievance within ten (10) business days. If a grievance is not resolved in Step 1, such grievance shall be placed in writing by the UNION referred to in Step 2 within ten (10) business days after the EMPLOYER'S final answer in Step 1.

STEP 2. The written grievance shall be presented to the Minnetonka Chief of Police by the UNION. The Chief of Police shall give the employee the EMPLOYER'S Step 2 answer within ten (10) business days after receipt of such Step 2 grievance. If a grievance is not resolved in Step 2, such grievance shall be referred to Step 3 within ten (10) business days following the EMPLOYER'S final Step 2 answer.

STEP 3. The written grievance shall be presented to the City Manager or other
EMPLOYER representative by the UNION. The City Manager or other EMPLOYER representative shall give the EMPLOYER'S answer within fifteen (15) business days after receipt of such Step 3 grievance. If a grievance is not resolved in Step 3, such grievance shall be referred to Step 4 by the UNION within ten (10) business days following the EMPLOYER'S final Step 3 answer.

**STEP 4.** Unresolved grievances are subject to the arbitration provisions of Minnesota Statutes, Section 179A.21. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this AGREEMENT. The arbitrator shall consider and decide only the specific issues submitted in writing by the EMPLOYER and the UNION and shall have no authority to make a decision on any other issue not so submitted to the arbitrator. The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator shall submit the decision in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be based solely upon the arbitrator's interpretation or application of the express terms of this AGREEMENT and on the facts of the grievance presented.

16.6 All documents, communications and records dealing with a grievance shall be filed separately from the personnel files of the involved employees.

16.7 Any grievance not referred in the prescribed manner by the UNION or the employee within the specified time limits stated for each grievance step shall be considered waived.

16.8 The time limits established in the Article may be extended by mutual consent of the EMPLOYER and the UNION and shall be in writing.

16.9 All fees and expenses for the arbitrator's services and proceedings shall be borne equally by the EMPLOYER and the UNION, provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be charged equally.

16.10 With respect to Statutes under the jurisdiction of the United States Equal Employment Opportunity Commission, an employee pursuing a statutory remedy is not precluded from also pursuing an appeal under this grievance procedure.

**ARTICLE XVII. PROBATIONARY PERIOD**

All original appointments shall be probationary and subject to a probationary period of 2,080 hours after appointment. All promotional appointments shall be probationary and subject to a probationary period of 1,040 hours. Any extended leave periods will extend the probationary period by the amount of the leave. During the probationary period, the City may demote an employee whose performance does not meet the required work standards. Such demotions are not subject to Article XVI.
ARTICLE XVIII. INSURANCE

18.1 HEALTH.
For each benefit-earning employee electing health insurance coverage through the EMPLOYER-sponsored cafeteria benefits program, the EMPLOYER'S monthly contribution toward that employee's benefits program is nine hundred seventy ($970) for those electing Single Coverage; one thousand one hundred ($1,100) for Employee plus Spouse Coverage; one thousand two hundred five ($1,205) for Employee plus Child(ren) Coverage; or one thousand two hundred fifty ($1,250) for Family Coverage in plan year 2018.

Each benefit-earning employee electing health insurance coverage through the EMPLOYER sponsored cafeteria benefits program and who participates in the EMPLOYER sponsored health initiative program receives $100 per month. Each benefit-earning employee who opts out of the EMPLOYER sponsored cafeteria benefits program who participates in the EMPLOYER sponsored health initiative program receives $50 per month in the plan year.

The Insurance Article is open for negotiations in 2019 and 2020.

18.2 LIFE.
The EMPLOYER agrees to pay the full cost of a thirty-five thousand dollar ($35,000) life insurance policy for each employee covered by this Agreement covered in the policy.

18.3 In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to a penalty, tax or fine, the Union and the Employer will meet immediately to bargain over alternative provisions.

18.4 LONG TERM DISABILITY.
The EMPLOYER will provide employees with long term disability insurance provided that a sufficient number of employees enroll to meet the Insurer's eligibility requirements. The cost of the insurance will be paid through deductions in each employee's accrued sick leave account of hours of time sufficient to provide for the payment of premiums.

ARTICLE XIX. RETIREE HEALTH SAVINGS PLAN

19.1 All employees are required to participate in the Retiree Health Savings Plan (RHSP).

19.2 EMPLOYER CONTRIBUTION. All employees will receive an annual contribution by the Employer equal to 0.5% of base pay. The deposit will occur in the month of December at a time to be determined by the Personnel Division.

ARTICLE XX. POST LICENSE FEE

EMPLOYER will pay for each employee the license fee for that license required by MSA 626.046, Subd.1.
ARTICLE XXI. SAVINGS CLAUSE

This Agreement is subject to the laws of the United States, the State Of Minnesota and the signed municipality. In the event any provision of this Agreement shall be held to be contrary to law by a court of competent jurisdiction from whose final judgment or decree no appeal has been taken within the time provided, such Provisions shall be voided. To the extent a provision of the contract is declared to be contrary to law by a court of final jurisdiction or administrative ruling or is in violation of legislation or administrative regulations, said provision shall be voided and of no effect. All other provisions shall continue in full force and effect. The voided provision may be renegotiated at the request of either party.

ARTICLE XXII. DUES CHECK OFF

The EMPLOYER shall deduct each payroll period an amount sufficient to provide the payment of regular dues established by the UNION from the wages of all employees authorizing such deduction in writing, and remit such deductions to the appropriate officer designated by the UNION. The UNION agrees to indemnify and hold the City of Minnetonka harmless against any and all claims, suits, order or judgments brought or issued against the City as a result of any action taken or not taken by the City under the provisions of this Article.

ARTICLE XXIII. DISCIPLINE

23.1 The EMPLOYER will discipline, suspend or discharge employees only for just cause. Discipline may be in one or more of the following forms:

   A. Oral reprimand;
   B. Written reprimand;
   C. Suspension;
   D. Demotion; or
   E. Discharge.

23.2 Suspensions, demotions, and discharges will be in written form.

23.3 Written reprimands, notice of suspensions, and notice of discharge, which are to become part of an employee’s personnel file, shall be read and acknowledged by signature of the employee. Employees will receive a copy of such reprimand and/or notices.

23.4 Employees may examine their own individual personnel files at reasonable times and under the direct supervision of the EMPLOYER.

23.5 An employee who is the subject of an investigation that may result in a disciplinary action to that employee may have a member of the UNION present during questioning. It will be the responsibility of the employee to make a request for a representative. An employee's waiver of union representation shall be in writing.

23.6 Discharges will be preceded by a five (5) day suspension without pay.

23.7 Grievances relating to this Article shall be initiated by the UNION in Step 2 in the
grievance procedure under Article XVI.

ARTICLE XXIV. SENIORITY

24.1 Seniority shall be determined by the employee's length of continuous employment with the police department and posted in an appropriate location. Seniority rosters may be maintained by the Chief on the basis of time in grade and time within specific classifications.

24.2 During the probationary period a newly promoted employee may be demoted at the sole discretion of the Employer. During the probationary period, a promoted employee may be placed in his/her previous position at the sole discretion of the Employer.

24.3 Classification seniority is determined by date of promotion.

24.4 Patrol division sergeants will bid shifts by seniority.

ARTICLE XXV. LAYOFF

25.1 Except in those instances where senior employees are not qualified to perform remaining work, seniority shall determine the order of layoff.

25.2 Layoff shall be by classification within the department in inverse order of classification seniority. However, an employee about to be laid off shall have the right to bump (displace) the least senior employee in the applicable police officers unit, provided the Employer determines the employee exercising bumping rights has previously held the position and is adequately qualified to perform the duties of the classification into which s/he is moving and s/he has greater seniority than the bumped employee.

25.3 Recall from layoff shall be by inverse order of layoff. An employee's name shall be retained on the recall list for two (2) years, at which time all rights to recall shall terminate.

ARTICLE XXVI. SEVERANCE POLICY

26.1 To be eligible for severance pay, employees must be regular employees on the date of termination, and have a total of 10 years of continuous service as a regular employee. Severance pay is granted to eligible employees when they leave the municipal service in good standing for one of the following reasons:

26.11 Elimination of their classification or position by the City.

26.12 Separation from City employment with the employee is eligible, based on age and/or service requirements, for an annuity from the Public Employees Retirement Association whether or not the employee starts receiving those benefits.

26.13 Mandatory retirement or termination of employment due to health reasons, service-connected injury, or illness. A letter from a physician is required to
indicate an employee’s inability to perform essential functions of the job.

26.2 Employees shall be entitled to severance pay equal to the greater of:

26.21 Four weeks of appropriate pay plus one additional week of appropriate pay for each year of service beyond 10 years, not to exceed a total of 13 weeks appropriate pay or

26.22 One-third of the employee’s accumulated sick leave at the appropriate pay rate.

26.3 Employees eligible for severance pay in accordance with Section 26.1 who submit a written notice of separation from City employment at least three months prior to that separation and who do not revoke it will receive the amount of severance pay pursuant to the policy plus an additional ten percent of that amount.

ARTICLE XXVII. WELLNESS/FITNESS

Each employee who voluntarily chooses to participate in this wellness/fitness program and meet employer established goals annually by October 31st of each year will receive 0.5% of base pay in additional compensation. Employees who exceed fitness goals by October 31st of each year will receive an additional 1.50% of base pay in additional compensation. Payment of the additional wellness/fitness compensation will be made no later than the last pay period of the year. The program will be administered by the Chief and will be in compliance with all local, state and federal laws governing discrimination based on gender, race or age.

ARTICLE XXVIII. LEADERSHIP PROGRAM

The Leadership Incentive Pay Program is a voluntary program under the direction of the Police Chief designed to enhance leadership skills, promote personal growth and performance for all employees who have successfully completed the applicable probationary period. Employees who successfully complete the requirements of the program will receive 1.9% of base pay in additional compensation. The program will operate on an annual basis, from the first payroll date of the year to October 31st of each year and payment for this compensation will be made no later than the last pay period of the year. Since the program is voluntary, employees will not be compensated for off duty time in which they are involved in researching, planning or preparing for components of the program. The program will be directed by the Chief and will be in compliance with all local, state and federal laws.
ARTICLE XXIX. DURATION

The Agreement shall be effective as of December 15, 2017 and shall remain in full force and effect until December 24, 2020, or until a successor Agreement is reached, whichever is later.

In witness thereof, the parties hereto have executed this Agreement on this _______ day of ________________, 2018.

FOR THE CITY OF MINNETONKA

_________________________________
Brad Wiersum, Mayor

_________________________________
Geralyn Barone, City Manager

_________________________________
Perry Vetter, Asst. City Manager

Date _____________________________

FOR LAW ENFORCEMENT LABOR SERVICES, INC.

_________________________________
Jessica Mabin, Business Agent

_________________________________
David Riegert, Union Steward

Date _____________________________
EXHIBIT A AND MARKET ADJUSTMENT

2018 a 1.50% base pay rate increase and a 4.29% market adjustment for a total 5.79% total wage increase as calculated in Exhibit A.

A one and one-half percent (1.50%) base pay rate increase in 2019 plus any applicable market adjustments and a one and one-half (1.50%) base pay rate increase in 2020 of the Labor agreement plus any applicable market adjustments. Market adjustments will be calculated according to the following methodology and wage schedule:

POLICE SERGEANTS PAY RATES - City of Minnetonka Start
92% of 2 yr rate
6 mos = 94% of 2 yr rate
1 yr = 97% of 2 yr rate

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**Market Adjustment**

There are two (2) components to the City's MERIT system. The performance management program described in Article XII ensures performance is recognized and compensated over and above the base pay rate. The market adjustment outlined below ensures that Minnetonka's pay scale keeps pace with comparable cities.

For 2019, the top 2018 base pay rate for Minnetonka sergeants will be multiplied by the negotiated base pay increase. Using 2018 League of Minnesota Cities salary data for the cities of Brooklyn Park, Burnsville, Eagan, Eden Prairie, Edina, Lakeville, Maple Grove, Plymouth, St. Louis Park and Woodbury, the average weighted mean of these cities (excluding Minnetonka) will be multiplied by the negotiated base pay increase for 2019. These two rates will be compared, and the higher of the two will be the 2019 top pay rate for Minnetonka. If a city has not reported data by September 1, 2018, the city of Minnetonka will contact the city directly to obtain the data. The remaining steps will be adjusted to maintain rates at 92%, 94% and 97% of the top hourly rate.

This same process will be repeated using 2019 data to determine if there is a 2020 market adjustment.
MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF MINNETONKA AND
LAW ENFORCEMENT LABOR SERVICES, INC.

As agreed during contract negotiations for 2018-2020 contract, the Union and the City agree on the following item:

SEVERANCE PAY

Employees eligible for severance pay who elect to have their dollars allocated to employer paid health insurance premiums in lieu of receiving cash may direct 50% of unused sick leave for said premiums. For employees who select this option in lieu of a cash payment, the cash value of 33% of unused sick leave will be taxed before being made available for payment of insurance premiums. In the event an employee electing this benefit chooses to discontinue health insurance coverage, the difference between the cash value of 33% of unused sick leave (after taxes) and the premiums paid to date shall be made to the employee. The employee shall forfeit the remaining cash balance, future rights and coverage of this benefit, and the right to reenter the City's insurance plan. All other provisions of the Personnel Policy regarding the application of these premiums must be followed. Employees who choose this option and also submit a three-month written notice of separation as noted in Article 26.3. Separation Policy, will receive 50% of unused sick leave plus an additional ten percent (10%) of that amount to be used for health insurance premiums.

FOR THE CITY OF MINNETONKA

Brad Wiersum, Mayor
Geralyn Barone, City Manager
Perry Vetter, Asst. City Manager

FOR LAW ENFORCEMENT LABOR SERVICES, INC.

Jessica Mabin, Business Agent
David Riegert, Union Steward

Date ____________________________  Date ____________________________
City Council Agenda Item #11A
Meeting of Feb. 26, 2018

Brief Description
Resolution approving a floodplain alteration permit, conditional use permit and setback variance for the construction of a new home at 3533 and 3535 Orchard Lane

Recommendation
Adopt the resolution approving the request

Background

In 1996, the city council approved the ASPEN RIDGE subdivision. This subdivision approved eight new single-family residential lots, including the subject properties – Lots 6 and 7 – which have been taxed as buildable lots, but have remained undeveloped.

Until recently, Lots 6, 7 and 8 were held in common ownership. As lot-behind-lots, Lots 6 and 7 do not have any frontage onto a public right-of-way. To allow for access to the two lots, the previous property owner recorded a driveway easement to formalize the driveway access from Orchard Road, across Lot 8, prior to selling the properties.

Proposal

The applicant, on behalf of the property owners, is proposing to construct a new home on Lot 6. The proposed two-story walkout home would be of modern design and would have a footprint of 3,200 square feet. Lot 7 would serve only to provide access to Lot 6.

The proposal requires the following:

- **Floodplain alteration permit.** By city code, a floodplain alteration permit is required when the amount of floodplain alteration includes excavation or fill of an area greater than 1,000 square feet or a volume greater than 20 cubic yards.

- **Conditional use permit.** By city code, a conditional use permit is required for private ponding areas and drainage facilities within floodplain areas, requiring the excavation or fill of an area greater than 1,000 square feet or a volume greater than 20 cubic yards.

- **Lot-behind-lot setback variance.** By city code, the minimum setback for principal buildings on lots-behind-lots is 40 feet or 20 percent of the distance between opposite lot lines, whichever is less, but in no case less than 25 feet. A lot-behind-lot setback...
variance is required to reduce the western setback from 36 feet to 35 feet for the northwestern corner of the proposed home.

- **Easement vacation.** During review of the proposal, staff discovered that drainage and utility easements around the lots predating ASPEN RIDGE were not vacated when new easements were dedicated as part of ASPEN RIDGE. Since the proposed home would encroach into one of the obsolete easements, the applicant has requested the easements be vacated. (The public hearing for the vacation will occur at the March 5, 2018 city council meeting).

**Planning Commission Hearing**

The planning commission considered the request on Feb. 15, 2018. The staff report and plans are attached. The staff report from that meeting is attached and various plans and documents describing the proposed project are attached. Staff recommended approval noting:

- While the applicant’s proposal requires several approvals, the impacts of the current proposal would be much less than if the two lots developed independently.

- The proposal would meet all of the floodplain alteration and conditional use permit standards outlined in city code.

- Despite the setback variance, the proposed home would have a setback larger than what was originally contemplated for the lots when the ASPEN RIDGE subdivision was approved.

At the commission meeting, a public hearing was opened to take comment. Two residents appeared and generally asked about the floodplain requirements, vegetation and screening. Following the public hearing, the commission asked questions and discussed the proposal. The following is intended to summarize their discussion:

- **Driveway.** The commission concurred that, to the extent possible, the driveway should be shifted north on the property to reduce the amount of tree impact. The planning commission also encouraged the applicant to consider permeable pavers for the terrace on the north side of the home.

- **Floodplain.** The commission confirmed with staff that the proposed mitigation would not result in additional tree loss and would result in an increase of floodplain storage on the site.

**Planning Commission Recommendation**

On a 6-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes from that meeting are attached.

**Since Planning Commission Hearing**

There have been no changes to the proposal since the planning commission’s meeting on the item. However, the applicant has contacted city staff to discuss the outstanding special assessment on Lot 6. There may be additional follow up on this item.
Staff Recommendation

Staff recommends the city council adopt the resolution approving a floodplain alteration permit, conditional use permit and lot-behind-lot setback variance for construction of a new home at 3533 and 3535 Orchard Lane.

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

Originator: Ashley Cauley, Senior Planner
MINNETONKA PLANNING COMMISSION
Feb. 15, 2018

Brief Description
Items concerning the construction of a new home at 3533 and 3535 Orchard Lane:

1) Floodplain alteration permit;
2) Conditional use permit; and a
3) Lot-behind-lot setback variance

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

Background
In 1996, the city council approved the preliminary plat of ASPEN RIDGE. The plat created eight new single-family residential lots, four of which are lots-behind-lots.

During review of ASPEN RIDGE, particular consideration was given to access and utilities provision to Lots 6 and 7. (Highlighted in red.) Prior to approval, several driveway and utility location options were reviewed. The final approved location of the driveway was established along the southern lot line as a way to ensure a suitable buildable area on Lot 7 while at the same time preserving trees and a buffer to the property to the south.

Drainage and utility easements were dedicated across the southern portion of Lot 7 to ensure driveway and utility access to Lot 6. The width of the easement was related to the amount of anticipated grading needed for utility installation.

Until recently, Lots 6, 7 and 8 were held in common ownership. Shortly before the properties changed hands, the former property owner recorded a driveway easement to formalize the driveway access from Orchard Road across Lot 8 to Lots 6 and 7.

In 2007, the city council approved a change to the zoning ordinance, increasing required setbacks on lots-behind-lots. When ASPEN RIDGE was approved, the required setback for lots-behind-lots was 25 feet from all property lines. Following the amendment, the setback was increased to 40 feet or 20 percent of the distance between opposite lot lines, whichever is less
but in no case less than 25 feet. The ordinance change significantly increased required setbacks on Lots 6 and 7.

Proposal Summary

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

- Existing Site Conditions

Floodplain basin. A portion of Lots 6 and 7 is encumbered by 100-year floodplain. The 100-year floodplain is 935.7-feet.

Wetland. To be considered a wetland, three characteristics must be present: (1) hydric soils; (2) hydrophytic vegetation; and (3) hydrology.

Initially, it was thought the basin may also be displaying wetland characteristics. During a site meeting in August 2017, both a private wetland delineator and city staff confirmed that the basin would not be considered a wetland because the basin lacks hydric soils. The delineators also agreed that, because hydrophytic vegetation and hydrology presently exist, the basin has the potential to develop into a wetland over time.

Topography. Lots 6 and 7 generally slope downward from the southern property lines towards the basin. The overall change in topography is roughly 26 feet. The central portion of the properties would be regulated by the city’s steep slope ordinance with an average slope of about 23 percent.

Trees. The properties are heavily wooded and include an oak forest woodland preservation area. The woodland preservation area is highlighted in green on the image to the left. Most of the woodland preservation area exists on the southern half of the properties.

As a condition of approval of the ASPEN RIDGE plat, a conservation easement was to be recorded on the subject properties and several properties to the south. Unfortunately, while the city has a draft of the easement document, it was never recorded. The area which was to be encumbered by the conservation easement is shown in brown.
Easements. On the diagram to the left, the areas in white (not shaded red) are those areas encumbered by drainage and utility easements. These easements were dedicated to protect the floodplain basin, as well as the driveway and utility access for the rear lot. The areas shaded red are areas not encumbered by easements.

Buildable area. Despite the larger lot sizes, the buildable areas or each lot is limited.

Lot 7, the western lot, has a buildable area of roughly 6,300 square feet.

Lot 6, the eastern lot, has a buildable area of roughly 3,400 square feet. This is slightly less than the minimum 3,500 square feet of buildable area required by the city’s subdivision ordinance. When the development was approved, the buildable areas were larger. They decreased in size due to the increase in required setbacks.

• Applicant Proposal

Building. New home construction is proposed on Lot 6. The two-story walkout home would be of modern design and would have a footprint of 3,200 square feet. The walkout level would include a tuck-under garage that would be accessed via the proposed terrace on the north side of the house. In addition to living space, the main level of the home would also include garage space that would be accessed via a driveway to the south.

Driveway. As currently proposed, the driveway to the home on Lot 6 would be located within the drainage and utility easement located in the southern half of Lot 7.

Lot 7. Lot 7 would serve only to provide access to Lot 6. No homes would be constructed on this lot at this time.

Site impacts. Significant grading and the removal of roughly 30 trees would be required to accommodate the proposed driveway. Additional trees would be removed in order to accommodate the construction of the terrace and proposed house.

A portion of the floodplain would be filled to ensure a more reasonable buildable area. Mitigation area would be created by excavating additional floodplain storage within the existing floodplain basin. The mitigation area would result in a small increase in
floodplain storage. The applicant is proposing to use this increase in floodplain storage as a way to manage stormwater for the increase in impervious surface onsite.

**Proposal Requirements**

The following applications are required for the proposal:

- **Floodplain alteration permit.** By city code, a floodplain alteration permit is required when the amount of floodplain alteration includes excavation or fill of an area greater than 1,000 square feet or a volume greater than 20 cubic yards.

- **Conditional use permit.** By city code, a conditional use permit is required for private ponding areas and drainage facilities within floodplain areas, requiring the excavation or fill of an area greater than 1,000 square feet or a volume greater than 20 cubic yards.

- **Lot-behind-lot setback variance.** By city code, the minimum setback for principal buildings on lots-behind-lots is 40 feet or 20 percent of the distance between opposite lot lines, whichever is less, but in no case less than 25 feet. A lot-behind-lot setback variance is required to reduce the western setback from 36 feet to 35 feet for the northwestern corner of the proposed home.

- **Easement vacation.** During review of the proposal, staff discovered that drainage and utility easements around the lots predating ASPEN RIDGE were not vacated when new easements were dedicated as part of ASPEN RIDGE. Since the proposed home would encroach into one of the obsolete easements, the applicant has requested the easements be vacated. (The public hearing for the vacation will occur at the March 5, 2018 city council meeting).

**Primary Questions and Analysis**

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

- **Is the proposal reasonable?**

  Generally, yes. The proposal is reasonable. The subject site consists of two buildable lots. The property owner has certain legal development expectations and rights. While the applicant’s proposal requires several approvals, the impacts of the proposal would be much less than if the two lots developed independent of one another.

  Though understanding the existing development rights, staff is concerned about the amount of tree lots associated with construction of the proposed driveway. If the driveway, utilities, grading and construction access across Lot 7 were shifted slightly north, the driveway would be located completely outside of the woodland preservation area and would result in the additional preservation of 30 of the 84 trees proposed for removal. The applicant has indicated that they would be willing to work with staff on the final driveway location to minimize tree loss.
• Is the floodplain alteration request reasonable?

Yes. The proposed floodplain alteration is reasonable as:

1. The proposed alteration would meet the general and specific standards for floodplain alteration as outlined in City Code §300.24, Subd. 9.

2. The proposed alteration would not negatively impact adjacent properties or the hydrology of the floodplain.

3. The proposal would not result in a net fill of floodplain.

4. The proposal would result in an increase of flood storage capacity on the property.

• Is it appropriate to allow private stormwater management facilities within the floodplain?

Yes. Typically, the city would strongly encourage – or may even require – that stormwater management facilities be located outside of the floodplain. However, in the case of this specific proposal staff would support the facility within the floodplain finding that:

1. Relocating the facility outside of the basin would result in the removal of additional trees.

2. Due to the existing topography of the site, all drainage naturally flows to the basin making it the most suitable location for the facility.

3. The proposal would meet all of the conditional use permit standards for facilities within the floodplain.

• Is the lot-behind-lot setback reasonable?

Yes. The proposed lot-behind-lot setback is reasonable, as:

1. The proposed home would be more than 75 feet from the nearest residential structure. Additionally, despite the variance, the proposed home would have a setback larger than several of the other homes on lots-behind-lots in the surrounding neighborhood.

2. The proposed setback of 35 feet would be larger than what was originally contemplated as part of the buildable area when the ASPEN RIDGE subdivision was approved.
Summary Comments

If ASPEN RIDGE were proposed today, staff would likely not support the subdivision in the form that was originally approved in 1996. However, both of the subject properties were developed as buildable lots and have been taxed as buildable lots for the last 20 years. For a property owner, this establishes a reasonable expectation regarding the ability to construct a home on the properties.

By policy, the planning commission is to give strong consideration to setback variances if a property has been assessed and taxed as a buildable lot. Staff anticipates that if the lots were developed independent of one another, more intense variances and site impacts would be needed to construct two homes.

Staff Recommendation

Staff recommends the city council adopt the attached resolution, which approves a floodplain alteration permit, conditional use permit and a setback variance for the construction of a new home at 3533 and 3535 Orchard Lane.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

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</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>Christian Dean, AIA, on behalf of the property owners</td>
</tr>
<tr>
<td><strong>Surrounding Properties to the north, south, east and west are single family residential homes, zoned R-1 and guided for low density residential</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Land Uses</strong></td>
<td>Planning Guide Plan designation: low density residential Zoning: R-1</td>
</tr>
<tr>
<td><strong>FPA Standards</strong></td>
<td>By City Code §300.24 Subd.9(c), in reviewing alteration permits, the city must consider whether the following general standards are met:</td>
</tr>
<tr>
<td></td>
<td>1. The magnitude of the alteration is appropriate relative to the size of the floodplain district.</td>
</tr>
<tr>
<td></td>
<td>2. The amount of any increase in buildable area is appropriate in comparison to the amount of buildable area before alteration.</td>
</tr>
<tr>
<td></td>
<td>3. The alteration will not negatively impact the hydrology of the floodplain.</td>
</tr>
<tr>
<td></td>
<td>4. Floodplain mitigation areas will not negatively impact adjacent properties.</td>
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<tr>
<td></td>
<td>5. The alteration will meet the intent of the city's water resources management plan and the subdivision and zoning ordinances;</td>
</tr>
<tr>
<td></td>
<td>6. The alteration will not adversely impact governmental facilities, utilities, services or existing or proposed public improvements; and</td>
</tr>
<tr>
<td></td>
<td>7. The alteration will not have an undue adverse impact on the public health, safety or welfare.</td>
</tr>
<tr>
<td>By City Code §300.24 Subd. 9(d) no alteration permit may be granted unless the following specific standards are met.</td>
<td></td>
</tr>
<tr>
<td>1. Water storage must be maintained and provided in an amount at least equal to that filled unless acceptable hydrologic engineering data has been presented and approved by the city engineer indicating that conditions have changed such that the floodplain characteristics will be maintained even with proposed floodplain fill.</td>
<td></td>
</tr>
</tbody>
</table>
2. Floodplain fill area must be located no more than 20 feet from any existing or proposed structure, except where required by the city engineer to achieve a required evacuation route.

3. Where floodplain alteration is required for construction of a driveway, the driveway must be no wider than 12 feet and must be located to minimize impact to the floodplain.

4. Floodplain alteration, including the creation of compensatory water storage, must not result in removal of regulated trees, adversely impact wetlands or existing wetland buffers, or be located within public easements. The city council may waive this condition if the proposed alteration would improve existing site conditions.

**Conditional Use Permit**

By City Code §300.26, Section 2, no conditional use permit may be granted for a conditional use in the wetlands, floodplain, or shoreland districts unless the city council determines that all of the following standards are met:

a) the use is consistent with the intent of this ordinance;

**Finding:** The proposal is consistent with the intent of the ordinance.

b) the use is consistent with the goals, policies and objectives of the comprehensive plan;

**Finding:** The proposed house would be consistent with the low-density residential designation of the property and would be consistent with the goals, policies and objectives of the comprehensive guide plan.

c) the use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;

**Finding:** As a condition of approval, the applicant must submit a utility plan for staff review. This plan will be reviewed to ensure that it would not have an undue impact on existing or proposed improvements.

d) the use is consistent with the city’s water resources management plan;

**Findings:** The proposal would be consistent with the city’s water resources management plan.

e) the use does not have an undue adverse impact on the public health, safety or welfare;

**Findings:** The proposed single-family home would not have an
undue impact on the public health, safety or welfare.

f) water bodies receiving runoff entering wetlands, floodplain or shoreland areas shall not be adversely impacted by the water quality of runoff;

**Findings:** The proposal includes stormwater management facilities and is not anticipated to adversely impact adjacent water bodies.

g) no structure or fill may be placed which adversely affects the minimum required water storage capacity as defined in the water resources management plan of a property;

**Findings:** The proposal would result in a slight increase in flood storage capacity on the property.

h) no structure subject to periodic inundation shall be designed for human habitation or shall the structure be serviced with public utilities;

**Findings:** No structure proposed for human habitation would be inundated.

i) structures shall have a low flood damage potential and shall be firmly anchored;

**Findings:** None are included in the proposal.

j) service facilities, such as electrical and heating equipment, must be located a minimum of two feet above the flood elevation defined in the water resources management plan;

**Findings:** This has been included as a condition of approval.

k) there shall be no storage of materials which are flammable, explosive or otherwise dangerous to human, animal or plant life;

**Findings:** None are included in the proposal but this has been included as a condition of approval.

l) there shall be only minimal interference with wetland vegetation; and

**Findings:** No wetlands are present on the property.

m) required approvals shall be secured from all appropriate jurisdictions, including the United States army corps of engineers, Minnesota department of natural resources, governing watershed
district and the Lake Minnetonka conservation district. Any conditions imposed upon such approvals shall be met.

**Findings:** This has been included as a condition of approval.

By City Code §300.26, Subd.4, no conditional use permit may be granted in the floodplain district except in circumstances in which its approval will not have an adverse impact on the intent of this ordinance or the precepts of the comprehensive plan. In addition, no conditional use permit may be issued unless efforts have been made to mitigate to the extent feasible adverse impacts on the subject property and adjacent properties. Granting of a conditional use permit will be conditioned upon review of the request by all other appropriate governmental agencies, including watershed districts, the Minnesota department of natural resources, and the United States federal emergency management agency and army corps of engineers.

**Findings:** The proposal has been reviewed by the city planning, engineering, and natural resources staff have reviewed the plan and have found it to be generally consistent with the city’s development guides. By developing the properties together, the proposal would result in a lesser impact than if the properties developed independently. As a condition of approval, the applicant must submit the plan to all necessary outside agencies for review and approval.

**Natural Resources**

Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval the applicant must submit a construction management plan detailing these management practices.

**Motion Options**

The planning commission has the following motion options:

1. Concur with staff’s recommendations. In this case, a motion should be made recommending the city council approve the requests based on the findings based on the staff-drafted resolutions.

2. Disagree with staff’s recommendations. In this case, a motion should be made recommending the city council deny the proposal. The motion should include findings for denial.

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

Neighborhood Comments
The city sent notices to 57 area property owners and received no comments.

Deadline for Decision
May 12, 2018
Location Map
Project: Kermisch Residence
Address: 3533 & 3535 Orchard Ln
CITY OF MINNETONKA VARIANCE APPLICATION

Describe why the proposed use is reasonable.

The proposed single-family residence is a reasonable size of home in relation to the lot area. The gross floor area of the home is 5,300 sf not including 1,700 of garage. The lot area is 38,408 sf and the house footprint is 3,371 sf including a screen porch.

Describe:

- Circumstances unique to the property;
- Why the need for variance was not caused by the property owner;
- Why the need is not solely based on economic considerations.

The ‘lot behind lot’ property is encumbered with numerous easements and setbacks; Conservation Easements to the east and south which prohibit any building activity within those areas which limit the available building area greater than the standard ‘lot-behind-lot’ setbacks.

A floodplain and associated setbacks existing on the lower / northern portion of the property also restricts the building area further.

Considering the south and east conservation easements, the north floodplain setback and the east ‘lot-behind-lot’ setback determination a compliant building area would have a compliant building footprint of approximately 17’ at it’s largest dimension in the north-south orientation. The site constraints unique to this property essentially leave this property unbuildable for a typical home with garages.

Describe why the variance would not alter the essential character of the neighborhood.

The variance requested is for the lot-behind-lot interior yard setback. The property owners own the adjacent property 3533 Orchard Lane and do not intend to develop that property. The proposed house is sited lower in elevation than the nearest neighboring home in a heavily wooded site and will not alter the essential character of the neighborhood.
WALL AND PARTITION KEY
EXISTING WALL
PROPOSED NEW WALL

PLAN NOTES
1. FIRST FLOOR FINISHED FLOOR ELEVATION 100' -0" = GEODETIC SURVEY MARKER ELEVATION 880.4'
2. FIELD VERIFY ALL DIMENSIONS
3. GRIDS TO FACE OF SHEATHING
4. INTERIOR DIMENSIONS TYPICALLY TAKEN FROM STRUCTURAL FACE OF EXTERIOR WALLS TO CENTERLINE OF INTERIOR STUD WALLS
5. REFERENCE STRUCTURAL DRAWINGS AND SPECIFICATIONS FOR ALL FRAMING REQUIREMENTS, SIZES AND CONFIGURATIONS.
COORDINATE WITH ARCHITECTURE LAYOUT AND REVIEW DISCREPANCIES WITH ARCHITECT.
6. PLAN CUT AT 4'-0" ABOVE FLOOR LEVEL
7. REFER TO ELEVATIONS FOR EXTENTS OF EXTERIOR SIDING MATERIALS

BASEMENT FLOOR PLAN
A200
To: Planning Commission
From: Loren Gordon, AICP, City Planner
Date: Feb. 15, 2018
Subject: Change Memo for the Feb. 15th Planning Commission Agenda

ITEM 8A – Kermisch

- The attached comment was received after publication of the packet.

ITEM 8B – Ridgedale Design Criteria

- An additional “0” was accidently omitted from the square footage of the mall addition. The following change should be made to page one of the report:

  Phase Two: The second phase consisted of the demolition of the then existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new 140,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.

- On page 5 of the design criteria, the applicant has requested the following addition:

  The quantity of EIFS is to be limited to 20% of the South, West and East elevations of the tenant façade as determined by property owner. The amount of EIFS is limited to 50% of the north elevation.

- To respond to the additional language, please make the following change to page 2 of the staff report:

<table>
<thead>
<tr>
<th></th>
<th>Existing Design Criteria</th>
<th>Proposed Design Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowed amount of EIFS on façade</td>
<td>Stucco and EIFS may be used in limited amounts.</td>
<td>Stucco and EIFS must be used in limited amounts. The quantity of EIFS is to be limited to 20-percent of the south, east and west elevations, allowed tenant façade ad determined by property owner. The amount of EIFS is limited to 50% of the north elevation.</td>
</tr>
</tbody>
</table>
To respond to the additional language, please make the following changes to page 6 of the staff report:

**Tenant 1A-1D: Rear Elevation**

<table>
<thead>
<tr>
<th>Design Criteria Standards</th>
<th>Rear Elevation</th>
</tr>
</thead>
<tbody>
<tr>
<td>One wall sign per elevation shown within the sign zone and must be located 5-feet above the projecting, black band.</td>
<td>No signage is proposed on the rear elevation.</td>
</tr>
<tr>
<td>Permitted façade materials: Stone, brick, metal panels and linear siding. The quantity of EIFS is limited to 20 percent of the allowed tenant façade.</td>
<td>As shown, materials include metal panels, stone and EIFS. The amount of EIFS would need to be reduced as it is shown about 50 percent EIFS. The amount of EIFS is roughly 50 percent and would meet the criteria.</td>
</tr>
<tr>
<td>Storefront height in the development is 12 feet with clear glass.</td>
<td>No glass would be proposed for the rear.</td>
</tr>
</tbody>
</table>

**ITEM 8C – iFly**

- An additional “0” was accidently omitted from the square footage of the mall addition. The following change should be made to page one of the report:

  Phase Two: The second phase consisted of the demolition of the then existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new 140,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.

**ITEM 9A – Chabad**

- The attached comments were received after publication of the packet.
Ashley,

I have reviewed the Staff Report on the Kermisch property and am supportive of the proposal. Given all the open land in the city will ultimately be developed, particularly property that is already divided into lots, this is an ideal outcome. The proposal limits the impact on the environment, is in keeping with the immediate neighborhood, and as a result ultimately will have a positive impact. I applaud all those directly involved. From those in the city, to the architect of record, to the new owner. This proposal is a dramatic improvement over the initial subdivision!

On a related note. Staff is recommending an alternate path for the driveway to the residence. The Staff proposal moves the driveway to the North. This proposal will save approximately 30 trees. With emerald ash bore knocking on the door and oak wilt here. Minimizing this impact will have an immediate positive impact, and may pay even greater dividends in the future. I would like to see Staff's recommendation for the driveway relocation accepted.

Thanks,

Rick Kruger
8. Public Hearings

A. Items related to construction of a new home at 3533 and 3535 Orchard Lane.

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

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

Sewall asked where the driveway would be located. Cauley pointed out the location and explained the driveway agreement that already exists.

Schack asked if moving the driveway would make development of the middle lot difficult. Cauley explained that a condition of approval would prevent Lot 7 from being developed.

Powers asked how many trees would be removed. Cauley answered that 30 trees would be removed for the driveway. Schwarz counted a total of 84 trees would be removed.

Christian Dean, architect representing the applicant, stated that he was present to answer questions. He was open to staff’s proposed location of the driveway. The applicant would be amenable to using permeable pavers.

The public hearing was opened.

Christina Rudolph, 3529 Orchard Lane, requested that fast-growing trees or vegetation be planted to replace the removed trees and provide a buffer to her house. The plan is wonderful. She loves the house design.

Caroline Munson-Benson, 3525 Orchard Lane, stated that:

- The applicant should have the boundary lines professionally surveyed. She was unable to find all of the stakes to her property.
- “That” parcel was approved many years ago for development and she bought the house to preserve the wooded area. The woodland is one of the last natural habitats left in Minnetonka. She saw 18 deer this year. She was appalled that 84 trees would be removed.
- A pond forms in the woodland every spring. She would like to hear more about the floodplain and wanted to make sure her natural habitat would not be ruined.
- She asked if the garage would face her house. She was concerned with that.
- The proposal would impact her quality of life.

No additional testimony was submitted and the hearing was closed.
Cauley pointed out the layout of the proposed garage and house on the site. The proposal would be required to treat water runoff for the addition of impervious surface. Engineering staff found that the proposal meets the stormwater treatment requirements. The proposal would excavate within the floodplain to mitigate for the fill of floodplain. This would result in an increase of floodplain storage on the site to improve the current situation. All of the excavation and mitigation would be done without impacting trees.

Cauley and Schwartz explained tree mitigation requirements and the location of the proposed conservation easement area.

Cauley noted that a survey was required as part of the application. The plans were prepared by a licensed surveyor.

Cauley stated that the lots have been taxed as buildable lots, so the property owners have some expectation that the lots would be buildable.

Schack confirmed with Cauley that Lot 7 would not be able to be developed. Cauley explained the location of the driveway. The location of utilities may impact the driveway location.
Schack thought the proposal makes the best out of a situation that is not ideal. She appreciated the driveway being moved to save trees. The lot is developable and the proposal is the most reasonable option.

Sewall and Chair Kirk agreed. They support the proposal. Chair Kirk would like permeable pavers to be a requirement of approval.

Powers found the environmental impact sad, but supports the proposal because there is no legal basis to deny it. The property owner has rights.

Sewall commended staff for working with the applicant to decrease the environmental impact and tree loss. The proposal is the best option for a bad situation.

Knight moved, second by Powers, to recommend that the city council adopt the resolution approving a floodplain alteration permit, conditional use permit and a setback variance for the construction of a new home at 3533 and 3535 Orchard Lane.

Schack, Sewall, Knight, O’Connell, Powers, and Kirk voted yes. Motion carried.

Chair Kirk stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.
Resolution No. 2018-
Resolution approving a floodplain alteration permit, conditional use permit and setback variance for the construction of a new home at 3533 and 3535 Orchard Lane

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

Section 1. Background.

1.01 Christian Dean, AIA, on behalf of the property owner is proposing to construct a new home on the properties at 3533 and 3535 Orchard Lane. (Project No. 18002.18a).

1.02 The properties are legally described as follows:

Lots 6 and 7, Block 1, Aspen Ridge, Hennepin County, Minnesota.

1.03 In 1996, the city council granted preliminary and final plat approval for the ASPEN RIDGE subdivision. At the time, city code required that any home constructed on a lot-behind-lot, or a lot without frontage on a public street, maintain a 25-foot building setback from all property lines.

1.04 The subject properties have remained undeveloped and are considered lots-behind-lots.

1.05 In 2007, city code was amended to require that any home constructed on a lot-behind-lot maintain a setback of 40 feet or 20 percent of the average distance between opposite lot lines, but not less than 25 feet.

1.06 The amendment increased the required setbacks on the subject properties from 25 feet to 36 feet from the western property line. The proposed home requires a variance to reduce the setback from 36 feet to 35 feet from the western property line.

1.07 By City Code §300.24, Subd. 9, a floodplain alteration permit is required when the excavation or fill of area is greater than 1,000 square feet or a volume greater than 20 cubic yards of land located outside of the floodway.

1.08 By City Code §300.24, Subd. 5, a conditional use permit is required for private ponding areas and drainage facilities, requiring the excavation or fill of an area
greater than 1,000 square feet or a volume greater than 20 cubic yards, within the floodplain.

1.09 On Feb. 15, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the planning commission. The planning commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The planning commission recommended the city council approve the requests.

Section 2. Standards.

2.01 City Code §300.24 Subd. 9(c), states that in reviewing alteration permits, the city will consider whether the following general standards are met:

1. The magnitude of the alteration is appropriate relative to the size of the floodplain district.

2. The amount of any increase in buildable area is appropriate in comparison to the amount of buildable area before alteration.

3. The alteration will not negatively impact the hydrology of the floodplain.

4. Floodplain mitigation areas will not negatively impact adjacent properties.

5. The alteration will meet the intent of the city's water resources management plan and the subdivision and zoning ordinances;

6. The alteration will not adversely impact governmental facilities, utilities, services or existing or proposed public improvements; and

7. The alteration will not have an undue adverse impact on the public health, safety or welfare.

2.02 City Code §300.24 Subd. 9(d), states that an alteration permit will not be granted unless the following specific standards are met.

1. Water storage must be maintained and provided in an amount at least equal to that filled unless acceptable hydrologic engineering data has been presented and approved by the city engineer indicating that conditions have changed such that the floodplain characteristics will be maintained even with proposed floodplain fill.

2. Floodplain fill area must be located no more than 20 feet from any existing or proposed structure, except where required by the city engineer to achieve a required evacuation route.

3. Where floodplain alteration is required for construction of a driveway, the driveway must be no wider than 12 feet and must be located to minimize impact to the floodplain.
4. Floodplain alteration, including the creation of compensatory water storage, must not result in removal of regulated trees, adversely impact wetlands or existing wetland buffers, or be located within public easements. The city council may waive this condition if the proposed alteration would improve existing site conditions.

2.03 By City Code Section 300.26, Subd. 4: No conditional use permit may be granted in the floodplain district except in circumstances in which its approval will not have an adverse impact on the intent of this ordinance or the precepts of the comprehensive plan. In addition, no conditional use permit may be issued unless efforts have been made to mitigate to the extent feasible adverse impacts on the subject property and adjacent properties. Granting of a conditional use permit will be conditioned upon review of the request by all other appropriate governmental agencies, including watershed districts, the Minnesota department of natural resources, and the United States federal emergency management agency and army corps of engineers.

2.04 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.

Section 3. Findings.

3.01 The proposal would meet the general and specific standards outlined in City Code §300.24, Subd. 9:

1. The proposed alteration would not negatively impact adjacent properties or the hydrology of the floodplain.

2. The proposal would not result in a net fill of floodplain.

3. The proposal would result in an increase of flood storage capacity on the site.

3.02 The proposal would meet the general and specific standards outlined in City Code §300.26, Subd. 4:

1. City planning, engineering, and natural resources staff have reviewed the plan and have found it to be generally consistent with the city’s development guides.

2. By developing the properties together, the proposal would result in a lesser impact than if the properties developed independently.

3. As a condition of this resolution, the applicant must submit the proposed plan to all necessary outside agencies for review and approval.
The proposal meets the variance standard outlined in City Code §300.07, Subd. 1(a):

1. PURPOSE AND INTENT OF THE ZONING ORDINANCE: The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of setback requirements is twofold: (1) to provide adequate space between property lines and structures; and (2) to establish neighborhood consistency. The proposed 35-foot setback would meet this intent. The proposed home would be more than 75 feet from the nearest residential structure. Additionally, despite the variance, the proposed home would have a setback larger than several of the other homes on lots-behind-lots in the surrounding neighborhood.

2. CONSISTENT WITH THE COMPREHENSIVE PLAN: The proposal would be consistent with the city’s comprehensive plan. One of the goals of the city’s comprehensive plan is to maintain, preserve, and support the character of the existing neighborhoods. The requested variance would not negatively impact the existing residential character of the neighborhood and would allow for investment into a property that has remained vacant since its approval in the mid-1990s.

3. PRACTICAL DIFFICULTIES: There are practical difficulties in complying with the ordinance:

   a. REASONABLENESS: The 2007 city code amendment, which increased the setback from all property lines for lot-behind-lots, reduced the amount of buildable area on the subject properties. While the site consists of two properties, each property is uniquely shaped. The proposed setback of 35 feet would be larger than what was originally contemplated as part of the buildable area when the ASPEN RIDGE subdivision was approved.

   b. UNIQUE CIRCUMSTANCE: The 2007 city code amendment reduced the amount of buildable area on both properties. Given the unique configuration of the lots, the reduction has significantly impacted the shape and size of the buildable area. This is a unique circumstance not common to similarly zoned properties.

   c. CHARACTER OF THE LOCALITY: Given that the requested variance would simply reflect the buildable area contemplated during the ASPEN RIDGE subdivision approval, the proposal would not have a negative impact on neighborhood character. Additionally, the proposed setback would be similar to other lot-behind-lot setbacks in the neighborhood.


4.01 The city council hereby approves the above described floodplain alteration permit, conditional use permit, and setback variance based on the findings
4.02 Approval is subject to the following conditions:

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

- Survey dated Jan. 11, 2018
- Tree removal plan dated Jan. 11, 2018
- Stormwater and flood plain management plan dated Jan. 11, 2018

2. The following must be submitted in order for a building permit application to be considered complete:

   a) Final site, utility, tree preservation and tree protection plans. These plans must:

      1) Adjust final driveway, utility, grading and construction access across Lot 7 to avoid impacts to the adjacent oak forest. Final driveway location is subject to city staff review and approval. The driveway must be located to minimize impacts to Tree No. 185 and 186.

      2) Confirm existing and proposed utility locations and connections.

      3) Confirm that proposed temporary and permanent fencing is located outside of the conservation easement.

      4) Show less than 30 percent impact to the critical root zone of trees 209 and 253.

      5) Meet minimum landscaping and mitigation requirements as outlined in the ordinance. However, at the sole discretion of natural resources staff, mitigation and landscaping may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation, topography, or site constraints.

      6) Confirm location of construction access route. This route must minimize impacts to adjacent trees.

   b) A final stormwater management plan. This plan must meet the requirements of the city’s Water Resources Management Plan, Appendix A. Design. In addition, supplemental calculations must be submitted detailing conformance with the city’s:
- Rate Control: maintain existing rates leaving the site for the 2-, 10-, and 100-year events.

- Volume: the storm chambers must capture one inch of the entire site's impervious surface. Soil borings are required to verify infiltration rates.

- Water Quality: materials must be submitted (MIDS or p8 model) to demonstrate that 68 percent of the total phosphorus and 90 percent of the TSS are removed.

c) 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.

d) 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.

e) Permits may be required from other outside agencies including, Hennepin County, United States Army Corps of Engineers, MNDNR, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant’s or property owner’s responsibility to obtain any necessary permits.

3. Prior to issuance of a building permit:

a) The following documents must be submitted for staff review and approval:

1) An encroachment agreement for the retaining wall north of the proposed house that lies within the city’s drainage and utility easement.

2) A conservation easement document. This easement must be generally consistent with the 1996 council approvals but should exclude the area west of trees 288 and 297.
3) The applicant must provide proof that the tax combination form has been submitted to Hennepin County. If the applicant decides not to tax combine the properties, the following is required:

a. Private utility and maintenance agreements.

b. A declaration of restrictive covenant, which restricts the separate sale of properties at 3533, and 3535 Orchard Lane.

b) A copy of this resolution must be recorded with Hennepin County and a copy of the recorded document must be returned to the city.

c) The conservation easement must be staked by the surveyor in the field.

d) If necessary, recorded driveway easement must be updated to reflect the location of the proposed driveway.

e) Install temporary erosion control, tree and wetland protection fencing, and any other measures required by staff for staff inspection and approval. These items must be maintained throughout the course of site work.

f) Pay all required hook-up and stormwater fees.

g) Drainage and utility easements originally dedicated per document 1938431 located on Lots 6 and 7 of the plat of ASPEN RIDGE must be vacated.

4. The low floor elevation of the proposed home must be two feet above the 100-year flood elevation of 935.7 feet.

5. The proposed house must be protected with a 13D automatic fire sprinkler system or an approved alternative system.

6. To avoid additional tree loss, impacts to trees adjacent to the floodplain compensation area should be minimized.

7. During alteration activity, the streets must be kept free of debris and sediment.

8. Prior to issuance of a certificate of occupancy, submit an as-built survey is required to verify floodplain fill and compensation areas.

9. This approval will be null and void on Dec. 31, 2019 unless: (1) construction, fill and mitigation is complete; or (2) the city has approved a time extension.
Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on Feb. 26, 2018.

David E. Maeda, City Clerk
City Council Agenda Item #13A  
Meeting of Feb. 26, 2018

**Brief Description**  
Temporary on-sale liquor license for Adath Jeshurun Congregation,  
10500 Hillside Lane W

**Recommendation**  
Hold the public hearing and grant the license

**Background**

The city has received an application for a temporary on-sale liquor license from Adath Jeshurun Congregation for an event to be held on June 13, 2018, at 10500 Hillside Lane W. The event will include dinner and cocktails and will be held from 5:00-9:00 p.m.

City liquor ordinances allow temporary on-sale liquor licenses to be issued to clubs and other charitable, religious, or not-for-profit organizations, subject to application, public hearing, and approval by the city council. Adath Jeshurun has completed the license application, paid the $25 fee, and provided proof of insurance. They are a non-profit organization, and are therefore eligible for a temporary liquor license.

Staff does not anticipate any difficulties in connection with serving alcohol at the event held on June 13, 2018. The event will be held on one evening only, and only adults over the age of 21 with a wristband will be served alcohol. Adath Jeshurun has hired professional bartenders for the evening and also assigned several individuals to patrol the dinner party to ensure no one under 21 is consuming alcohol. The city did not encounter any issues with the 2017 event held at Adath Jeshurun.

**Recommendation**

Staff recommends the council hold the public hearing and grant the license.

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

Originated by:  
Kathy Leervig, Community Development Coordinator
Location Map
Project: Adath Jeshuun Congregation
Address: 10500 Hillside Lane W
Adath Jeshurun Congregation
Annual Benefit – June 13, 2018

Responsible Liquor Service Plan

Adath Jeshurun Congregation’s Annual Benefit is coming up on Wednesday, June 13, 2018. The event includes a dinner party for all ages, at which alcohol will be served. Ensuring those under the age of 21 do not consume alcoholic beverages is a top priority for the congregation. As such, we have the following plans to prevent minors from consuming alcoholic beverages:

- Upon entering the dinner party, all adults will show valid state-issued or federally-issued identification to prove they are over 21. Staff will put “over 21” wristbands on those adults.
- Professional bartenders are instructed to only serve adults with a wristband; they are also told they can refuse service to anyone for any reason – whether they believe the person may be under the age of 21, whether they believe the person is intoxicated, or for any other judgement made in good conscience.
- A group of highly responsible adults will be charged with patrolling the dinner party for its full duration; looking for unattended beverages. They will pick up and remove any unattended beverages, to ensure minors are not able to pick up such a beverage.

For more information or to discuss the plan, please contact Adath Development Director Evan Stern: evans@adath.net; 952-215-3916.
An Afternoon of Cuban Film and Food in collaboration with the Sabes JCC Jewish Film Festival

Sunday, February 11 • 5 pm

Cuban food and drink will accompany a screening of Cuba’s Forgotten Jewels, a fascinating documentary film born of the tales that Marion Kreith told her daughter, co-director Judy Kreith, over the years. Marion escaped war-torn Europe as a young girl with her family, evading Nazi capture and crossing the Atlantic to a tropical paradise. In this film, her story mingles with the personal accounts of other refugees who recall their escape to Havana and the challenges they face in an exotic and unfamiliar land. With a stunning musical score of Jewish melodies and the pulsating music of Havana, the film merges the realities of two vastly different yet intermingled cultures, bringing this colorful and uplifting piece of history to light.

Cost: $18 for film and dinner

Jewish Theater: Script-Reading, Guthrie Play and Discussion

Thursday, February 22 • 7-9 pm
Thursday, March 8 • 7:30-10 pm

Come to Adath to read aloud Sholem Asch’s controversial 1907 play God of Vengeance on February 22. Then attend the Guthrie Theater on March 8 to see the recent play Indecent by Paula Vogel, followed by a private discussion with Guthrie Senior Dramaturg Jo Holcomb.

Indecent, which debuted on Broadway this past spring, is a theatrical play with music inspired by the 1923 Broadway debut of Asch’s God of Vengeance—a play that follows a Jewish brothel owner and the lesbian romance between his 17-year-old daughter and a prostitute. The modern play Indecent charts the journey of a drama upheld as a groundbreaking piece of Jewish literature by some, and an act of obscenity by others. An ensemble of eight plays klezmer music as well as nearly 40 roles to shed light on one of the most fascinating scandals in theater history.

Cost: $40

Please register by February 20 for tickets.

Six13 on 6.13

Wednesday, June 13

We will welcome national phenomenon Six13—a Jewish a cappella group—to our Adath Benefit on June 13, 2018. It will be a night of great food, great music, and a celebration of our great community.

Six13 is a groundbreaking, six-man vocal band that brings an unprecedented style of Jewish music to the stage, with songs ranging from hip-hop dance tracks to rock anthems. The members of the New York City-based group sound like a full band—while using nothing but their voices.

Benefit sponsorships and tickets will be available in April.

Knitting Plus

Sundays: January 7, February 4 and March 4 • 1-3 pm

If you knit, crochet, needlepoint, cross-stitch or want to learn, join us at our monthly Knitting Plus Circle. Come share patterns and techniques as we hang out and relax. Bring your projects. Beginning knitters please bring medium yarn and size 7, 8 or 9 needles to start your scarf! Meets in the Adult Lounge.
City Council Agenda Item #13B  
Meeting of Feb. 26, 2018

**Brief Description**  
Temporary on-sale liquor license for ICA Food Shelf, for use at 3739 Tonkawood Road

**Recommendation**  
Hold the public hearing and grant the license

**Background**

The city has received an application for a temporary on-sale liquor license from ICA Food Shelf (ICA) for a fundraiser event to be held at Tonkadale Nursery, 3739 Tonkawood Road. ICA serves neighbors in need in Hopkins, Minnetonka, Excelsior, Shorewood, Deephaven, Greenwood and Woodland.

The Edibles Expo event will be held on Saturday, March 24, 2018, from 10 a.m.-2 p.m. The event will consist of gardening sessions, information booths, kid and family activities, food, beer, silent auction and music. The event is a family friendly event, so guests over 21 will be given a wristband to designate that they have had their ID verified.

City liquor ordinances allow temporary on-sale liquor licenses to be issued to clubs and other charitable, religious, or not-for-profit organizations, subject to application, public hearing, and approval by the city council. ICA Food Shelf has completed the license application, paid the administrative fee, and provided proof of insurance. They are a non-profit charitable organization, and are therefore eligible for a temporary liquor license.

Staff does not anticipate any difficulties in connection with serving beer at the event held on March 24, 2018. The fundraiser will be held for four hours and only adults over the age of 21 will be served beer.

Staff asked the applicant to provide more information about parking at the site and in the surrounding area to ensure operation of the event is sensitive to the surrounding neighborhood. ICA has submitted a parking plan which includes overflow parking at Minnetonka Lutheran Church on Minnetonka Blvd. with shuttles operating from 9:30 a.m.-2:30 p.m. The police department has been informed of the event to monitor if there are issues.

**Recommendation**

Staff recommends the council hold the public hearing and grant the license.

Submitted through:

- Geralyn Barone, City Manager
- Julie Wischnack, AICP, Community Development Director

Originated by:

- Kathy Leervig, Community Development Coordinator
Location Map
Applicant: ICA Food Shelf
Event Location: Tonkadale Nursery
Address: 3739 Tonkawood Rd
February 8, 2018

Dear Minnetonka City Council,

Minnetonka Community Day: an Edibles Expo to benefit the ICA food shelf will take place on Saturday, March 24th from 10:00am-2:00pm on at Tonkadale Greenhouse.

The events of the day include a seminar focusing on edible gardening, children’s story time, the Bo Riddle band, information booths, kids and family activities, free food, beer for purchase, and a silent auction to benefit ICA. In addition, attendees will be asked for a $15.00 minimum donation for admission to the event. Tonkadale will donate 20% of total sales from that day.

Unmapped Brewing is donating, delivering, and pouring beer near station 5 – located in the greenhouse and to the north of the checkout area. Tonkadale employees will check I.D.s and will provide “21 and over” wristbands for attendees who wish to purchase beer tickets. Beer tickets will be for sale at station 5. Attendees will be allowed to consume beer throughout the indoor space, but customer access will be limited to the front half of the greenhouse only. If the weather permits, attendees may want to consume food and beverage outdoors. Food and beverage, including beer will not be allowed beyond the front of the greenhouse building or in the parking lot. Signs will be posted.

The Tonkadale team and ICA thank you an is looking forward to a great event. Let’s do this!
February 8, 2018

Dear Minnetonka City Council,

In conjunction with the application for our temporary liquor license permit, outlined below is our plan for parking during this event.

Minnetonka Community Day: an Edibles Expo to benefit the ICA food shelf
Saturday, March 24th – 10:00 am – 2:00 pm

Tonkadale employees will park in designated employee parking spaces as designated on our CUP. These spaces do not consume parking spaces in our customer parking lot and do not require on street parking.

Tonkadale’s parking lot can accommodate up to 65 vehicles, as well as additional street parking within posted signs.

Overflow parking will also be available at the Minnetonka Lutheran Church located at 16023 Minnetonka Blvd. Tonkadale will create sandwich board signs to notify visitors of overflow parking locations.

ICA volunteers will be present at this event and are instructed to carpool, or park at the Minnetonka Lutheran Church.

First Student transportation has provided one, mini-bus that will shuttle attendees and volunteers to and from the overflow parking lot at the Minnetonka Lutheran Church. The shuttle will run non-stop from 9:30 am-2:30 pm the day of the event.

Previous events have seen over 300 people and we believe that this parking plan will be able to accommodate that traffic over the course of 4 hours.

Thank you for your consideration.

Sincerely,

Ron Kamps
MINNETONKA COMMUNITY DAY

An Edibles Expo to Support the ICA Food Shelf

MARCH 24, 2018
10:00 am—2:00 pm

Booths and Vendors
ICA and St. Therese
Herbal Teas and Tinctures
Fruit Shrubs, Bailey Nurseries
Plan It Plant It, Hennepin County Master Gardeners
Bonide Goodies, Baddies, and Solutions
Seed Starting and Microgreens
Veggie Vow
Kids Activities
Great Harvest Bread Co.
Beer service by Unmapped Brewing

Schedule
10:00—11:00 Edibles Seminar
11:00—2:00 Product Vendors
11:30—12:00 Storytime
12:00—2:00 Silent auction, food and fun
12:30—1:30 Bo Riddle Band

$15 minimum donation for all-access wristband. $5 for kids. Beer tickets available for purchase after entry. Registration not required, pay at the door.

Learn more at tonkadale.com
Brief Description: Conditional use permit, with variances and an expansion permit, for a restaurant with outdoor seating area at 5445 Eden Prairie Road.

Recommendation: Adopt the resolution approving the conditional use permit, with variances and an expansion permit.

Proposal

City records indicate that the existing commercial building at 5445 Eden Prairie Road was constructed in 1946. Over the next 70 years, the building was occupied by a variety of professional offices and the Glen Lake Dairy Queen. The Dairy Queen closed in 2016 and the building has since been vacant.

Chris Bjorling, one of the owners and operators of The Copper Hen restaurant in Minneapolis, is now proposing to repurpose the building to accommodate The Copper Cow, a dine-in/take out restaurant with full service bar. As proposed, the interior of the existing building would be completely remodeled for the new restaurant. The remodeled space would seat roughly 85 customers. The exterior of the building would also be remodeled. Proposed changes include construction of a new pitched roof over a portion of the building; installation of new metal roofing, decorative copper panels and wood siding; and painting of the existing brick. The applicant intends to keep an existing drive-up window located on the east side of the building for pick-up of pre-ordered food.

Outdoor seating areas are proposed on the northwest and west sides of the building. As is a condition of any liquor license, the outdoor areas would be surrounded by uninterrupted enclosures.

Planning Commission Hearing

The planning commission considered the proposal on Feb. 1, 2018. The commission report and plans are attached. Staff recommended approval noting:

- The proposed restaurant is consistent with the comprehensive plan’s village center concept and would further the plan’s policies. In staff’s opinion, the proposal would add a new and interesting land use to the area and in doing so would contribute to the vitality and diversity of the village center.

- The proposed remodel is reasonable and attractive. The remodeled building would significantly improve the aesthetic of the property and the immediate area.

- Anticipated parking demand may be accommodated through restriping of the parking lot and provision of some off-site stalls.

At the commission meeting, a public hearing was opened to take comment. Three individuals expressed concern about the impact of potential overflow parking. Following the public hearing, the commission discussed the proposal and expressed its general support.
Planning Commission Recommendation

On a 6-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes are attached. There have been no changes to the proposal or additional information received since the planning commission’s meeting on this item.

Staff Recommendation

Staff recommends the city council adopt the resolution approving a conditional use permit, with variances and an expansion permit, for a restaurant with outdoor seating area at 5445 Eden Prairie Road.

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

Originator: Susan Thomas, AICP, Assistant City Planner
Brief Description
Conditional use permit, with variances and an expansion permit, for a restaurant with outdoor seating area at 5445 Eden Prairie Road.

Recommendation
Recommend the city council adopt the resolution approving the conditional use permit, with variances and an expansion permit.

Introduction
City records indicate that existing commercial building at 5445 Eden Prairie Road was constructed in 1946. Over the next 70 years, the building was occupied by a variety of professional offices and the Glen Lake Dairy Queen. The Dairy Queen closed in 2016 and the building has since been vacant.

Chris Bjorling, one of the owners and operators of The Copper Hen restaurant in Minneapolis, is now proposing to repurpose the building. As proposed, the entirety of the building would be remodeled and occupied by The Copper Cow, a dine-in/take out restaurant with full service bar.

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

- **Existing Site Conditions.**

  The subject property is located in the Glen Lake village center, south of Excelsior Boulevard and east of Eden Prairie Road. The existing building is situated in the southwest corner of the site. The building has a footprint of approximately 2,625 square feet and total area of 5,100 square feet; half of this area is basement storage space. The building is served by a 26-stall parking lot.

- **Proposed Building.**

  To accommodate the new restaurant, the interior of the existing building would be completely remodeled. The remodeled space would seat roughly 85 customers. The exterior of the building would also be remodeled. Proposed changes include construction of a new pitched roof over a portion of the building; installation of new metal roofing, decorative copper panels and wood siding; and painting of existing brick. The applicant intends to keep an existing drive-up window located on the east side of the building for pick-up of pre-ordered food.

  Outdoor seating areas are proposed on the northwest and west sides of the building. As is a condition of any liquor license, the outdoor areas would be surrounded by uninterrupted enclosures.
• **Proposed Use.**

As currently proposed, The Copper Cow would be open Monday thru Friday 11 a.m.–11 p.m., Saturday 10 a.m.–11 p.m., and Sunday 10 a.m.–10 p.m. The restaurant would offer a variety of starters, burgers, desserts and a full bar.

**Primary Questions and Analysis**

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

• **Is the proposed use appropriate?**

Yes. The 2030 Comprehensive Guide Plan places special emphasis on a “village center” concept. The purpose of the concept “is to provide development and redevelopment opportunities to encourage vitality, promote identity, and improve livability.”  To that end, the Guide Plan suggests a policy of “supporting existing commercial areas and encouraging new development techniques that contribute to the vitality and diversity of the area.”

The subject property is located within the Glen Lake village center. The proposed restaurant is consistent with the comprehensive plan’s village center concept and would further the plan’s policies. In staff’s opinion, the proposal would add a new and interesting land use to the area and in doing so would contribute to the vitality and diversity of the village center.

• **Are the proposed building changes reasonable?**

Yes. From staff’s perspective, the proposed changes are reasonable and attractive. The remodeled building would significantly improve the aesthetic of the property and the immediate area.

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

Yes, if the existing parking lot is restriped and off-site parking is provided. City code parking requirements are based on the square footage of a building and the uses occupying that building. However, staff generally finds that parking demand for restaurants is a function not just of the size or type of restaurant, but the popularity of the restaurant. In other words, restaurants of the same size and similar menu may have significantly different parking demands based on the restaurants’ popularity. Given this, in evaluating the applicant’s proposal staff looked not just at consistency with code requirements, but also consulted data collected by the Institute of Transportation Engineers (ITE) and parking approvals for other restaurants in the community. ITE would suggest that the Copper Cow’s average peak parking demand could be accommodated by the provision of 36 to 41 parking stalls. (For more information of the other restaurants parking provision, see the “Supporting Information” section of this report.)

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1 2030 Comprehensive Guide Plan, III-8
The property currently has 26 striped parking stalls. However, additional parking could be provided both on and off site.

**On-Site.** Staff has drafted two revised parking lot configurations to accommodate more on-site parking stalls and to provide for more intuitive vehicular circulation. Both plans suggest one-way vehicle movement through the site. Access to the site would be via the existing drive on Eden Prairie Road and egress would be via a relocated drive on Stewart Lane. This relocated drive would be roughly 45 feet west of the current location, in closer alignment to the office property to the south. Staff-Drafted Configuration A would provide 28 on-site stalls and would not increase the paved area of the existing parking lot. Staff-Draft Configuration B would provide 32 on-site stalls. This configuration would expand the existing lot, resulting in loss of existing open space and likely tree impacts. In addition, this plan would increase impervious surface on the site, requiring a variance and necessitating installation of stormwater management facilities.

**Off-Site.** Generally, the city would prefer to see shared use of existing parking to construction of new parking. To that end, the applicant has approached the owner of the office property to the south regarding leasing parking stalls. If stalls can be secured for evening parking, peak parking demand may be met.

<table>
<thead>
<tr>
<th>Parking Stalls</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ITE Demand</td>
<td>36–41 stalls</td>
</tr>
<tr>
<td>Staff-Drafted Configuration A</td>
<td>28 stalls</td>
</tr>
<tr>
<td>Off-Site Stalls</td>
<td>13 stalls</td>
</tr>
<tr>
<td><strong>Total Provided</strong></td>
<td><strong>41 stalls</strong></td>
</tr>
</tbody>
</table>

As conditions of approval, the applicant must: (1) provide a copy of a parking lease agreement to the city prior to issuance of a building permit for the restaurant; and (2) restripe and appropriately sign the parking lot consistent with Staff-Drafted Configuration A prior to issuance of a certificate of occupancy.

**Can future nuisance issues be addressed?**

Yes. Staff recognizes the proposed restaurant may generate smells, noise, and activity of a different sort and level than the previous Dairy Queen and office occupants. However, the city has mechanisms in place to address issues associated with real and perceived nuisances:

1. The city’s noise ordinance essentially establishes community “quiet hours” from 10:00 p.m. to 7:00 a.m.
2. The city’s waste collection and disposal ordinance regulates the storage and disposal of garbage on both commercial and residential properties.

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

Summary Comments

Staff acknowledges that repurposing the currently vacant building would impact the immediate area. The restaurant would bring more people – both drivers and pedestrians – into the area. These people may be more numerous than customers of the former office spaces and Dairy Queen and these people would occupy the site at more and different times during the day. Parking demand in the area and noise levels may increase over current levels. However, staff does not believe that any of these impacts would be inherently bad. Rather, staff finds that the proposal would further the goals of the comprehensive plan. It would contribute to the vitality and diversity of the Glen Lake village center. Staff supports the applicant’s request, with conditions regarding provision of off-site parking.

Staff Recommendation

Recommend the city council adopt the resolution approving a conditional use permit, with variances and an expansion permit, for a restaurant with outdoor seating area at 5445 Eden Prairie Road.

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

Surrounding Land Uses
Northerly:  Gas station, zoned B-2
Easterly:  Vacant property owned by Xcel Energy, zoned B-2
Southerly: Office building and townhomes, zoned B-1 and PUD
Westerly:  Commercial strip mall, zoned B-2

Planning
Guide Plan designation:  Commercial
Existing Zoning:  B-2, limited business

City Actions
The proposal requires the following applications:

- Conditional Use Permit, with variances. By City Code §300.18 Subd.4(i), restaurants are conditionally-permitted uses in the B-2 zoning district. One of the conditional use permit standards is a specific number of parking stalls. The site would not contain the number of parking stalls required by code, as such a variance is necessary.

- Code §300.21 Subd.4(p), outdoor seating areas are conditionally-permitted uses in the B-2 zoning district. One of the conditional use permit standards is a minimum setback between the seating areas and residentially-zoned properties and property lines. The seating area would not meet these setbacks, as such variances are necessary.

- City Code 300.18 Subd.5(b), requires that commercial properties maintain a 50 ft. setback from front property lines. The existing building was constructed 20 years before adoption of the city’s first zoning ordinance. It has a non-conforming front yard setbacks of nine feet and three feet from south and west property lines respectively. The applicant’s proposal includes the addition of sloped roof over a portion of the non-conforming building, increasing building height in this area by roughly seven feet. An expansion permit is necessary.

Site Statistics
The existing site and building were developed 20 years prior to adoption of the city’s first zoning ordinance. As such, there are several non-conforming aspects of both the site and building.

<table>
<thead>
<tr>
<th></th>
<th>REQUIRED</th>
<th>EXISTING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BUILDING SETBACKS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North</td>
<td>35 ft</td>
<td>40 ft</td>
</tr>
<tr>
<td>South</td>
<td>50 ft</td>
<td>9 ft*</td>
</tr>
<tr>
<td>East</td>
<td>35 ft</td>
<td>150 ft</td>
</tr>
<tr>
<td>West</td>
<td>50 ft</td>
<td>3 ft*</td>
</tr>
<tr>
<td><strong>PARKING SETBACKS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North</td>
<td>10</td>
<td>0 ft</td>
</tr>
<tr>
<td>South</td>
<td>20</td>
<td>5 ft</td>
</tr>
<tr>
<td>East</td>
<td>10</td>
<td>37 ft</td>
</tr>
</tbody>
</table>
Traffic

The proposed restaurant would be located near the intersection of Excelsior Boulevard/Eden Prairie Road, both of which are Hennepin County roadways and are classified as “minor expander” or “minor arterial” roadway. Such roadways are designed for a capacity of 5,000 to 30,000 average daily vehicle trips. Traffic volume information from 2015 indicates 10,300 and 6,400 daily vehicle trips on Excelsior Boulevard and Eden Prairie Road respectively.

To evaluate the impact of the proposed restaurant on these roadways, staff looked at anticipated trip generation rates as suggested by ITE. Staff used the “quality restaurant” ITE classification. The roughly 2,625 square foot restaurant would generate the following:

<table>
<thead>
<tr>
<th></th>
<th>Peak Hour Rate</th>
<th>Peak Hour Trips</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekday</td>
<td>9.02/1,000 sq.ft.</td>
<td>24</td>
</tr>
<tr>
<td>Saturday</td>
<td>10.82 trips/1,000 sq.ft.</td>
<td>28</td>
</tr>
<tr>
<td>Sunday</td>
<td>8.38 trips/1,000 sq.ft.</td>
<td>22</td>
</tr>
</tbody>
</table>

* peak hour of restaurant, defined by ITE as the “generator”

It should be noted that these numbers assume all trips to/from an establishment would be vehicles trips. The numbers do not take into account pedestrians or other modes of transportation. Given the existing traffic volumes on Excelsior Boulevard/Eden Prairie Road, the anticipated impact of the proposed restaurant on traffic volume would be nominal.

Interestingly, a “quality restaurant” would generate fewer p.m. peak hour trips than several other uses that could be considered equally appropriate for the site:

<table>
<thead>
<tr>
<th>Use</th>
<th>P.M. Peak Hour Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank with Drive Up Window</td>
<td>26.69 trips/1000 sq.ft.</td>
</tr>
<tr>
<td>Convenience Store (non-24 hr)</td>
<td>36.22 trips/1000 sq.ft.</td>
</tr>
<tr>
<td>Coffee Shop with Drive Thru</td>
<td>36.16 trips/1000 sq.ft.</td>
</tr>
</tbody>
</table>

Stormwater

As the proposal is for reuse of the site without expansion of impervious surface, stormwater management is not required.

Landscaping

As a condition of approval, a final landscaping plan must be submitted for staff review and approval. Staff anticipates the plan to include planters adjacent to the proposed outdoor seating area. In addition, staff would suggest some upkeep/planting on the eastern portion of the site in the area previously used by Dairy Queen as informal seating.
CUP Standards

The proposed restaurant would be generally consistent with the general CUP standards as outlined in City Code §330.21 Subd.2:

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

The proposal requires variances from the specific conditional use permit standards for restaurants as outlined in City Code §300.21 Subd.4(i):

1. Parking shall be in compliance with the requirements of section 300.28 of this ordinance;

**Finding:** The proposed restaurant requires a variance from city code parking standards. See the “Variance” section of this report.

2. Shall only be permitted when it can be demonstrated that operation will not significantly lower the existing level of service as defined by the Institute of Traffic Engineers on streets and intersections; and

**Finding:** As noted earlier in this report, the proposal is not anticipated to significantly impact existing traffic volumes or levels of service. Further, several other land uses with significantly higher trip generation rates could appropriately occupy the building.

3. Shall not be located within 100 feet of any low density residential parcel or adjacent to medium or high density residential parcels. The city may reduce separation requirements if the following are provided:

a) landscaping and berming to shield the restaurant use;
b) parking lots not located in proximity to residential uses; and
c) lighting plans which are unobtrusive to surrounding uses.
Finding: The proposed restaurant would be over 150 feet from the closest low-density parcel, which is located across Eden Prairie Road to the southwest. It would be roughly 90 feet from the medium-density parcels located to the southeast across Stewart Lane.

The proposal requires a variance from the specific conditional use permit standards for outdoor seating area as outlined in City Code §300.21 Subd.4(p):

1. Shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal building;

Finding: The proposed seating area would be surrounded by decorative planters and fencing.

2. Shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;

Finding: The proposed seating area requires a variance from this standard. Though this area would be screened from nearby residences by existing vegetation and the restaurant building itself, the areas would be 150 feet from the closest residential properties to the southwest and southeast. See the “Variance” section of this report.

3. Shall be located and designed so as not to interfere with pedestrian and vehicular circulation;

Finding: The seating areas would not disrupt site circulation.

4. Shall not be located to obstruct parking spaces. Parking spaces may be removed for the use only if parking requirements specified in section 300.28 are met;

Finding: The seating areas would not obstruct parking.

5. Shall be located adjacent to an entrance to the principal use;

Finding: The areas would be appropriately located near the principal entrance to the business.

6. Shall be equipped with refuse containers and periodically patrolled for litter pick-up;

Finding: This has been included as a condition of approval.
7. Shall not have speakers or audio equipment which is audible from adjacent parcels; and

**Finding:** This has been included as a condition of approval.

8. Shall be located in compliance with building setback requirements.

**Finding:** The seating areas require a variance to the setback requirements, this is due to the fact the building itself is non-conforming. See the “Variance” section of this report.

### Variance Standard

A variance may be granted from the requirements of the zoning ordinance when: (1) it is in harmony with the general purposes and intent of the ordinance; (2) it is consistent with the comprehensive plan; and (3) when an applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean that the applicant proposes to use a property in a reasonable manner not permitted by the ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and, the variance if granted, would not alter the essential character of the locality. (City Code §300.07) The requested variances would meet the variance standard:

### Intent of the Ordinance.

- The intent of the ordinance as it pertains to parking requirements is to ensure adequate parking is provided to meet anticipated parking demand. Though parking demand is not likely to be met by available on-site parking during the restaurant's p.m. peak hours of operation, provision of off-site parking during this time may mitigate the deficit.

- The intent of the ordinance as it pertains to outdoor seating area setbacks is to ensure appropriate separation between these areas and residential land uses and property lines, so as to minimize real and perceived nuisance impacts and promote safety. The outdoor seating area would be separated from area residences by existing roadways, commercial properties, and vegetation. Similarly, the seating area would not be closer to area roadways than the pedestrian sidewalks in the area.

### Consistent with Comprehensive Plan.

The subject property is located in the Glen Lake village center. One of the overall themes outlined in the comprehensive plan is to “provide development and redevelopment opportunities that encourage vitality, promote identity, and improve livability” in village centers. The requested variances would result in reuse of an existing building as a new and unique gathering space, consistent with the goals of the comprehensive plan.
Practical Difficulties

- Reasonableness.
  
  (1) The requested parking variance is reasonable. Though parking demand is not likely to be met by available on-site parking during the restaurant's p.m. peak hours of operation, provision of off-site parking during this time may mitigate the deficit. Use of existing off-site parking would be preferable to creating additional parking on the east side of the site through removal of existing open space.

  (2) The requested setback variances are reasonable. The outdoor seating area would be separated from area residences by existing roadways, commercial properties, and vegetation. Similarly, the seating area would not be closer to roadways than the pedestrian sidewalks in the area.

- Unique Circumstance. The existing building and site were developed 20 years prior to the adoption of the city’s first zoning ordinance. Though various aspects of the building and site are non-conforming with current zoning standards, the various businesses and a fast food restaurant successfully operated from the site for decades. The non-conformity, but overall success of the site, presents a unique circumstance not common to every similarly zoned property.

- Character of the Neighborhood. The Glen Lake village center includes a variety of land uses. A gas station, commercial strip mall, professional offices, electric substation, and residential uses are all located in close proximity to the subject property. While the reuse of the currently vacant building would alter the level of site activity, the requested variance themselves would not alter the unique character of the neighborhood.

Expansion Permit

The proposal would meet the expansion permit standard as outlined in City Code §300.29 Subd.7:

- Reasonableness and Neighborhood Character: The proposed roof pitch change is reasonable and would not negatively impact the character of the surrounding neighborhood. The change is for aesthetic reasons only, it would not increase the footprint or usable space of the existing building.

- Unique Circumstance: The existing building is situated in the far southwest corner of the subject property. It far exceeds required setbacks from the north and east property lines and has non-conforming setbacks from south and west lines. It is not “centered” on the lot. This is a unique circumstance not common to every similarly zoned property.
Liquor License

The applicants are requesting a liquor license. The city council has the authority to approve or deny liquor licenses; such licenses are not the purview of the planning commission. The commission must consider the proposal’s conformance with the requirements and the intent of conditional use permit standards.

Restaurant Comparison

The following illustrates sizes and parking approvals of other restaurants in the area:

<table>
<thead>
<tr>
<th>Restaurant</th>
<th>Sq.Ft.</th>
<th>Indoor Seating</th>
<th>Parking Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copper Cow</td>
<td>2,625 sq.ft.</td>
<td>85 seats</td>
<td>Variance requested 2018</td>
</tr>
<tr>
<td>Station Pizza</td>
<td>2,450 sq.ft.</td>
<td>72 seats</td>
<td>On-Street parking to meet ITE standard, approved 2016</td>
</tr>
<tr>
<td>Ikes’s</td>
<td>3,600 sq.ft.</td>
<td>134 seats</td>
<td>Non-conforming parking, approved 2012</td>
</tr>
<tr>
<td>Gold Nugget</td>
<td>6,380 sq.ft.</td>
<td>182 seats</td>
<td>Variance, approved 2008</td>
</tr>
</tbody>
</table>

County Review

As a courtesy, the city routes to Hennepin County all development proposal adjacent to county roads. In reviewing the proposed restaurant the county reiterated its long-standing position regarding access drives in the immediate area. The county would prefer that the driveway to the subject property and the drive to the gas station to the immediate north be consolidated. The county has further indicated that a raised median may be constructed on Eden Prairie Road in the future. (See attached letter.) City planning and engineering staff understand the county’s position regarding the drive consolidation. If full redevelopment were proposed on both sites, this would be reasonable request. However, several factors prevent the city from requiring such consolidation at this time. The most important factor is that the city cannot force participation from the gas station owners who are not requesting any land use approvals. Aside from this issue, there is a topographic change between the two properties that would necessitate grading to accommodate the consolidated drive. This required grading would likely trigger stormwater management practice requiring greater site disturbance and cost for the owners of both sites. The consolidated drive would further reduce parking on both sites.

Staff acknowledges that the county would be well within its rights to construct a raised median on Eden Prairie Road at any time.

Pyramid of Discretion

This proposal:
Motion Options

The planning commission has three options:

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

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

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

Voting Requirement

The planning commission will make a recommendation to the city council. The city council’s final approval requires an affirmative vote of four members.

Neighborhood Comments

The city sent notices to 359 property owners and has received one written comment to date.

Deadline for Action

April 2, 2018
Location Map
Project: The Copper Cow
Applicant: Chris Bjorling
Address: 5445 Eden Prairie Rd
Existing Dairy Queen
Eden Prairie Road and Excelsior Blvd
Minnetonka, MN
Proposed Improvements
February 17, 2009
EDEN PRAIRIE ROAD
HAND
STEWART LANE
Mobil Station
184'-4" +/-
98'-7" +/-
263'-11" +/-

25 existing parking spots to remain
Existing speed bump
Drainage is towards Stewart Lane
Existing landscape to remain
Existing trash to remain
Existing stop sign

Property / Right of Way Line

Outlet

Existing architectual site plan
CUSTOMER AREA = 1,410 SQ. FT.
TOTAL OVERALL AREA = 2,624 SQ. FT
KITCHEN / PREP / BAR SERVICE AREA = 1,214 SQ. FT.

PROPOSED BUILDING AREA

SCALE: 1/4" = 1'-0"

PROPOSED FLOOR AREA

SCALE: 0/0" = 1'-0"
CONCRETE PATIO SLAB
EXISTING CONCRETE IN 8" LAY TO EXIST - PROTECT - PAINT.
EXISTING CONCRETE ILL TERRACED - PROTECT - PAINT.
EXISTING CONCRETE TERRACE WITH DRAIN - PROTECT - PAINT.
COPPER SHEETS 4'-0" WIDE TYPICAL.
DECORATIVE WOOD SIDING - STAIN.
EXISTING CONCRETE DRIVEWAY TO REMAIN - PROTECT - PAINT.
EXISTING INSULATED HOLLOW METAL DOOR AND FRAME - TO REMAIN - PROTECT - PAINT.
EXISTING ANODIZED ALUMINUM DRIVE-THRU WINDOW - TO REMAIN.
ALUMINUM EXTERIOR COW - STAIN.
EXISTING BI-FOLD DOORS TO REMAIN - PROTECT.
EXISTING METAL FASICA - EXIST.
PRE-FINISHED METAL CAP FLASHING.
HIDDEN LINE INDICATES LOCATION OF EXISTING ROOF-TOP MACHINERY.
PRE-FINISHED METAL CONTINUOUS RIDGE VENT.
EXISTING UTILITY METER - TO REMAIN - PROTECT - PAINT.

Scale: 1/8" = 1'-0"
Submitted in 2008, in conjunction with redevelopment proposal for the site.
Access item reiterated via conference call in 2018

Mr. Jeff Thomson, Planner
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

June 3, 2008

Re:  Site Plan Review Glen Lake Dairy Queen
      CSAH-4 (Eden Prairie Road) / CSAH-3 (Excelsior Blvd.)
      Hennepin County Review No. 3134

Dear Mr. Thomson;

We reviewed the proposed site plan for the redevelopment of the Glen Lake Dairy Queen and offer the following comments:

**CSAH-4 Driveway**

- We have concerns related to the existing driveway on CSAH-4 due to its proximity to the CSAH-4 / CSAH-3 intersection, the Mobil service station driveway, the Snyder’s Drug retail center driveway, and the CSAH-4 / Stewart Lane intersection. These access points are located much too close to one another and numerous conflicts have been observed involving turning vehicles.
- The existing driveway does not meet county access spacing guidelines aimed at improving roadway safety and operations. The City of Minnetonka is on record as supporting these guidelines in the Policies on Access Management from the City’s Comprehensive Plan.
- As mentioned to city staff last fall, we would like to pursue revising this segment of CSAH-4 with the installation of channelization (see attached schematic). This concept would provide dedicated left turn lanes to both Stewart Lane and the Synder’s Drug retail center. Our preferred option would include a raised median for the channelization to limit vehicle movements. If the City does not feel they can support this approach, we would be willing to discuss a striped channelization treatment as an alternative.
- If driveway access must remain to CSAH-4, we would prefer a consolidated entrance be developed with the Mobil service station to help reduce the vehicle conflicts. We understand the grade and coordinating issues this would entail.

**Site Circulation**

- In our minds, the proposed site plan has some drawbacks especially related to the drive-thru. The drive-thru lane has no provisions for vehicles to bypass if for some reason a lead vehicle is delayed – I myself patronize this DQ and have experienced some fairly long waits. The queue storage also appears too short.
- With some adjustments, we believe that the site could be configured to eliminate the need for the CSAH-4 driveway altogether while improving the building, parking, and drive-thru locations and minimizing any impacts to Stewart Lane.

If this redevelopment proposal proceeds, we would like the opportunity to discuss these issues further with city staff.

Respectfully submitted,

Robert H. Byers, P.E.
Senior Transportation Engineer

RQB/DKZ/sew
cc: Steve Lillehaug, Minnetonka City Traffic Engineer
    Plat Review Committee-Byers / Lindgren / Holtz / Drager / Zetterstrom / Fackler / Lemke
City officials,

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

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

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

Brian Smidt

Minnetonka, MN
City of Minnetonka

Attn: Susan Thomas

14600 Minnetonka Blvd

Minnetonka, MN 55345

RE: Copper Cow Variance Request

Dear Ms. Thomas:

I understand that the Copper Cow restaurant at the old D.Q. site at 5445 Eden Prairie Road is scheduled before the Planning Commission for a Conditional Use Permit with variances on Thursday February 1st.

As provided on their plans submitted to the City showing an area of approximately 2,600 sq. ft. of 1st floor restaurant area, parking for only 26 spaces are shown, with an interior seating total of 85 and an additional 37 seating area outside. It is my understanding the City has a requirement of 1 parking space for every 50 sq.ft. of floor area which would require 52 total parking spaces.

Additionally, how is the city accounting for the lower level prep and storage space area? Does this need to be accounted for in the total restaurant area calculations for parking?

The Glen Lake area is already under extreme parking pressure as it exists today, with no on-street parking available on Stewart Lane, Excelsior Blvd or Eden Prairie Road (Cty Rd 4). Parking is our biggest challenge at the Gold Nugget, additional stress on an already difficult parking situation would be crippling for us.

The expansion of the Dairy Queen's non-conforming use of approximately 1,250 sq. ft. should not be allowed without proof of parking for the 52 spaces required at all hours the new restaurant would be open, plus any additional spaces for the lower level area.

The other consideration should be the need given to the number of parking spaces required by restaurant staff alone. It's our estimate that the new restaurant would require 4-5 front of house servers for the 85 main dining seats, a hostess and general manager on duty along with a bartender, resulting in a minimum of 7-8 personnel on duty.

Based upon the commentary from the press articles written, it appears to be their intention to prepare most items from scratch, which means more kitchen help. This would mean from 6-8 prep and line cooks including a chef to manage the kitchen. Bringing a total for staff parking needs to 13-16 spaces of the 26 being provided. Where is there the potential for 85 customers to park?
Parking is key to the success of any retail business. The success of UnMapped Brewing has filled the parking area to the west in late afternoons and evenings. Dr. Olson’s lot to the south is filled most days. To allow and have a new establishment interfere in the parking of neighboring businesses is unfair knowing these owners followed the codes established by the city to establish their current businesses.

Historically, the D.Q. and its approximate 1,250 sq. ft. retail space with its 26 parking spaces was a welcomed neighbor in the Glen Lake community. Another similar use of that space would be a much more acceptable neighbor with the limited amount of on-site parking that is provided. Once again, parking is the major issue, and it’s not going away.

Thank you for your consideration.

Respectfully,

Thomas B Wartman
Chief Mgr
Gold Nugget Tavern & Grille
January 28, 2018

City of Minnetonka  
Attn: Susan Thomas  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345

RE: Copper Cow Variance Request  
   Our File No. 9000.00

Dear Ms. Thomas:

   I am the managing owner of The Exchange Development LLC d/b/a Oaks Glen Lake Apartments/Retail Shops. Our property is adjacent to the Xcel Energy substation located east of the Copper Cow property. I write to object to variances contemplated by the Copper Cow proposal.

   While we support development and new businesses in our Glen Lake Neighborhood, the Copper Cow proposal should be evaluated under the same rules that existing developments and businesses have been required to follow. First, I understand the Copper Cow proposed use is a non-conforming use for that property and a conditional use permit is required. Second, I understand the required on-site parking is 52 stalls and the site has 26 stalls (does the required parking count include employee parking?). That is a material shortfall. Please inform me how many business operating plans the City has approved with a 50% parking shortage for customers and no consideration of employee parking.

   The Copper Cow’s parking is not an insignificant issue. Bucolic, narrow Stewart Lane lacks on-street parking. There is no street parking on Excelsior Boulevard and Eden Prairie Road. As such, we envision patrons and employees of the Copper Cow parking in our lower parking lot, which is reserved for residential tenants of Oaks Glen Lake Apartments, or parking in our upper parking lot, which is for the exclusive use of our retail tenants. Not good. I think it unreasonable to add a “parking police” task to our management staff and our tenants, which is exactly what will happen when Copper Cow patrons and employees park where they don’t belong and we have to start towing unauthorized parkers from our parking lots. Everybody is the loser if that happens.
Interestingly, your staff reports that parking for restaurants/bars is highly dependent on the popularity of the establishment. The proponents of the Copper Cow are experienced operators and I would hope the business is a huge success. If it is, the proposed parking plan will be woefully inadequate.

We have recent, real time experience with a happily successful tap room tenant at our Oaks Station Place development at the 46th Street Station of the Blue Line. Our on-site parking is limited to just 14 stalls as we are located at a light rail station. Neighborhood, walkable parking is available on 46th Street, 36th Avenue and 35th Avenue. More than 100 stalls are available in approximately a 1.5 block distance. Venn Brewing, our tenant, needs all of those neighborhood spaces to meet its parking requirements. Your staff report ignores the parking needs of a successful Copper Cow.

The City of Minnetonka has a well-earned reputation for fostering thoughtful business development. Parking is a key component to every suburban liquor/dining establishment. The Copper Cow is no exception. That you would ignore the very rules other neighborhood businesses have been required to follow is a bad idea and not fair to those businesses. Thank you for your consideration.

Very truly yours,

[Signature]

Norman P. Bjornnes, Jr.
President

NPB/
Cc: Peter Donnino
February 21, 2018

City of Minnetonka
Attn: Mayor and City Council
14600 Minnetonka Boulevard
Minnetonka, MN 55345

RE: Copper Cow Variance Request
Our File No. 9000.00

Dear Honorable Mayor and Members of the City Council:

I am the managing owner of The Exchange Development LLC d/b/a Oaks Glen Lake Apartments/Retail Shops. Our property is adjacent to the Xcel Energy substation located east of the Copper Cow property. I write to object to variances contemplated by the Copper Cow proposal.

While we support development and new businesses in our Glen Lake Neighborhood, the Copper Cow proposal should be evaluated under the same rules that existing developments and businesses have been required to follow. First, I understand the Copper Cow proposed use is a non-conforming use for that property and a conditional use permit is required. Second, I understand the required on-site parking is 52 stalls and the site has 26 stalls (does the required parking count include employee parking?). That is a material and troublesome shortfall.

The Copper Cow’s parking is not an insignificant issue. Bucolic, narrow Stewart Lane lacks on-street parking. There is no street parking on Excelsior Boulevard and Eden Prairie Road. As such, we envision patrons and employees of the Copper Cow parking in our lower parking lot, which is reserved for residential tenants of Oaks Glen Lake Apartments, or parking in our upper parking lot, which is for the exclusive use of our retail tenants. Not good. I think it unreasonable to add a “parking police” task to our management staff and our tenants, which is exactly what will happen when Copper Cow patrons and employees park where they don’t belong and we have to start towing unauthorized parkers from our parking lots. Everybody is the loser if that happens.

Interestingly, your staff reports that parking for restaurants/bars is highly dependent on the popularity of the establishment. That is certainly true for the Unmapped Brewing entry into the neighborhood. Unmapped has been a great success. We are happy for our residents who patronize...
City of Minnetonka  
Our File No. 9000.00  
February 21, 2018  
Page 2

a fine neighborhood establishment. Unmapped’s success resulted in unauthorized parking in our residential and commercial parking lots. As a result, we have initiated permit parking in our residential parking lot and greater vigilance in our upper commercial lot.

The proponents of the Copper Cow are experienced operators and I would hope the business is a huge success. If it is, the proposed parking plan is woefully inadequate. There simply is no convenient street parking available and neighboring private parking lots will bear the burden of inadequate Copper Cow parking. That’s not right.

The City of Minnetonka has a well-earned reputation for fostering thoughtful business development. Parking is a key component to every suburban liquor/dining establishment. The Copper Cow is no exception. That you would ignore the very rules other neighborhood businesses have been required to follow is a bad idea and not fair to those businesses. Thank you for your consideration.

Very truly yours,

[Signature]

Norman P. Bjornnes, Jr.
President

NPB/
Cc: Peter Donnino
Schack asked if replacing the retaining wall in the future would create an issue. Colleran explained that replacing the retaining wall would cause removal of trees. The retaining wall would need to be replaced regardless if the proposal would be completed or not.

**O’Connell moved, second by Knight, to recommend that the city council adopt the resolution approving the preliminary and final plat for Simpson Park Addition.**

**Powers, Schack, Sewall, Knight, O’Connell, and Kirk voted yes. Motion carried.**

Chair Kirk stated that this item is tentatively scheduled to be reviewed by the city council on Feb. 26, 2018.

**B. Conditional use permit with variances and an expansion permit for a restaurant with outdoor seating area at 5445 Eden Prairie Road.**

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

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

Schack asked staff to compare parking for the proposal with the Station Pizza and Gold Nugget sites. Thomas provided a chart detailing parking for Ike’s, People’s Organic, and Gold Nugget.

Sewall asked where off-site parking could be located. Thomas answered that there is an office building on the south side that has different peak hours of operation, a bank on the north side, and there are some churches in the area that are being considered. The restaurant’s staff would typically be the ones required to park off-site. The conditional use permit would require a parking agreement to be in place between the property owners.

In response to Chair Kirk’s question, Thomas noted that the site is currently at its hard-surface coverage maximum.

Chris Bjorling and Danielle Bjorling, applicants, introduced themselves. Mr. Bjorling stated that:

- He appreciated Thomas explaining the project so well.
- The proposal is looking at redeveloping the space in the Glen Lake neighborhood to continue the revitalization that is happening there.
- The Copper Cow is intended to be a very family-friendly, neighborhood restaurant selling burgers, fries, salads, and sandwiches. There would be a pick-up window and walk-up counter with ice cream.
- He has been working to maximize the parking and is in negotiations with the property owner across the street to lease additional parking. Employee and over-flow parking is being considered at another site.
• He was happy to answer questions.

Powers asked how the traffic pattern would work with the drive-thru. Mr. Bjorling explained that orders could be made and paid for online to cut out two of the three steps of a typical drive thru. He estimated that orders would be ready by the time the customer arrived for pick up. There would be a designated waiting area for pick-up orders. Powers liked how the applicant had thought the proposal through.

Mr. Bjorling stated that parking information would be available on the restaurant’s website, on each receipt, and on signs. He would want to be a good neighbor to residents near the site and who, hopefully, would be frequent patrons of the restaurant.

Schack asked if valeting had been considered. Mr. Bjorling answered affirmatively. It would be implemented if it would be needed.

The public hearing was opened.

Kathy, a Ramsey resident and property manager at Oak Glen Apartments, stated that she was concerned with the parking. When Unmapped opened, there was nowhere for the apartment’s residents to park. The parking lots are now signed that a permit is required to park in the lot. She noted that there would be seating for 85 customers and 26 parking stalls.

Paula Larson, 14414 Stewart Lane, stated that she works for the Oaks Glen Lake Apartment’s management company. Parking is a big issue. Eden Prairie Road is a busy road and there is no crosswalk.

Tom Wartman, 14401 Excelsior Boulevard, stated that he is concerned with parking. He appreciated staff’s report. The lower level would be used as a prep kitchen and part of the overall space. He has a parking problem at Gold Nugget. Employees are supposed to park across the street in the Lunds-Byerly’s parking lot. Spasso’s has overflow parking occurring in Lakewinds and the hardware store. Ike’s has a natural overflow onto the frontage road. It took two years to get the crosswalk at Woodhill Road and Excelsior Boulevard. There is no transit to transport employees to Glen Lake. The 13 to 18 employees would drive to the site.

No additional testimony was submitted and the hearing was closed.

Thomas clarified that the lower level was not included in the parking requirement calculation. She did not anticipate that the lower level would generate the same amount of needed parking that the upper level would generate. The parking requirement looks at the number of indoor seats and square footage of certain areas. Staff is comfortable with its calculation.
Chair Kirk noted that existing parking problems for surrounding uses should not prevent a new use from being approved. The conditional use permit would require a parking agreement for additional parking stalls.

Chair Kirk asked for comments on the appropriateness of the use at the proposed location. Sewall felt that the use and location would be reasonable.

Schack stated that the success of Gold Nugget is a testament to the need for a restaurant of this type in the area. She did not think that the addition of the proposal would even meet that demand. The site is currently vacant. The proposal would be a definite improvement. The patio would be shielded by the building. It would not create a nuisance issue. She is comfortable with the use.

Powers stated that the positives would outweigh the possible negatives. Everyone would benefit. He supports the proposal.

O’Connell felt that the use would be reasonable for the site. It would look better than what is currently there.

Sewall commended the applicant for vetting the parking options before the meeting.

Powers liked the owner’s presentation. He thought it was smart of the owners to look for parking alternatives.

Knight liked the use. He lives two blocks north and would walk to the restaurant, even in the winter. He looked forward to a new restaurant in the area.

Schack noted that Station Pizza is located in her back yard. When its application was reviewed, there was a lot of concern expressed by neighbors regarding parking and traffic. She has not experienced any trouble with parking. It has not been an issue. The whole neighborhood walks there in the winter as well.

Knight moved, second by Powers, to recommend that the city council adopt the resolution approving a conditional use permit with variances and an expansion permit for a restaurant with outdoor seating area at 5445 Eden Prairie Road.

Powers, Schack, Sewall, Knight, O’Connell, and Kirk voted yes. Motion carried.

Chair Kirk stated that this item is tentatively scheduled to be reviewed by the city council on Feb. 26, 2018.

9. Other Business

A. Concept plan review for Ridgedale Active Adult Apartments at 12421 Wayzata Blvd.
Resolution No. 2018-

Resolution approving a conditional use permit, with variances and an expansion permit, for a restaurant with outdoor eating area at 5445 Eden Prairie Road

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

Section 1. Background.

1.01 The property is located at 5445 Eden Prairie Road. It is legally described as follows:

That part of the abandoned right of way of the Minneapolis, St. Paul & Suburban Railway Company, Section 33, Township 117 North, Range 22, lying East of the East line of Eden Prairie Road and West of a line drawn at right angles to the center line of said right of way from a point in said center line 260 feet Northeasterly along center line of said right of way from its intersection with the east line of said Eden Prairie Road, as said right of way appears upon the plat of Glen Lake Park.

Torrens Property

Begin registered land as evidenced by Certificate of Title No. 1071440

1.02 Chris Bjorling is proposing to operate a restaurant with outdoor seating area on the subject property. The interior and exterior of the existing building would be completely remodeled to accommodate the restaurant. The proposal requires a conditional use permit with the following:

1. Parking Variance from 52 stalls to 28 stalls;

2. Setback variance from residential property from 200 feet to 150 feet for the outdoor eating area;

3. Front yard setback variance from 50 feet to 0 feet for the outdoor eating area; and

4. Expansion permit for a change in the roof pitch over an existing, non-conforming portion of the building.
1.03 On Feb. 1, 2018, the planning commission held a hearing on the request. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The commission recommend the city council approve the proposal.

Section 2.  Standards.

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

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

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

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

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

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

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

2.02 City Code §300.21 Subd.4(i) lists the following specific conditional use permit standards for restaurants having on-sale intoxicating liquor or dance hall licenses:

1. Parking shall be in compliance with the requirements of section 300.28 of this ordinance;

2. Shall only be permitted when it can be demonstrated that operation will not significantly lower the existing level of service as defined by the Institute of Traffic Engineers on streets and intersections; and

3. Shall not be located within 100 feet of any low density residential parcel or adjacent to medium or high density residential parcels. The city may reduce separation requirements if the following are provided:

   a) landscaping and berming to shield the restaurant use;

   b) parking lots not located in proximity to residential uses; and

   c) lighting plans which are unobtrusive to surrounding uses.
2.03 City Code §300.21 Subd.4(p) lists the following specific standards for accessory sidewalk cafes and outdoor eating areas:

1. Shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal building;

2. Shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;

3. Shall be located and designed so as not to interfere with pedestrian and vehicular circulation;

4. Shall not be located to obstruct parking spaces. Parking spaces may be removed for the use only if parking requirements specified in section 300.28 are met;

5. Shall be located adjacent to an entrance to the principal use;

6. Shall be equipped with refuse containers and periodically patrolled for litter pick-up;

7. Shall not have speakers or audio equipment which is audible from adjacent parcels; and

8. Shall be located in compliance with building setback requirements.

2.04 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.

2.05 By City Code §300.18 Subd.5(b), buildings within the B-2 zoning district must maintain a 50-foot setback from front property lines. The existing building was constructed 20 years before adoption of the city’s first zoning ordinance. It has non-conforming front yard setbacks of nine feet and three feet from south and west property lines respectively. By City Code §300.29 Subd. 7(c) the city may approve expansion of a non-conformity when an applicant meets the burden of proving that:
1. The proposed expansion is a reasonable use of the property, considering such things as: functional and aesthetic justifications for the expansion; adequacy of off-site parking for the expansion; absence of adverse off-site impacts from such things as traffic, noise, dust, odors, and parking; and improvement to the appearance and stability of the property and neighborhood.

2. The circumstances justifying the expansion are unique to the property, are not caused by the landowner, are not solely for the landowners convenience, and are not solely because of economic considerations; and

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

Section 3. FINDINGS.

3.01 The proposed restaurant and outdoor eating area would meet the general conditional use permit standards as outlined in City Code §300.21 Subd.2 and the staff report associated with the applicant’s request. The findings of the staff report are incorporated into this resolution by reference.

3.02 But for the requested variances, the proposed restaurant and outdoor eating area would meet the specific conditional use permit standards as outlined in City Codes §300.21 Subd.4(i) and §300.21 Subd.4(p) and the staff report associated with the applicant’s request. The findings of the staff report are incorporated into this resolution by reference.

3.03 The proposal would meet the variance standard as outlined in City Code §300.07 Subd. 1:

1. Intent of the Ordinance.
   a) The intent of the ordinance as it pertains to parking requirements is to ensure adequate parking is provided to meet anticipated parking demand. Though parking demand is not likely to be met by available on-site parking during the restaurant’s p.m. peak hours of operation, provision of off-site parking during this time may mitigate the deficit.
   b) The intent of the ordinance as it pertains to outdoor seating area setbacks is to ensure appropriate separation between these areas and residential land uses and property lines, so as to minimize real and perceived nuisance impacts and promote safety. The outdoor seating area would be separated from area residences by existing roadways, commercial properties, and vegetation. Similarly, the seating area would not be closer to roadways than the pedestrian sidewalks in the area.
2. Consistent with Comprehensive Plan. The subject property is located in the Glen Lake village center. One of the overall themes outlined in the comprehensive plan is to “provide development and redevelopment opportunities that encourage vitality, promote identity, and improve livability” in village centers. The requested variances would result in reuse of an existing building as a new and unique gathering space, consistent with the goals of the comprehensive plan.

3. Practical Difficulties

a) Reasonableness.

1) The requested parking variance is reasonable. Though parking demand is not likely to be met by available on-site parking during the restaurant’s p.m. peak hours of operation, provision of off-site parking during this time may mitigate the deficit. Use of existing off-site parking would be preferable to constructing additional parking on the east side of the site through removal of existing open space.

2) The requested setback variances are reasonable. The outdoor seating area would be separated from area residences by existing roadways, commercial properties, and vegetation. Similarly, the seating area would not be closer to roadways than the pedestrian sidewalks in the area.

b) Unique Circumstance. The existing building and site were developed 20 years prior to the adoption of the city’s first zoning ordinance. Though some aspects of the building and site do not conform to current zoning standards, various businesses and a fast food restaurant successfully operated from the site for decades. The overall success enjoyed by businesses previously occupying the building, despite the non-conformities of the building and site, constitutes unique circumstance not common to every similarly zoned property.

c) Character of the Neighborhood. The Glen Lake village center includes a variety of land uses. A gas station, commercial strip mall, professional offices, electric substation, and residential uses are all located in close proximity to the subject property. While the reuse of the currently vacant existing building would alter the level of site activity, the requested variances themselves would not alter the unique character of the neighborhood.

3.04 The proposal would meet the expansion permit standard as outlined in City Code §300.29 Subd. 7(c):
1. Reasonableness and Neighborhood Character. The proposed roof pitch change is reasonable and would not negatively impact the character of the surrounding neighborhood. The change is for aesthetic reasons only and it would not increase the footprint or usable space of the existing building.

2. Unique Circumstance. The existing building is situated in the far southwest corner of the subject property. It exceeds required setbacks from the north and east property lines and has non-conforming setbacks from south and west lines. It is not “centered” on the lot. This is a unique circumstance not common to every similarly zoned property.

Section 4. City Council Action.

4.01 The above-described conditional use permit, with variances and expansion permit, is approved. Approval is based on the findings outlined in the associated staff report and section 3 of this resolution. Approval is subject to the following conditions:

1. Subject to staff approval, the property must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
   - Site plan dated, Jan. 8, 2018
   - Floor plan dated, Jan. 8, 2018
   - Exterior Elevations, dated, Jan. 8, 2018

2. Prior to issuance of a building permit submit the following for staff review and approval:
   a) A revised survey showing all existing easements, proposed seating areas, and parking lot reconfiguration generally consistent with Staff-Drafted Configuration A. Note, no improvements are permitted within existing county easements.
   b) A signed parking agreement for the use of at least 13 stalls during evening hours.
   c) A revised enclosure plan illustrating uninterrupted enclosures around seating area, with access only through the restaurant building.
   d) A final landscape plan including planters adjacent to the outdoor seating areas and attention given to the eastern portion of the site previously used as informal seating.
   e) A final materials board.
3. Prior to issuance of a certificate of occupancy, the following must be completed:
   a) The parking lot must be restriped generally consistent with Staff-Drafted Configuration A.
   b) The egress onto Stewart Lane must be relocated generally consistent with Staff-Drafted Configuration A.
   c) Appropriate parking lot “in/out” signage must be installed at entrance/exits and one-way arrows painted within the parking lot.

4. If the area proposed for the outdoor seating area is considered pervious under existing conditions, the area may only be covered with pervious materials. No new impervious surface is allowed.

5. The outdoor seating area must be equipped with refuse containers and regularly patrolled for litter pick-up.

6. The outdoor eating area must be closed by 10:00 p.m. daily.

7. Outdoor audio equipment that is audible from adjacent parcels is not allowed. If an outdoor system is installed, it must be equipped with technology to quickly and easily regulate volume.

8. No dumping of glass or other recyclables is allowed between the hours of 10:00 p.m. and 6:00 a.m.

9. The basement of the existing building may not be converted to accommodate customers.

10. The restaurant and outdoor eating area must conform to all aspects of the City Code Chapter 8, Public Health and Public Nuisance Ordinances.

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

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

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

_______________________________________
Brad Wiersum, Mayor
Attest:

David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held Feb. 26, 2018.

David E. Maeda, City Clerk

SEAL
City Council Agenda Item #13C2
Meeting of Feb. 26, 2018

Brief Description
On-sale and Sunday on-sale intoxicating liquor license for Copper Cow, LLC, at 5445 Eden Prairie Road

Recommendation
Continue the public hearing from Jan. 8 and grant the license

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

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

Business Operations
The restaurant is approximately 2,500 square feet and is proposed to be located in the former Dairy Queen in Glen Lake. The proposal anticipates seating for 85 indoor guests and 35 seats outside. The space has a drive thru, but the owners are planning on using this for a take-out/pick up area. The restaurant will be open the following hours:

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

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

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

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

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

Application information and license fees have been submitted. The police department’s investigative report on this application is complete and is satisfactory. The report will be forwarded to the council separately.

Resident Feedback

At the January hearing, a resident spoke at the meeting and was concerned about “boozy shakes” as part of the menu, being provided thru the pick-up window and taken off-site. The on-sale liquor license requires that all alcohol be consumed on-site and is not allowed to be taken off of the licensed premise as to-go items. The owners are aware of this law and will ensure that staff is trained to not allow anyone to order “boozy shakes” to go.

Recommendation

Staff recommends that the city council continue the public hearing from January 8 and grant the license. This review will coincide with review of the conditional use permit and site and building plan for the proposal.

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

Originated by:
   Kathy Leervig, Community Development Coordinator
Location Map

Project: The Copper Cow
Applicant: Chris Bjorling
Address: 5445 Eden Prairie Rd
The Copper Cow Business Plan for License Application

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

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

II. Safeguards Against Underage Sales & Server Awareness

Alcohol Server Training Plan Overview

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

- **Be Cautious** – it is very hard to tell a young person's age. Ensure that staff are checking IDs, even of those that look older than 21.

- **Be Consistent** – have employees always check ID, even if they think the establishment served the customer before or are pretty certain they are of legal drinking age.

- **Be Courteous** – have staff let the customer know that refusing a sale due to lack of ID is simply following policy and that your establishment would be happy to serve them when they are able to produce a valid ID.

- **Be Conscientious** – it may be useful to ensure that you and your staff record all refusals including date, time, appearance of the customer, items refused, and staff name for every refusal.

- **Be Careful** – there is evidence that staff may often fail to refuse service if they feel afraid of the consequences, abuse, and violence. Make sure you and your staff feel safe, confident, and supported in refusing service.

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

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

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

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

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

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

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

- Always take physical control of the ID and request that it be taken out of wallets or covers so that you may:
  - Check the back; look for poor photocopy quality (blurred imagery) or digitized lettering. Also, look for wording that indicates it is not an issued by a branch of government, a disclaimer, or statement of authenticity.
  - Check for thickness, unevenly cut corners and bumpy surfaces indicating a picture has been replaced or the card has been hand cut.
Check for color bleed on security features and font on the front of the ID card- all images should be crisp and clear.

Check the picture and physical information to see that it matches the person attempting to gain entrance or be served.

Pay special attention to the date of birth and confirm the individual is old enough and that it has not been altered (are the numbers the same size and color? Are the numbers evenly spaced and level with each other?)

Make sure the identification has not expired.

Use the ID Checking Guide you can purchase at:


Discipline Policy for Servicing Alcohol to Minors

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

Self-Audits

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

Resources:


III. Projected food to liquor ratios

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

IV. Hours of Operation and Entertainment Plan

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

V. Menu

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

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

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

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

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

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

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

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

VI. Orderly appearance of operations

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

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

VII. Sound and noise management plan

To recap from section IV: Most events will most likely be held on Friday-Sunday. We do not at present have plans for consistent live music, but we could see the possibility of hosting events that would have live music or a DJ. We will have a sound system that will play music for restaurant guests and there may be some speakers positioned so it can be heard on the patio as well. We would anticipate music to be played during our hours of operation. If it is found that the noise generated from the establishment is too loud, we will be happy to address complaints on an as-needed basis. We would request that during special events, that if additional sound is generated, that people would be understanding for those occurrences.
City Council Agenda Item #13D  
Meeting of Feb. 26, 2018

**Brief Description**  
On-sale brewer’s taproom and Sunday liquor license, and off-sale liquor license (for growlers) for Brass Foundry Brewing Co., 5959 Baker Road

**Recommendation**  
Open the public hearing and continue to April 2, 2018

**Background**

The city has received an application for an on-sale brewer’s taproom and Sunday liquor license, and off-sale liquor license for Brass Foundry Brewing Co., for use at 5959 Baker Road. The applicant is proposing to establish a microbrewery at 5959 Baker Road.

The site is located in the Baker Technology Park near 494/62. The owners are in the process of securing the lease to occupy the space. The brewery anticipates a Summer 2018 opening, pending council approval.

**Business Ownership**

Brass Foundry Brewing Co., is owned by Work Zone Breweries, Inc. Work Zone Breweries is owned by many individuals with Daniel Shrader owning 30.39% and Peter Voldness owning 28.93%. The remaining owners/investors own less than 8% each. Dan Shrader is the CEO/President of Brass Foundry Brewing Co. The owners live in the metro area and meet the residency requirement of the city code. The taproom manager will be required to submit an application for a background check upon hire at the brewery.

**Business Operations**

The applicant is requesting to have a taproom and an off-sale license for growlers. The taproom will not include food, but the brewery plans on having food trucks available for patrons on a regular basis.

The licensed premise will include an outdoor patio. The approval of the licensed premise is subject to the conditions of approval for the requested conditional use permit which will coincide with the final hearing on April 2. The patio is required to have a cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access must be only through the principal building.

Employees of the brewery will receive extensive training initially and on an ongoing basis for alcohol service.

**Other Similar Actions**

The council previously approved an on-sale taproom and off-sale liquor licenses (for growlers) for Unmapped Brewing, determining that a brewery offers a distinctive specialty service.

Brass Foundry is also requesting permission to host events during the year as other breweries have requested previously in Minnetonka. As with other breweries in Minnetonka, the council has approved three events annually as a condition of approval of the license. Staff feels that three events, annually, is acceptable to approve for Brass Foundry.
Recommendation

Application information has been submitted. The police investigation is pending and will be provided with the continued public hearing on April 2. Staff recommends that the city council open the public hearing and continue it to April 2, 2018, which will coincide with the conditional use permit for the site.

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

Originated by:
  Kathy Leervig, Community Development Coordinator
Location Map
Project: Brass Foundry Brewing Co
Address: 5959 Baker Rd
A. Alcohol Server Training Plan
   a. Staff Training
      i. Onboard training taught by experienced trainer.
         1. This includes training on any and all equipment to be used safely
         2. Customer Service techniques
         3. How to spot fake I.D.s
            a. Monetary reward for every fake I.D. confiscated
            b. Management will occasionally audit the staff on this practice to
               insure policy adherence
         4. How to properly pour beer and which glass is appropriate for each style
            of beer
         5. Education on the brewing process with a brew day experience
            requirement
      ii. Regular Training
         1. Management will continue training staff with occasional trainings on
            new and improved techniques or changes in policy taught during
            Onboard training.
   b. Carding Policy
      i. All persons will be carded before beer is served, no exceptions.
      ii. After 9 PM, only patrons over the age of 21 will be allowed on the premises
      iii. 1-2 persons will be designated as security to card all individuals wishing to drink
            beer on the premises.
            1. After a driver’s license or other legal identification is inspected for
               proper age, said person will be stamped on visible portion of the hand
            2. During patron’s order, bartender will inspect said stamp before any beer
               is poured
   c. Self-Audits
      i. Management will, on occasion, conduct a self-audit to ensure that all policies
         outlined regarding safety, customer service, and carding policy are followed.
         1. Any exceptions will be documented and addressed by the taproom
            manager
B. Police Department Security Plan
   a. Security Staff
      i. There will be 1-3 employees designated for security purposes, such as checking ID’s and doing rounds of the premises to make sure all patrons are safe and prevent any potential incidents from developing.
      ii. Bartender’s will also be cross trained on spotting fake ID’s and how to check an ID for signs of a fake in case security employees are busy with other tasks and patrons enter the premises.
      iii. The plan is to have security individuals always checking ID’s upon entry of the premises by the gate entrance during good weather, and within the vestibule during poor weather.
   b. Special Events
      i. Special events will have additional security as needed. Any special event we will be reaching out to the Minnetonka Police Department to discuss events, number of guests, and additional security recommendations.
   c. Security System
      i. The Property will have a security system installed, with cameras watching all entrances and bar tops.
   d. No Admittance List
      i. All incidents will be noted by the taproom manager. The manager will keep a log of any incidents and persons involved.
      ii. Management follows a three-strike policy regarding any incidents, but reserves the right to put a person on the no admittance list earlier.
      iii. Management does not expect any incidents to occur, but have put this policy in place as a last resort measure.
   e. Reporting Incidents
      i. Management will report all incidents that occur on the property to the authorities regardless of the severity of the incident.
   f. Evaluating Security Plans
      i. Management will conduct a yearly review of all security plans and policies for effectiveness and safety.
      ii. Any deficiencies will be noted and appropriately addressed to ensure safety of patrons, employees.
   g. Communication of policies, incidents, and updates
      i. Taproom manager will hold weekly meetings to discuss any changes, concerns, incidents and updates to the security plans.
C. Noise Management Plan
   a. Speakers
      i. There will be two to six small speakers outside, positioned to provide the patio with ambience music. These speakers will point toward the building and only be used at low volumes. Speakers will be turned off at closing time.
      ii. Indoor speakers will be positioned within corners in multiple areas of the interior. All speakers will be used at low volumes to provide ambient music.
   b. Closing Time
      i. Closing time will be variable, as it is in many establishments similar to Brass Foundry Brewing Co. (BFBC). Typically, BFBC will close well before 1 am. During the winter season this can be as early as 10 pm, and during the summer closer to 11:30 pm. Bartenders will make “last call”. There is no alteration to exterior lighting during closing, the interior lighting will raise to indicate closing time and all employees will instruct guests that it is closing time and to leave in an orderly fashion.
   c. Location
      i. Brass Foundry Brewing Co. is located in a setting with no street level residences nearby. We expect no noise complaints and very few, if any, issues with unruly customers that require police interaction. We do not foresee any closing time issues either.
D. Entertainment
   a. The nature of entertainment in the taproom of Brass Foundry Brewing Co. will revolve
      around enjoying our beer, good conversation, and relaxation. The entire atmosphere of
      the taproom will revolve around creating space for groups of guests to enjoy great beer
      and conversation. On occasion, there will be live music for guests to enjoy but will be
      for bands that are light hearted and easy going. Televisions will only be used to show
      live Minnesota teams but will otherwise be turned off or will only show our list of
      available beers.
   b. We will be open Monday through Sunday, with occasional live music on Friday or
      Saturday evenings. Closing times will vary from as early as 10 pm but can be as late as
      11:30 pm.
   c. The age group we will be focusing on is the 21-35 age bracket but will be also intent on
      creating an atmosphere that is agreeable and enjoyable for all ages and families.

E. Community Impact Plan
   a. All employees will be trained to recognize any potential side effects of patrons and will
      be handled directly by the taproom manager.
   b. Responsible alcohol consumption will be stressed to our employees and to recognize
      any potential issues and ways to address these beforehand.

F. Hours of Operation
   a. Taproom hours will be variable throughout the week, as it is in many establishments
      similar to Brass Foundry Brewing Co. (BFBC). Typically, BFBC will close well before 1
      am. During the winter season this can be as early as 10 pm, and during the summer
      closer to 11:30 pm. Bartenders will make “last call”. There is no alteration to exterior
      lighting during closing, the interior lighting will raise to indicate closing time and all
      employees will instruct guests that it is closing time and to leave in an orderly fashion.
   b. The brewhouse portion of the property will also have variable hours depending upon
      our production needs. Typically, there will be 3 “brew days” during any given week that
      will take place during the normal workday period from 8 AM to 6 PM.
   c. After closing time, all areas will be swept and properly cleaned to maintain the property.
      Any graffiti or outside refuse will be taken care of and noted. Any issues that arise will
      be documented and addressed on a case by case basis by the taproom manager.

G. Food Service
   a. Brass Foundry Brewing Company will not be offering any food for patrons.
   b. Brass Foundry will be partnering with local food trucks to provide these options and will
      be rotated for variety.
H. Marketing/Business Plan

a. Quality
   i. First and foremost, Brass Foundry will be known for uncompromising quality.
   ii. Every beer is made for the customer, regardless of type or style
   iii. Continue to show why Craft Beer is synonymous with quality and innovation
        1. Releasing new and different flavor combinations and new styles of beer
cr
        2. to push the industry forward.

b. Pilot Program
   i. As part of our beer for our customers initiative, we will be having a rotating
      small-scale series
   ii. Customers will get to participate in the release of beers by being the judges.
      Each participant will get a tasting sheet to fill out and include comments
      regarding taste, mouthfeel, head retention, etc.
   iii. This will be rotated every 2-4 weeks and winners will be put in regular
      production based off of feedback and tasting sheets.

c. Events
   i. Per City of Minnetonka, we are allowed 3 events per year.
   ii. Purpose of each event to connect us to the community and create a bond with
      each of our customers.
   iii. Examples would include 4\textsuperscript{th} of July, Oktoberfest, Springtime Fest

d. Distribution/Sales
   i. Create efficient and effective sales team
   ii. Self-distribute within the Twin Cities of at least 2 SKUs
   iii. Create Brand Ambassador Cicerones to increase brand awareness and loyalty
        1. Attend all industry events and festivals
        2. Hold regular tastings at liquor stores around the Twin Cities
        3. Share knowledge of beer and different styles to the market
   iv. Build relationships with established distributors to handle distribution outside of
      the Twin Cities territory
City Council Agenda Item #14A  
Meeting of Feb. 26, 2018

Brief Description
Items concerning iFly at 12415 Wayzata Boulevard:
1) Amendments to the existing master development plan;
2) Site and building plan review; and
3) Sign plan review.

Recommendation
Adopt the ordinance and resolution approving the requests

Proposal
SkyGroup Investments, LLC (“iFly”) is proposing to construct an indoor skydiving venue at 12415 Wayzata Boulevard. As submitted, the building would have a footprint of 6,100 square feet in size and be 56-feet tall. The proposal requires:

1. **Master development plan amendment.** The mall’s existing master development plan illustrates the three pad sites as restaurants. While iFly would still be considered an entertainment use, the use is significantly different than what was original envisioned. This, coupled with the increased building height, triggers an amendment to the master development plan.

2. **Site and building plan review.** By city code, site and building plan approval is required for construction of any new building of the proposed size.

3. **Sign plan review.** By code, all signage is regulated by the city’s sign ordinance. However, developments on properties zoned PUD/PID – which have unique characteristics and signage needs – may be regulated by a “sign plan” rather than by ordinance if approved by the city.

Planning Commission Hearing

The planning commission considered the request on Feb. 15, 2018. The staff report, various plans and documents from that meeting are attached. At that meeting, a public hearing was opened to take comment, but no one appeared to speak.

The commission generally discussed the mass and future uses of the building. While commissioners supported the amount of signage proposed for iFly, they expressed that they would not be supportive of possible future tenants being allowed the same amount of signage.

Planning Commission Recommendation

On a 6-0 vote, the commission recommended that the city council approve the proposal with a modification to exclude future tenants of the building from the sign plan. Meeting minutes from that meeting are attached.
Since Planning Commission Hearing

The applicant has made no changes to the proposal since the planning commission’s discussion. However, staff has added the following condition of approval to page 6 of the resolution:

> The approved sign plan applies exclusively to iFly. Future tenants of the building would be required to comply with the city’s sign ordinance or apply for and receive approval of a new sign plan

Staff Recommendation

Staff recommends the city council adopt the following pertaining to iFly at 12415 Wayzata Boulevard:

1) Ordinance amending an existing master development plan.

2) Resolution approving final site and building plans and a sign plan.

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

Originator: Ashley Cauley, Senior Planner
Brief Description
Items concerning iFly at 12415 Wayzata Blvd.:

1) Amendment to the existing master development plan;

2) Site and building plan review; and

3) Sign plan review.

Recommendation
Recommend the city council approve the proposal

Background

In March 2013, the city council approved the master development plan for the Ridgedale Shopping Center. The master development consists of three phases:

- **Phase One**: The first phase included construction of an 80,000 square foot addition to Macy’s, updating the exterior of the Macy’s store, as well as parking lot, stormwater and landscaping improvements for the north side of the site.

- **Phase Two**: The second phase consisted of the demolition of the then existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new 14,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.

- **Phase Three**: The third phase consisted of three new, freestanding restaurants on the northwest side of the mall, as well as final parking lot and landscaping improvements.

In May 2017, the city council approved site plans and design criteria for the Phase Three restaurant pads in the northwest corner of the Ridgedale parking lot. At that time, the council also approved building plans and a conditional use permit for a restaurant, with an outdoor patio, on the westernmost pad site. Shell construction of that building is well underway and city staff has been working with the property owner and prospective tenants to ensure the façade treatments comply with the approved guidelines. (Note that the planning commission will also be reviewing proposed changes to the approved guidelines on a separate agenda item.)

In October 2017, the city council reviewed a concept plan presented by SkyGroup Investments, LLC (“iFly”). The plan contemplated a building for indoor skydiving on the second pad site. Conceptually, the building would be roughly 5,000 square feet in footprint area and be 56 feet tall. The council asked questions about how the building would function and expressed some concern related to the noise generation and the amount of overall signage shown on the plan. However, the council generally expressed support of the entertainment use and the overall size/mass of the building.
Proposal Summary

iFly has now submitted formal applications and plans for the second pad site; the plans are generally consistent with the previous concept regarding the building footprint and its position on the site. 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.

- **Proposed site design.** Following the approval of the grading permit for the site in July 2017, portions of the existing mall parking lot were removed and overall site grading and “site prep” for the three pad sites was completed. As such, the proposal consists of just minor grading, landscaping and utility connections.

- **Proposed building.** The proposed building would have a footprint of 6,100 square feet and be 56-feet tall. The building would consist of two primary areas: (1) the occupied area; and (2) the return air towers and mechanical surround.

  **Occupied space.** The occupied space would be roughly two-stories tall and generally consist of office, retail, party rooms and the flight chamber with associated observation areas. The lower level of the front façade would be glass and the upper area would be grey-toned metal tiles.

  **Mechanical space.** Staff has referred to the outermost, unoccupied space as a “suitcase handle” because of the shape. The vertical – or side – portions surrounding the occupied space are the return air towers. The purpose of these towers is to assist in circulating the air through the flight chamber to the mechanical fans housed in the top of the “suitcase handle”. The façade of towers would primarily be a grey and blue poured material. The upper portion of the handle would house the mechanical equipment and fans needed to operate the flight chambers. Since the equipment would require the façade to flex slightly, this area would be primarily exterior insulation and finish system, or EIFS.

- **Proposed signage.** The proposal includes a sign plan specific to the iFly building. The proposed sign plan would allow signage on all four building elevations.

<table>
<thead>
<tr>
<th>Elevation</th>
<th>Proposed Sign Area</th>
<th>Percentage of Wall face</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>235 sf</td>
<td>Approximately 4%</td>
</tr>
<tr>
<td>East</td>
<td>105 sf</td>
<td>Approximately 4%</td>
</tr>
<tr>
<td>South</td>
<td>Sign One: 80 sf</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sign Two: 50 sf</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total: 130 sf</td>
<td>Approximately 2%</td>
</tr>
<tr>
<td>West</td>
<td>105 sf</td>
<td>Approximately 4%</td>
</tr>
</tbody>
</table>

Primary Questions and Analysis

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

- Is the proposed land use and master development plan appropriate?
Yes, the entertainment use is appropriate for the site. The property is guided for mixed use – meaning a variety of uses could occupy the site. The comprehensive guide plan suggests that “service commercial, office, and other commercial uses should occur” in this area to “complete the commercial profile of the Ridgedale Mall, and introduce a pedestrian-friendly transition starting at the edges of the mall.”

Further, the existing mall’s master development plan illustrates the three pad sites as restaurants. While the proposed indoor skydiving use is significantly different than what was originally envisioned, the proposed entertainment use would serve as a transitional use from the vehicular-orientated environment to the north to the envisioned pedestrian-friendly environment for the mall site.

- Is the proposed building design reasonable?

Yes, the proposed building design is reasonable. The proposed building is attractive and complimentary to the high quality and aesthetic used throughout the Ridgedale Center site and the restaurant pad to the west. Further, the site plan generally aligns with the overall site plans approved by the council in 2017.

- Are the proposed signs reasonable?

Yes, the proposed signs are reasonable. The intent of the city’s sign ordinance is to balance the need for a well-maintained and attractive community with the need for effective communication and business identification. The city’s sign ordinance establishes regulations and maximum amounts of signage based on the zoning district. However, within the planned unit (PUD) and planned I394 (PID) districts, developments with unique signage needs can request to be regulated by sign plan rather than the sign ordinance. More information on the proposed signage can be found in the “Supporting Information” section of this report.

Staff finds the proposed sign plan reasonable as:

1. It is somewhat unclear whether signage for the proposed building should be regulated by the city’s sign ordinance, the Ridgedale sign plan, or the design criteria. The proposed sign plan would provide clarity to staff, future tenants and the property owner.

2. As proposed, the signage on the south – or front – elevation would be pedestrian-scaled and would visually align with the signs contemplated in the design criteria for the Ridgedale restaurant site. The remaining elevations would be scaled for visibility by vehicular traffic on adjacent roadways.

3. The scale of the signage on the proposed elevations would be visually proportionate to the building.

4. The proposed sign plan would comply with the factors identified in the city’s sign ordinance for consideration of a sign plan on properties zoned PUD/PID.

---

1 Comprehensive Guide Plan, page IV-32
Staff Recommendation

Recommend the city council adopt the following for iFly at 12415 Wayzata Blvd.:

1) Ordinance amending an existing master development plan; and

2) Resolution approving final site and building plans and a sign plan.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Surrounding Land Uses

<table>
<thead>
<tr>
<th>Direction</th>
<th>Land Use Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northerly</td>
<td>Wayzata Blvd. and I394</td>
</tr>
<tr>
<td>Easterly and Southerly</td>
<td>Ridgedale mall, zoned PID, and guided mixed use</td>
</tr>
<tr>
<td>Westerly</td>
<td>Bonaventure Shopping Center, zoned PID, guided mixed use</td>
</tr>
</tbody>
</table>

Planning

<table>
<thead>
<tr>
<th>Planning Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guide Plan designation: Mixed Use</td>
</tr>
<tr>
<td>Zoning: PID, Planned I394 District</td>
</tr>
</tbody>
</table>

City Actions

The proposal requires the following applications:

- **Master development plan amendment.** The mall’s existing master development plan illustrates the three pad sites as restaurants. While iFly would still be considered an entertainment use, the use is significantly different than what was original envisioned. This, coupled with the increased building height, triggers an amendment to the master development plan.

- **Site and building plan review.** By city code, site and building plan approval is required for construction of any new building of the proposed size.

- **Sign plan review.** By code, all signage is regulated by the city’s sign ordinance. However, developments on properties zoned PUD/PID – which have unique characteristics and signage needs – may be regulated by a “sign plan” rather than by ordinance if approved by the city.

Council Introduction

In January 2018, the city council introduced an ordinance to amend the existing Ridgedale master development plan. The council continued to express support of the entertainment use. However, the council expressed concerns about the amount of signage shown on the building. The council also asked questions about the aesthetic of the rear view.

Building setbacks:

The proposed building would have the following setbacks:

<table>
<thead>
<tr>
<th>Direction</th>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>55 ft</td>
<td>57 ft</td>
</tr>
<tr>
<td>South</td>
<td>n/a</td>
<td>112 ft</td>
</tr>
<tr>
<td>East</td>
<td>n/a</td>
<td>253 ft</td>
</tr>
<tr>
<td>West</td>
<td>50 ft</td>
<td>284 ft</td>
</tr>
</tbody>
</table>

Noise Impact

During the council’s review of iFly’s concept plan, several members of the council inquired about the level of noise the use would generate. The applicant indicated that the mechanical equipment would not
generate excessive amounts of noise. Since the concept plan review, staff has reached out to several cities, which have existing iFly locations. All of cities contacted initially were concerned about noise generation as well, however, none of the cities contacted have had any noise complaints. Nonetheless, the city has mechanisms in place to address issues associated with real and perceived nuisances. Minnesota State Statute §7030 establishes maximum noise pollution standards. Additionally, the city’s noise ordinance essentially establishes community “quiet hours” from 10 p.m. to 7 p.m.

### Proposed Signage

Both iFly and the property owner have asked for clarification on whether the site would be regulated by the Ridgedale sign plan or the sign ordinance. Recognizing that the use would have unique sign needs, staff worked with the applicant to scale the proposed signage appropriate to the size of the building. The following is intended to compare the amount of signage currently proposed to the existing Ridgedale sign plan and sign ordinance.

<table>
<thead>
<tr>
<th>Proposed</th>
<th>Ridgedale Sign Plan</th>
<th>Ordinance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>North – or – rear elevation</strong></td>
<td>3.5 ft tall x 59 ft long = 100 sf</td>
<td>1. maximum of one sign per elevation;</td>
</tr>
<tr>
<td><strong>East Elevation</strong></td>
<td>10 ft tall x 9.5 ft long = 100 sf</td>
<td>2. total height of sign cannot exceed five feet;</td>
</tr>
<tr>
<td><strong>South – or front – elevation</strong></td>
<td>Sign one: 4 ft tall x 20 ft long = 80 sf</td>
<td>3. Total length of sign cannot exceed 75-percent of the lineal footage of the surface to which it is affixed. (north and south: 84 ft; East and west: 19 ft)</td>
</tr>
<tr>
<td></td>
<td>Sign Two: 1.75 ft tall x 29 ft long = 51 sf</td>
<td></td>
</tr>
<tr>
<td><strong>West Elevation</strong></td>
<td>10 ft tall x 9.5 ft long = 100 sf</td>
<td>Each elevation: 100 sf or 15-percent of the wall face, whichever is less.</td>
</tr>
<tr>
<td><strong>Total for property</strong></td>
<td>431 sf</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td>150 sf</td>
</tr>
</tbody>
</table>

For visual reference, staff has included information on existing mall tenants:

<table>
<thead>
<tr>
<th>Tenant</th>
<th>Elevation</th>
<th>Sign Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>iFly: east and west elevations</td>
<td>Building Height: 56 ft</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sign Height: 9.5 ft</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sign area: 105 sf</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Percentage of wall face: 4%</td>
<td></td>
</tr>
<tr>
<td>Elevation</td>
<td>Building height:</td>
<td>Sign height:</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Macy’s North</td>
<td>49 ft</td>
<td>18 ft*</td>
</tr>
<tr>
<td>Macy’s East</td>
<td>49 ft</td>
<td>18 ft*</td>
</tr>
<tr>
<td>Nordstrom East</td>
<td>43 ft</td>
<td>5.25 ft</td>
</tr>
</tbody>
</table>

* as measured from the top of the apostrophe to the bottom tail of the y.
** as measured excluding the top of the apostrophe and the tail of the y.

**Sign Plan**

The proposed signage would comply with all the sign plan standards as outlined in City Code Section 325.06:

1. The development includes a high rise (greater than 3-story) structure;

   **Finding:** The proposed building would have a height of approximately 56-feet. This would be tall enough to be considered a high-rise structure.

2. The development includes multiple structures and/or substantial site area;

   **Finding:** While the sign plan would be intended to regulate signage on one, sole structure, the structure would be part of the larger Ridgedale Mall development, which includes multiple structures and a substantial site area.
3. The development includes mixed uses;

**Finding:** The structure would be part of both the Ridgedale restaurant and mall sites. Both of these sites include a variety of uses and building scales.

4. A sign plan is unique adapted to address the visibility needs of a development while remaining consistent with the intent of this section to direct high quality signage; and

**Finding:** Given the height and mass of the building, staff finds that the proposed signage is scaled appropriately. The proposed signage on the front façade is reasonably scaled for pedestrian traffic. The signage proposed for the north, east and west facades are reasonably scaled for vehicular traffic and visibility from I-394.

5. The sign plan includes permanent sign covenants which can be enforced by the city.

**Finding:** If approved, the proposed signage on the plans would establish the placement, size and scale of the signs for the building. Changes to alter the approved location or changes to increase the size or scale of the signs would require further review by the planning commission.

**SBP Standards**

The proposal would comply with all site and building standards as outlined in City Code 300.27 Subd.5

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

**Finding:** The proposal has been reviewed by planning, building, engineer, natural resources, fire, and public works staff. Staff finds it to be generally consistent with the city's development guides.

2. Consistency with this ordinance;

**Finding:** The proposed site and building are consistent with minimum ordinance standards.

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

**Finding:** In 2017, the city approved a grading permit to remove a portion of the mall parking lot to create the pad sites. Under that permit, the site was prepared for the development of the subject
property. As such, minimal site work is required to accommodate the proposal.

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

**Finding:** The proposal includes a building that incorporates many of the architectural features and aesthetics from the Ridgedale mall and the approved plans for the restaurant pads to the west.

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

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

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

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

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

**Finding:** The proposal would result in a high quality redevelopment with a logical placement of buildings, use of high quality materials, incorporation of landscaping and open space, and orderly routes for vehicle and pedestrian circulation and parking.

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

**Finding:** As new construction, the proposed building would meet minimum energy standards.

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

**Finding:** The proposal would not negatively impact neighboring land uses. Rather, it is anticipated that such redevelopment would result in both a physical and visual improvement to the Ridgedale Mall.

**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.

**Pyramid of Discretion**

![Pyramid Diagram]

This proposal:

**Motion Options**

The planning commission has three options:

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

2. **Disagree with staff’s recommendation.** In this case, a motion should be made recommending the council denying the requests. This motion should include findings for denial.

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

**Voting Requirement**

The planning commission will make a recommendation to the city council. The city council's final approval requires an affirmative vote of a simple majority.
<table>
<thead>
<tr>
<th><strong>Neighborhood Comments</strong></th>
<th>The city sent notices to 1419 area property owners and received no comments to date.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deadline for Decision</strong></td>
<td>May 16, 2018</td>
</tr>
</tbody>
</table>
Location Map

Ifly
Address: 12415 Wayzata Blvd
Project No. 17004.17b

City of minnetonka

This map is for illustrative purposes only.
PLANT SCHEDULE

1. The Landscape Contractor shall be responsible for installing materials and plants shown on the Landscape Plan. The Contractor is responsible for the cost to repair any defects, adjacent landscape, public and private property that is damaged by the Contractor or their subcontractor's operations while planting, grading or during the specified maintenance periods. Call for utility locations prior to any excavations.

2. The Contractor shall report any discrepancy in plan vs. field conditions immediately to the Landscape Architect. Prior to continuing with that portion of work.

3. The Contractor shall be responsible for the repair of any of their trenches or excavations that

4. All nursery stock shall be well-branched, healthy, full, pre-hycalculated, and free of disease or insect damage. The Landscape Contractor shall remove the wrap at the proper time as a part of this contract.

5. All nursery stock shall be guaranteed by the Contractor for one year from date of final installation.

6. Amendedsols shall be provided and graded by the General Contractor up to 6 inches below finished grade in turf areas and 12 inches in planting areas.

7. Planting area soils shall be amended with 25% sphagnum peat moss, 5% humus, and 65% pulverized soil for all shrub, ornamental grass, and annual beds. Amended turf area soil shall be standard soil.

8. Soil top lines are approximate. Contractor shall sod all areas which are disturbed by grading and construction.

9. Contractor shall install shredded hardwood mulch at a 2" depth to all trees, shrub, perennial, and groundcover areas. Trees placed in areas covered by turf shall receive a 2" depth of hardwood mulch. Perennials and groundcover areas shall be separated with burlap bags from turf. Site soil shall be standard.

10. Shrub beds are installed by the Contractor. Shrub beds installed adjacent to the site.

11. Plant quantities shown are for the convenience of the Owner and Jurisdictional Review Agencies. The Contractor shall be responsible for cost and all plant quantities to be installed. The Owner's Representative may reject any plant materials that are diseased, deformed, or otherwise not exhibiting superior quality.

12. The Owner's Representative may reject any plant materials that are diseased, deformed, or otherwise not exhibiting superior quality.

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12. The Owner's Representative may reject any plant materials that are diseased, deformed, or otherwise not exhibiting superior quality.
IRRIGATION NOTES

1. This drawing illustrates the scope and concept for the irrigation system. It does not specify all the work.
2. Submit shop drawings for a complete and functional irrigation system. System to provide adequate spacing with 100% coverage where shown.
3. Locate all valves and quick couplers on the inside edge of all shrub beds where practical. Install valve boxes for both quick couplers and valves. All valves to be 1" or larger.
4. Comply with all local irrigation codes and regulations required by the city.
5. Secure and pay for all permits, fees, and inspections necessary for execution of the work.
6. Contact owner representative's approval of pipe trench and line layout prior to installation.
7. Fill all valve boxes with pea gravel.
8. Comply with all local irrigation codes and regulations required by the city.
9. Secure and pay for all permits, fees, and inspections necessary for execution of this work.
10. Locate all sleevings under pavements, coordinate with concrete contractor to provide necessary sleevings in concrete.
11. Provide RPZ backflow preventer and all other necessary plumbing.
12. Provide owner as-built drawings.
13. If necessary, contractor to provide a booster pump system to handle the volumes and pressures of water required by the irrigation system.
14. Contractor to coordinate location of 110 volt power source for field controllers with the irrigation consultant and electrical engineer.
15. Irrigation contractor to provide a controller in a weatherproof, lockable cabinet if existing controller is not sufficient for new system.
16. Irrigation contractor to coordinate with general contractor and owner/owner's representative the location of domestic water line and any pre-existing controller.
17. Irrigation system to be maintained.

IRRIGATION LIMITS

LAWN AREA
To be irrigated by rotor heads

LANDSCAPE BED
To be irrigated by drip lines or spray heads

NOTE: Irrigation supply shall come off the domestic side of the water service prior to the domestic meter and then be metered separately for billing purposes. The irrigation meter is purchased by filing out a plumbing permit for the meter.
**EXTERIOR ELEVATION - LEFT**

**SCALE**
3/32 = 1'-0"  

**CON 2**

**STN2**

**EFS1**

**MTL3**

**MTL2**

**STN 1**

**STEEL TUBE TRELLIS @4'-0" O.C.**

---

**100% DESIGN INTENT**

Prepared by:
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Original: 2018 JANUARY 09

Revisions:

<table>
<thead>
<tr>
<th>TEAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>OWNER</td>
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<tr>
<td>PROJECT</td>
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<tr>
<td>iFLY Prototype</td>
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<tr>
<td>SkyGroup Investments, LLC</td>
</tr>
<tr>
<td>LW, CC, SE, JB, JW, KH</td>
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</tbody>
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Rendering - from ring road
Ridgedale Master Development Plan
**PHASE I**

MACY'S EXPANSION
81,085 SF (2 LEVELS)

**PHASE II**

NORDSTROM ANCHOR
138,000 SF

MACY'S

RIDGEDALE CENTER

J.C. PENNY

SEARS

FIRESTONE AUTOMOTIVE

**PHASE I**

STORMWATER POND IMPROVEMENTS

MALL EXPANSION

EXISTING BUILDING TO BE RECONFIGURED

**PHASE I**

LANDSCAPE IMPROVEMENTS

**PHASE II**

PARKING RESTRIPE
467 LOTS

485 LOTS

**PHASE I**

PARKING RESTRIPE

MECH
500 SF

TENANT 1C
2,948 SF

TENANT 1A
2,500 SF

TENANT 1D
3,500 SF

TENANT 1B
2,200 SF

SERVICE
894 SF

2,498.5 SF

2,200.5 SF

2,945.3 SF

3,493.9 SF

PAD
36,500 SF

6,496.1 SF

COMPACTOR ZONE

PAD
26,350 SF

6,347.9 SF

MECHANICAL ZONE

UTIL. TRANS.

OPTIONAL PAD
6,350 SF

PATIO
1A
1,223 SF

PATIO
B
####

PATIO
1C
1,107 SF

PATIO
1D
####

PATIO
1,365 SF

PATIO
770 SF

**PHASE III**

THREE RESTAURANT OUTPARCELS

104 spaces proposed

Net reduction of 262 spaces
Ridgedale Restaurants
Concept Plan
EXTERIOR ELEVATION - LEFT

STN1
TYP.

STN2
TYP.

MTL4

STF1

MTL3

EFS2

MTL3

EFS3

MTL2

EFS4

EFS7

EFS6

EFS4

EFS6

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Original:  2017 SEPTEMBER 07
Revisions:

TEAM
OWNER
PROJECT

iFLY Prototype
SkyGroup Investments, LLC
LW, CC, SE, JB, JW, KH

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Rendering
Front Facade
A. Concept plan review for iFLY at 12415 Wayzata Boulevard.

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

Cauley reported. She recommended commissioners provide their reaction and general comments related to building scale, building design, and appropriateness of the use of the site.

Patrick Framel, Sky Group Investments, LLC., and Mark Lee, real estate and development director for North American iFLY, representing the applicant, introduced themselves. Mr. Framel provided illustrations of the proposed unique structure and a video. Mr. Framel stated that their mission is to make the dream of flight a reality. Ages 3 to 103 years are eligible to participate. The company has safely flown over 7 million people in 15 countries since 1998. The environment is completely controlled. There is no noise outside of the facility. The company is one of the largest providers of STEM education. The company provides community impact programs. The shape of the building is driven by the mechanics. Adjustments have been made to match the color scheme mandated by GGP’s design criteria that was approved by the city. The sign would be modified to integrate with the surrounding buildings. This is not the application phase. He would appreciate feedback.

Powers asked how many sites have failed. Mr. Framel said zero. The company has opened 66 facilities since 1998 and all are still operating.

Schack asked if food or beverages would be provided. Mr. Framel stated that birthday parties or corporate events may be catered. Vending machines are available for beverages. There would be a large berm between the rear of the building and Interstate 394. There would be an air conditioning unit outside, but no other noise would be heard outside. It would be similar in height to a five-story apartment building.

Powers asked why this would be the best site. Mr. Framel answered that this area is already dynamic and draws people from the region. He likes the family focus. Most of the other facilities are on pads in mall parking lots. The typical experience lasts an hour or an hour and fifteen minutes with actual flight time of a couple minutes. The price is typically $50, but varies depending on the time of year.

Powers asked if the use would have back-up power in case of a power outage. Mr. Framel answered in the negative. The engine would not come to a complete stop if it failed. The fans would continue to move air and slow down gradually. A tremendous amount of testing has been done.
Mr. Framel stated that the sign plans have not been finalized.

Chair Kirk invited audience members to provide comments.

Ryan Smith, Minneapolis resident, stated that he has visited several iFLY locations. He is very excited. The building looks weird on paper, but it looks great in person. He prefers the big sign that would be legible from the interstate. It would bring patrons to the mall.

Knight liked that the building would be see-through. It would not be as noticeable. He suggested an exterior color that would blend in with the background, but did not object to the building’s appearance. He liked the logo of a person flying. He noted that the “Macy’s” sign is not visible from the interstate until the driver is passing the site.

Schack noted that the city council approved a 42-foot sign for Total Wine. The concept plan’s sign is 56-feet tall.

Calvert thought that the logo looks neat, but the sign would look too much like a billboard. It would not be in compliance with the sign ordinance. She thought the building would provide a good transition to add more mass to the area. The use would fit the area, but the proposed logo would be too big. She would like materials used to make it blend in.

Powers disagreed. The sign should be bright, attractive, and inviting. The future of Minnetonka is density and mass. This would lead the Ridgedale area. He did not want it to blend in to the extent that Knight mentioned, but he does not want it to be an eye sore.

Chair Kirk suggested the applicant work with the sign ordinance to brand the building. He supports the proposed concept.

Sewall was confident a compromise could be made for the signs. He would have the “indoor skydiving” face Interstate 394. The use would fit the area similar to a movie theater. He liked the unique look and being able to look through the building would be an asset. It would be large, but the interstate would be elevated and there are no residential areas real close without buffering. He was glad there would be no exterior noise. It looks great.

Chair Kirk likes the STEM educational component of the use. He hoped economical packages would be provided for groups of students.

Schack supports the proposal. It would be great to have a unique attraction. It would be an asset to the city and Ridgedale Center. It is a great family
opportunity. The height looks different, but she recognized other uses that have been allowed to have signs larger than allowed by the sign ordinance.

Chair Kirk realized that the proposed building would highlight the area and surrounding businesses. He was comfortable with the scale. The use would be brilliant.

Sewall suggested that General Growth Properties update a plan for the future.

Chair Kirk and Wischnack discussed the master development plan for the Ridgedale area.
A. Concept plan review for iFLY at 12415 Wayzata Boulevard

City Planner Loren Gordon gave the staff report.

Mark Lee, director of development for iFLY, said he was glad to talk about bringing the dream of flight to people visiting Ridgedale. This would be the first and only location of iFLY in Minnesota. He shared a video of what indoor skydiving was. He said it was great watching his brother experience the experience. He couldn’t be more glad to bring indoor skydiving to Minnetonka.

Schneider said the size of the building likely wasn’t an issue but signage could be. Allowing visibility from 394 was important but to have signage around the building might be problematic. He said iFLY could attract a whole different market of people to the mall that would not otherwise come. Over time it would expose the other retailers to a lot broader base given the uniqueness of iFLY. He asked if there was a possibility to link the experience with virtual reality goggles to let users feel like they were skydiving into something other than a glass bubble. Lee said the company was looking into that option although it hadn’t rolled it out in any of its other locations.

Allendorf said he appreciated the concept views of how the building related to its neighboring buildings. He agreed iFLY would open up an entertainment option that currently didn’t exist in the city. He said he too was concerned about the signage. His first inclination was to allow iFLY to have signs all over but then he questioned what that meant for other tenants of the mall. He said it would be a fine line between allowing the proper signage for this business, if the process proceeds, with what that would mean for the other businesses at the mall.

Bergstedt asked Lee to address potential noise issues with restaurants with outdoor seating on either side of the proposed site. Lee said because of the recycling air design, the noise never escapes the building. It was silent from the outside. Inside the chamber ear protection would be worn because of how loud it will be. Bergstedt asked if iFLY was successful in Minnetonka, if the company would look at other Minnesota locations. One of the appeals was it would bring a whole new clientele to Ridgedale. This would be lost if the plan was to saturate the metro area with similar stores. Lee said he saw it likely as a two store market with an east/west strategy. There was nothing currently in the works. Bergstedt noted there was an indoor skydiving facility in Scottsdale, Arizona. He asked if that was owned by iFLY. Lee confirmed it was owned by iFLY. He said some of the older
facilities had a louvered system that allowed air in for cooling. Those systems were louder. The Minnetonka facility would have a chiller system that doesn’t need outside air. He noted there would be wall to wall steady air flow so a person couldn’t fall off the stream of air unlike some of the competitors. Bergstedt said he was excited about the use but he too was concerned about balancing the signage.

Acomb said Lee had estimated there would be around 150,000 visitors a year. This would mean around 400 people a day would visit iFLY. She asked if this was based on data from other sites. Lee said the number was based on other sites but was on the high side. He said the Twin Cities was the second largest metro area that iFLY was not in. The only larger city was Boston.

Ellingson asked how many people could fly at a time. Lee said for new flyers there would be only one person in the chamber at a time. There always would be an instructor in the chamber as well.

Wiersum asked for information about the typical customer experience. Lee said most people call ahead or signup online. The experience lasts about an hour and a half. There is a course that teaches people the concepts. The person gears up. The flying experience lasts about a minute. This is longer than a free fall when a person jumps out of a plane. The cost is around $60. Wiersum asked who the target audience was. Lee said it varies a bit by area but usually it’s those 7 to 17 years old or 9 to 19 years old.

Schneider said one downside was if iFLY left, there wasn’t much of a reuse of the building. Lee said because of the deal structure, iFLY was paying for the building so it was in their best interest to make sure the business succeeds. What would likely happen when the tunnel gets decommissioned, was the entire building would be taken down.

Acomb asked if because the building was a high energy user, solar energy was an option. Lee said he was on an energy call earlier in the week when solar energy was discussed. Nothing has been ruled out. The number one cost is electricity.

Annette Bertelsen, 13513 Larkin Drive, said she was speaking on behalf of a group of residents who live in the Essex Hills neighborhood. The group was thrilled about the use and was looking forward to having an attraction like this at Ridgedale. She said the neighborhood group had questions about the traffic and if an application was submitted, if there would be a traffic study. The group also had questions if the placement of the building was the best location to accommodate future growth. She suggested if there was a neighborhood meeting that representatives from
General Growth attend to talk about their visions for future growth and structured parking on the mall property — or, alternatively, that they attend the first public engagement discussions coming up for the comprehensive guide plan for the Ridgedale Village area.

Wischnack noted that no one attended the first planning commission meeting on the project. Around five hundred people in the central area were notified of that meeting. Because the iFLY representative was flying in from Austin, Texas, and the General Growth representative was flying in from Chicago, it was challenging to setup a neighborhood meeting where they could attend. She said it could be done if that was what the council directed. Schneider said he was assuming that type of meeting might occur during a formal application process. Allendorf said he thought it made more sense to have the General Growth representative attend a meeting as part of the comprehensive guide plan process for the area rather than a neighborhood meeting for this project. Bergstedt said given the quiet, yet unique use of this project and its location, he didn’t think many people would attend a neighborhood meeting other than hearing from a General Growth representative. He didn’t want to make the applicant fly in for a meeting that no one attended. Schneider said he supported separating the overall visioning of the Ridgedale area and this project.
C. Items concerning iFly at 12415 Wayzata Boulevard.

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

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

Mark Lee, representing iFly, applicant, stated that this proposal would be the first iFly in Minnesota. It is safe for people of all ages and abilities. Classes are provided to students about the science of flying as well as providing them with the opportunity to fly. He was happy to answer questions.

In response to Chair Kirk’s question, Mr. Lee stated that the building would be removed and materials recycled when it outlived its life in approximately 35 years. The building would be designed to enclose the noise and provide a smooth column of air which is safer than previous methods.

Sewall asked if the buildings are all the same size. Mr. Lee stated that a few smaller, tunnel-style buildings still exist, but have been discontinued because of how the fans operate. The proposal is safer than those. This building would be a medium. There is also a large size.

Knight noted that there would be no noise since it would all be enclosed. He asked if the air would warm up. Mr. Lee answered affirmatively. The air is cooled to remain 72 degrees. Traffic would be louder than the hum from the coolers.

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

Knight asked if the signage would be specific to iFly. Cauley explained that a new tenant would be allowed a sign with a size equal to the existing one.

Powers supported a condition approving the signage for the applicant only.

Schack appreciated the applicant changing the signage to reflect commissioners’ comments. She did not mind the size of the signs, but the number of signs would be more troubling for a different tenant.

Schack moved, second by Powers, to recommend that the city council adopt the following for iFly at 12415 Wayzata Boulevard with an amendment to apply the approval of the signage to iFly only and no future tenants:

1) An ordinance amending an existing master development plan.
2) A resolution approving final site and building plans and a sign plan.

Schack, Sewall, Knight, O’Connell, Powers, and Kirk voted yes. Motion carried.
Ordinance and Resolution
ITEM 8A – Kermisch

- The attached comment was received after publication of the packet.

ITEM 8B – Ridgedale Design Criteria

- An additional “0” was accidently omitted from the square footage of the mall addition. The following change should be made to page one of the report:

  **Phase Two:** The second phase consisted of the demolition of the then-existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new **140,000** square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.

- On page 5 of the design criteria, the applicant has requested the following addition:

  The quantity of EIFS is to be limited to **20% of the South, West and East elevations.** of the tenant façade as determined by property owner. **The quantity of EIFS is to be limited to 50% of the north elevation.**

- To respond to the additional language, please make the following change to page 2 of the staff report:

<table>
<thead>
<tr>
<th><strong>Existing Design Criteria</strong></th>
<th><strong>Proposed Design Criteria</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allowed amount of EIFS on façade</strong></td>
<td><strong>Stucco and EIFS must be used in limited amounts.</strong> The quantity of EIFS is to be limited to <strong>20% of the south, east and west elevations.</strong> allowed tenant façade ad determined by property owner. <strong>The amount of EIFS is limited to 50% of the north elevation.</strong></td>
</tr>
</tbody>
</table>
To respond to the additional language, please make the following changes to page 6 of the staff report:

**Tenant 1A-1D: Rear Elevation**

<table>
<thead>
<tr>
<th>Design Criteria Standards</th>
<th>Rear Elevation</th>
</tr>
</thead>
<tbody>
<tr>
<td>One wall sign per elevation shown within the sign zone and must be located 5-feet above the projecting, black band.</td>
<td>No signage is proposed on the rear elevation.</td>
</tr>
<tr>
<td>Permitted façade materials: Stone, brick, metal panels and linear siding. The quantity of EIFS is limited to <strong>20%</strong> of the allowed tenant façade.</td>
<td>As shown, materials include metal panels, stone and EIFS. The amount of EIFS would need to be reduced as it is shown about <strong>50%</strong> EIFS. The amount of EIFS is roughly <strong>50%</strong> and would meet the criteria.</td>
</tr>
<tr>
<td>Storefront height in the development is 12 feet with clear glass.</td>
<td>No glass would be proposed for the rear.</td>
</tr>
</tbody>
</table>

**ITEM 8C – iFly**

- An additional “0” was accidently omitted from the square footage of the mall addition. The following change should be made to page one of the report:

  Phase Two: The second phase consisted of the demolition of the then existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new 140,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.

**ITEM 9A – Chabad**

- The attached comments were received after publication of the packet.
Ordinance No. 2018-
An ordinance amending an existing master development plan for iFly at 12415 Wayzata Boulevard

The City Of Minnetonka Ordains:

Section 1.

1.01 The subject property is located at 12415 Wayzata Boulevard. It is legally described as:

Tract B, Registered Land Survey No. 1826, files of the Registrar of Titles.

1.02 In 2013, the city approved the master development plan for Ridgedale Shopping Center. The master development plan consisted of three phases. The third phase included the construction of three freestanding restaurants on the northwest side of the mall.

1.03 In 2017, the city approved site plans and design criteria for the three restaurant pads indicated on the master development plan as phase three. A conditional use permit and building plans were approved for the first and westernmost pad site.

1.04 SkyGroup Investments, LLC (‘iFly’) has submitted plans to develop the second pad site with a building intended to be used for indoor skydiving. While the use is still an entertainment use, it is significantly different than what was originally envisioned for the pad sites.

Section 2.

2.01 This ordinance is based on the findings that the proposed development would not negatively impact public health, safety or welfare.

Section 3.

3.01 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:
The above plans are hereby adopted as the master development plan and as final site and building plans.


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

Section 5. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

Brad Wiersum, Mayor

ATTEST:

David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction:
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.
Date of publication:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on Feb. 26, 2018.

______________________________
David E. Maeda, City Clerk
Resolution No. 2018-
Resolution approving final site and building plans and a sign plan
for iFly at 12415 Wayzata Boulevard

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

Section 1. Background.

1.01 SkyGroup Investments, LLC (‘iFly’) has requested approval of final site and building plans for an indoor skydiving venue at 12415 Wayzata Boulevard. The request also includes a sign plan. (Project 17004.17a).

1.02 The subject property is legally described as:

Tract B, Registered Land Survey No. 1826, files of the Registrar of Titles.

1.03 On Feb. 15, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended the city council approve the request.

Section 2. General Standards.

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

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

2. Consistency with the ordinance;

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

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

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

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

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

2.02 By City Code §300.30 Subd.9(h) the city may consider and approve sign plans with differing standards for properties located within the PID district. Factors used in determining if an individual sign plan will be considered include the following:

1. The development includes a high rise (greater than 3 story) structure;
2. The development includes multiple structures and/or substantial site area;
3. The development includes mixed uses;
4. A sign plan is uniquely adapted to address the visibility needs of a development while remaining consistent with the intent of this section to direct high quality signage; and
5. The sign plan includes permanent sign covenants, which can be enforced by the city.
Section 3. Findings.

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

1. The proposal has been reviewed by planning, building, engineer, natural resources, fire, and public works staff. Staff finds it to be generally consistent with the city’s development guides.

2. The proposed site and building plans are consistent with minimum ordinance standards.

3. In 2017, the city approved a grading permit to remove a portion of the mall parking lot to create the pad sites. Under that permit, the site was prepared for the development of the subject property. As such, minimal site work is required to accommodate the proposal.

4. The proposal includes a building that incorporates many of the architectural features and aesthetics from Ridgedale Mall and the approved plans for the restaurant pads to the west.

5. The proposal would result in a high quality redevelopment with a logical placement of buildings, use of high quality materials, incorporation of landscaping and open space, and orderly routes for vehicle and pedestrian circulation and parking.

6. As new construction, the proposed building would meet minimum energy standards.

7. The proposal would not negatively impact neighboring land uses. Rather, it is anticipated that such redevelopment would result in both a physical and visual improvement to Ridgedale Mall.

3.02 The proposal would meet the sign plan standards outlined in the City Code City Code §300.30 Subd.9(h)

1. The proposed building would have a height of approximately 56 feet. This would be tall enough to be considered a high-rise structure.

2. While the sign plan would be intended to regulate signage on just one structure, the structure would be part of the larger Ridgedale Mall development, which includes multiple structures and a substantial site area.

3. The structure would be part of both the Ridgedale restaurant and mall sites. Both of these sites include a variety of uses and building scales.

4. Given the height and mass of the building, the proposed signage is scaled
appropriately. The proposed signage on the front façade is reasonably scaled for pedestrian traffic. The signage proposed for the north, east and west facades are reasonably scaled for vehicular traffic and visibility from I394.

5. If approved, the proposed signage on the referenced plans would establish the placement, size and scale of the signs for the building. Requests to alter the approved location or to increase the size or scale of the signs would require further review by the planning commission.

Section 4. City Council Action.

4.01 The final site and building plans and sign plan for iFly are approved based on the findings outlined in section 3 of this resolution. Approval is subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   - Site layout and paving plan dated Jan. 10, 2018;
   - Grading plan dated Jan. 10, 2018;
   - Utility plan dated Jan. 10, 2018;
   - Landscape plan dated Jan. 10, 2018;
   - Performance irrigation plan dated Jan. 10, 2018;
   - Site plan dated Jan. 9, 2018;
   - Site and building elevations dated Jan. 9, 2018;
   - Floor plan dated Jan. 9, 2018;

2. Prior to issuance of a building permit:
   a) Submit or complete items associated with site work:
      1) Submit an electronic PDF copy of all required plans and specifications.
      2) Submit a revised survey, which includes all right-of-way easements.
      3) Submit a final ADA compliant site plan.
      4) Submit a final utility plan:
         a. Areas within 10-feet of the building must comply with the plumbing code for materials and methods.
         b. Confirm the sanitary sewer lateral size. Current plan indicates an 8-inch line whereas the 2017
grading plan indicates a 6-inch line. The 8-inch pipe cannot connect to the 6-inch main. If this condition exists, the lateral must be removed and replaced with 6-inch pipe.

5) Submit a final landscaping plan. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.

6) Submit impervious surface calculations for the pad site to confirm that the installed stormwater management facility has sufficient capacity.

7) Submit individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit and landscaping requirements and to restore the site. One itemized letter of credit is permissible, if approved by staff. The city will not fully release the letters of credit or cash escrow until: (1) as-built drawings have been submitted; (2) a letter certifying that the underground facility has been completed according to the plans approved by the city has been submitted; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

8) 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.

9) 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.

10) This resolution must be recorded at Hennepin County.
11) Install erosion control, and tree protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

12) Permits may be required from other outside agencies including, Hennepin County, the Bassett Creek Watershed Management Commission and the MPCA. It is the applicant’s or property owner’s responsibility to obtain any necessary permits.

b) Submit items associated with building work:

1) A final material and color palate board for staff review and approval.

2) All required hook-up fees.

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

4. The approved sign plan applies exclusively to iFly. Future tenants of the building are required to comply with the city’s sign ordinance.

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

6. Construction must begin by Dec. 31, 2019, unless the city council grants a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

________________________________________________________________________

Brad Wiersum, Mayor

ATTEST:

________________________________________________________________________

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

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

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on Feb. 26, 2018.

David E. Maeda, City Clerk
City Council Agenda Item #14B  
Meeting of Feb. 26, 2018

**Brief Description**  
Amendments to the design criteria for the Ridgedale Restaurant Properties at 12415 Wayzata Blvd.

**Recommendation**  
Adopt the resolution approving the request

**Proposal**

Ridgedale Anchor Acquisition, LLC has proposed amendments to the design criteria for the Ridgedale Restaurant pads at 12415 Wayzata Blvd. The following is intended to summarize the proposed amendments:

<table>
<thead>
<tr>
<th></th>
<th><strong>Existing Design Criteria</strong></th>
<th><strong>Proposed Design Criteria</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Expand signage area on the eastern elevation</td>
<td><img src="image1" alt="Existing Design Criteria" /></td>
<td><img src="image2" alt="Proposed Design Criteria" /></td>
</tr>
<tr>
<td>Relocate sign area from the sign band to five feet above the band on the façade</td>
<td><img src="image3" alt="Existing Design Criteria" /></td>
<td><img src="image4" alt="Proposed Design Criteria" /></td>
</tr>
<tr>
<td>Allowed amount of EIFS of façade</td>
<td>Stucco and EIFS may be used in limited amounts.</td>
<td>Stucco and EIFS must be used in limited amounts. The quantity of EIFS is to be limited to 20 percent of the south, east and west elevations. The quantity of EIFS is limited to 50 percent of the north elevation.</td>
</tr>
</tbody>
</table>
| **Signage**                          | • Building signage floats on black metal channel.  
• Minimum projection from building is 4 feet. Maximum projection is 8 feet. | • Within limits of façade building signage zone.  
• Each tenant is allowed one wall sign per exterior elevation. |
Meeting of Feb. 26, 2018

Subject: Ridgedale Restaurant Properties at 12415 Wayzata Boulevard

| • Project must be for at least 50 percent of the storefront. | • Total square footage of sign must not exceed 15 percent of wall elevation. |
| • Maximum letter height is 2 feet. | • On south side, all signage must start at a consistent elevation of 5 feet above black metal channel, roughly 17 feet above grade. |
| • Signage length for a 2-foot tall letter is .38 x length of frontage. |

Planning Commission Hearing

The planning commission considered the request on Feb. 15, 2018. The staff report and various plans and documents describing the proposed project from that meeting are attached. At that meeting, a public hearing was opened to take comment but no one appeared to speak.

Following the public hearing, the commission asked general questions about preferred building materials within the Planned I394 District, PID, and the Ridgedale mall area.

Planning Commission Recommendation

On a 6-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes are attached. There have been no changes to the proposal or additional information received since the planning commission’s meeting on this item.

Staff Recommendation

Staff recommends the city council adopt the resolution approving Amendments to the design criteria for the Ridgedale Restaurant Properties at 12415 Wayzata Blvd.

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

Originator: Ashley Cauley, Senior Planner
Background

In March 2013, the city council approved the master development plan for the Ridgedale Shopping Center. The master development consists of three phases:

- **Phase One:** The first phase included construction of an 80,000 square foot addition to Macy’s, updating the exterior of the Macy’s store, as well as parking lot, stormwater and landscaping improvements for the north side of the site.

- **Phase Two:** The second phase consisted of the demolition of the then existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new 14,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.

- **Phase Three:** The third phase consisted of three new, freestanding restaurants on the northwest side of the mall, as well as final parking lot and landscaping improvements.

In May 2017, the city council approved site plans and design criteria for the Phase Three restaurant pads in the northwest corner of the Ridgedale parking lot. At that time, the council also approved building plans and a conditional use permit for a restaurant, with an outdoor patio, on the westernmost pad site. Shell construction of that building is well underway and city staff has been working with the property owner and prospective tenants to ensure the façade treatments comply with the approved guidelines.

Introduction

Ridgedale Anchor Acquisition, LLC has proposed to amend the approved design criteria to provide clarity for the property owner and prospective tenants. The proposed amendments would: (1) establish a maximum amount of allowable exterior insulating and finish system (EIFS) per tenant façade; and (2) establish sign areas on the tenant façades.

The following is intended to summarize the proposed amendments:
## Subject: Ridgedale Restaurant Properties at 12415 Wayzata Blvd.

### Meeting of Feb. 15, 2018

<table>
<thead>
<tr>
<th><strong>Existing Design Criteria</strong></th>
<th><strong>Proposed Design Criteria</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expand signage area on the eastern elevation</strong></td>
<td><img src="image1.png" alt="Image" /></td>
</tr>
<tr>
<td><strong>Relocate sign area from the sign band to five feet above the band on the façade</strong></td>
<td><img src="image2.png" alt="Image" /></td>
</tr>
<tr>
<td><strong>Allowed amount of EIFS of façade</strong></td>
<td>Stucco and EIFS may be used in limited amounts.</td>
</tr>
<tr>
<td><strong>Signage</strong></td>
<td><strong>Within limits of façade building signage zone.</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Each tenant is allowed one wall sign per exterior elevation.</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Total square footage of sign must not exceed 15-percent of wall elevation.</strong></td>
</tr>
<tr>
<td></td>
<td><strong>On south side, all signage must start at a consistent elevation of 5-feet above black metal channel, roughly 17-feet above grade.</strong></td>
</tr>
</tbody>
</table>

### Staff 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 applicant’s request and staff findings:

- **Are the proposed amendments reasonable?**

  Yes. The proposed amendments would provide clarity and additional flexibility to prospective tenants during the development of their plans for building permit review. The existing design criteria requires that all signs be located on the metal sign band, which would be projected from the building between four and eight feet. Several tenants have
indicated that their signs could not be affixed to the band. The proposed amendments would allow tenants to affix their signs to the façade to allow for some design flexibility.

In addition, one of the proposed amendments would establish a maximum amount of allowable EIFS of the building rather than the ambiguous limitation allowed under the existing criteria.

- **Do the amendments meet the intent of the design criteria?**

Yes. The intent of the design criteria is to communicate the design principals and objectives for tenants and to establish the overall architectural quality of the Ridgedale restaurant development. The amendments would not make significant changes to the existing design criteria, but rather are proposed to provide some additional sign flexibility, clarity and direction for prospective tenants.

Staff was initially concerned that façade signage would no longer encourage the organized and horizontal progression of the front façade. To address this concern, the applicant proposed to establish a consistent horizontal baseline for signage. Staff finds that the sign baseline coupled with the projected metal band would maintain the horizontal “feel” originally presented in the design criteria.

**Staff Recommendation**

Recommend the city council adopt the resolution approving amendments to the existing master development plan at 12415 Wayzata Blvd.

**Originator:** Ashley Cauley, Senior Planner  
**Through:** Loren Gordon, AICP, City Planner
Supporting Information

Project No. 17004.18b

Property 12415 Wayzata Blvd.

Applicant Ridgedale Anchor Acquisition, LLC

Surrounding Land Uses
Northerly: Wayzata Blvd. and I394
Easterly and Southerly: Ridgedale mall, zoned PID, and guided mixed use
Westerly: Bonaventure Shopping Center, zoned PID, guided mixed use

Planning Guide Plan designation: Mixed Use
Zoning: PID, Planned I394 District

Compliance

The city has not yet received building permit applications for the restaurant tenants. However, staff has had many discussions with Xfinity and Café Zupas regarding their façade improvements.

The following is intended to summarize how staff would review façade improvements to ensure compliance with the approved design criteria:

- Tenant 1A-1B: Xfinity

<table>
<thead>
<tr>
<th>Design Criteria Standards</th>
<th>Xfinity</th>
</tr>
</thead>
<tbody>
<tr>
<td>One wall sign per elevation shown within the sign zone and must be located 5-feet above the projecting, black band.</td>
<td>While this particular drawing does not include the signage, one sign would be on the south elevation and one sign would be on the west elevation. Both signs would be within the sign</td>
</tr>
</tbody>
</table>
Meeting of Feb. 15, 2018                                                                                                 Page 5
Subject: Ridgedale Restaurant Properties at 12415 Wayzata Blvd.

| Zone and would be 5-feet above the projecting, black band. | 
|---|---|
| Permitted façade materials: Stone, brick, metal panels and linear siding. The quantity of EIFS is limited to 20 percent of the allowed tenant façade. | The materials would primarily be metal panels, stone, and EIFS. The amount of EIFS would be roughly 15 percent of the tenant’s façade. |
| Storefront height in the development is 12 feet with clear glass. | Staff is working with the tenant to reduce the amount of opaque glass but generally finds that the amount of proposed glass is appropriate. |

- **Tenant 1C: unidentified**

Information on the prospective tenant will be provided when the tenant has been identified.

- **Tenant 1D: Café Zupas**

Café Zupas has indicated that they intend to wait for final review of the design criteria amendments to continue working on their façade. The following is intended to summarize how staff would review the plan if an application were received.

<table>
<thead>
<tr>
<th>Design Criteria Standards</th>
<th>Café Zupas</th>
</tr>
</thead>
<tbody>
<tr>
<td>One wall sign per elevation shown within the sign zone and must be located 5 feet above the projecting, black band.</td>
<td>The sign located on the projecting sign band would not be allowed because: (1) two signs are not allowed on the same elevation; and (2) all signage must be located five feet above the projecting, black band. The wall sign on the east – or right side of the image – would not be allowed, as it would be outside of the sign zone.</td>
</tr>
<tr>
<td>Permitted façade materials: Stone, brick, metal panels and linear siding.</td>
<td>The materials shown would be primarily stone tile on the parapet, EIFS and glass.</td>
</tr>
</tbody>
</table>
The quantity of EIFS is limited to 20 percent of the allowed tenant façade. The amount of EIFS would need to be significantly reduced, as it appears to be roughly 40 percent of the façade.

Storefront height in the development is 12-feet with clear glass. Staff is working with the applicant to find alternatives to the window graphic. However, the amount of glass shown on the elevation is appropriate.

- Tenant 1A-1D: Rear Elevation

<table>
<thead>
<tr>
<th>Design Criteria Standards</th>
<th>Rear Elevation</th>
</tr>
</thead>
<tbody>
<tr>
<td>One wall sign per elevation shown within the sign zone and must be located 5-feet above the projecting, black band.</td>
<td>No signage is proposed on the rear elevation.</td>
</tr>
<tr>
<td>Permitted façade materials: Stone, brick, metal panels and linear siding. The quantity of EIFS is limited to 20 percent of the allowed tenant façade.</td>
<td>As shown, materials include metal panels, stone and EIFS. The amount of EIFS would need to be reduced as it is shown about 50 percent EIFS.</td>
</tr>
<tr>
<td>Storefront height in the development is 12 feet with clear glass.</td>
<td>No glass would be proposed for the rear.</td>
</tr>
</tbody>
</table>

- iFly

<table>
<thead>
<tr>
<th>Design Criteria Standards</th>
<th>iFly</th>
</tr>
</thead>
<tbody>
<tr>
<td>One wall sign per elevation shown within the sign zone and must be located 5-feet above the projecting, black band.</td>
<td>iFly is requesting their own sign plan specific to their signage needs.</td>
</tr>
<tr>
<td>Permitted façade materials: Stone, brick, metal panels and linear siding. The quantity of EIFS is limited to 20 percent of the allowed tenant façade.</td>
<td>Generally, the materials are poured panels, EIFS, metal tiles and glass. The exact amount of EIFS is unknown at this time.</td>
</tr>
</tbody>
</table>
Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with the staff recommendation. In this case, a motion should be made recommending to adopt the resolution approving the request.

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

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

Voting Requirement

The planning commission will make a recommendation to the city council. The city council’s final approval requires an affirmative vote of a simple majority.

Neighborhood Comments

The city sent notices to 250 area property owners and received no comments.

Deadline for Decision: May 16, 2018
Ridgedale Restaurants
Address: 12415 Wayzata Blvd
Project No. 17004.17b

This map is for illustrative purposes only.
DESIGN CRITERIA

Ridegedale Center-Outparcel Restaurant, Minnetonka, MN

GGP
The Outparcel Design Criteria is established as a reference guide for Multi-tenant Outparcel Development projects at Ridgedale Center located in Minnetonka, MN. The intent of the Design Criteria is to communicate the design principals and objectives for tenants and establish the overall architectural quality of the Development. The goal is to create an activated streetscape of restaurants. The criteria is designed for the tenant to express themselves within the framework of a modern minimal feel with a bit of edge.

The Landlord will apply these guidelines to all Multi-tenant Outparcel Development projects in conjunction with the Mall Tenant Criteria Manual.

The Outparcels are located in the Planned I-394 District of the City of Minnetonka. The intent is to establish additional Landlord design standards to supplement the Architectural standards of the City of Minnetonka per Section 300.31 Section 7.
Tenant Streetscape Elements

The goal of this development is to create unique dining destinations. In order to create an active streetscape, a number of elements need to come together some of which are the responsibility of the Tenant. In order to maintain a consistent look and feel of the Outparcels, guidelines have been established for these elements:

- **Green Buffer**: 24” minimum zone of planting which screens the dining patio from the parking. (See page 3.)
- **Patio**: Outdoor dining or seating area to create a street cafe environment. (See page 3.)
- **Tenant Facade and Storefront**: Tenant facade design is vital to the energy of each space. (See page 4.)
  - **Storefront**: Clean and minimal. (See page 5.)
  - **Tenant Entrance Frame**: Contemporary and simple statement to define the entrance at the storefront. (See page 5.)
  - **Materials and Colors**: The overall palette of the Outparcels is primarily neutral. Tenant is expected to provide materials and branding for the full height of exterior facade to the coping. (See page 5.)
- **Signage**: While individual tenant logos are permitted, a zone has been developed for the location of signs at the building and pedestrian level. (See page 6.)
Design Criteria
Ridegedale Center-Outparcel Restaurant, Minnetonka, MN

Green Buffer

Green Buffer zone is to screen guests sitting at patio from vehicles traveling along the patio perimeter lease line that abuts the sidewalk. The minimum width is 2'-0". Tenants are encouraged to use a raised planting bed with black edge to create a separation between public and private. Plants may be a mixture of grasses, groundcovers and ornamental shrubs. Plants that provide screening the entire year are preferred. Shrubs should be a minimum of 18" in height. Groundcovers may include rocks or pebbles. Fencing should be maximum 36" high with minimum open area of 50%. Fence design subject to Landlord approval.

Patio

Patios should enhance the customer experience. Pavers or concrete in a simple pattern reinforce the clean minimal feel of the development. Stamped concrete should be contemporary in pattern. Integral color or stained concrete is permitted.

Tenant Entry Zone

Tenant Entry Zone is a break in the Green Buffer to the Tenant entrance. The minimum width is 6'-0". Paving should coordinate with the Patio Paving.
DESIGN CRITERIA
Ridegedale Center-Outparcel Restaurant, Minnetonka, MN

Tenant Facade and Storefront

Facade - A majority of Facade below 12'-0" a.f.f. should be storefront. At the head of the storefront is a metal reveal that connects around the building and coordinates with the signage. Above the metal reveal is the facade. Tenants are permitted to use a maximum of 4 materials and 2 minimum for solid areas of the facade. Tenant is expected to provide materials and branding for the full height of exterior facade to the coping. Materials must be submitted for review for Landlord approval. Permitted materials:
- Natural or Man-Made stone
- Brick
- Metal panels and metal linear siding are permitted.
- Stucco or exterior insulated finish system may be used in limited amount. (See page 5.)

Extended height parapets are acceptable with landlord approval.

Windows - Windows create an active and inviting environment. Tenants are encouraged to minimize the amount of solid walls in their facades to keep a synergy between inside and outside dining. Storefront height in the development is 12'-0" with clear glass. Storefront color should align with Development Palette on page 5.

Tenant entrance frame - Tenant is encouraged to frame the entrance with a simple and clean frame. Frame may extend past the lease line 2’. The objective is to separate the entrance from the storefront.
Materials and Colors:

The overall goal is to create a streetscape that has modern edge to it. The facades have a level of minimalism to enhance the more colorful activities inside each restaurant. Exterior colors should be neutral, natural, and clean. Texture of materials similarly should be natural, geometric or abstract, not faux representations of historic elements or theming. Stronger accents colors may be used at entrances subject to Landlord approval. There should be a difference in color and material between adjacent tenants. The quantity of EIFS is to be limited to 20% of allowed tenant facade as determined by property owner.
**Signage**

**Facade Signage** - Building signage floats off the building on the black metal channel. The minimum projection from the building is 4'-0" and maximum projection is 8'-0". Projection should be at least 50% of the storefront. The layout of this metal channel is determined by the Tenant. Maximum letter height is 2'. The metal channel should wrap the storefront. Maximum letter height is 2'. A guideline for signage length for a 2’ tall letter is .38 x length of frontage. Signage must conform with City of Minnetonka Ordinance No. 2016-08 Section 325.

**Facade signage:** Within the limits of the facade building signage zone of the design criteria (See page 2), each tenant can have a maximum of one wall sign per exterior elevation. The total square footage of the sign must not exceed 15% of the total square footage of the elevation to which it is affixed within the defined tenant frontage. On the south facade, in order to present an organized approach to signage, all facade mounted signage shall start at a consistent elevation of 5'-0" above the bottom of the black band around the building, roughly 17'0" above grade. Final signage plan and elevations are to be submitted to the property owner for review and approval.
Signage

Pedestrian Monument Sign - Pedestrian Sign serves as a screen between tenant patios and also as a pedestrian level identification. Screen details to be provided to the tenant. Maximum letter height is 12”. When located at the lease line adjacent to another tenant, each tenant is responsible for their half of the sign wall. First Tenant to build Pedestrian Monument Sign is to finish the 4th face to with metal panel prior to construction of adjacent sign.
ITEM 8A – Kermisch

- The attached comment was received after publication of the packet.

ITEM 8B – Ridgedale Design Criteria

- An additional “0” was accidently omitted from the square footage of the mall addition. The following change should be made to page one of the report:

  Phase Two: The second phase consisted of the demolition of the then existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new 140,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.

- On page 5 of the design criteria, the applicant has requested the following addition:

  The quantity of EIFS is to be limited to 20% of the South, West and East elevations of the tenant façade as determined by property owner. The quantity of EIFS is to be limited to 50% of the north elevation.

- To respond to the additional language, please make the following change to page 2 of the staff report:

<table>
<thead>
<tr>
<th>Existing Design Criteria</th>
<th>Proposed Design Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allowed amount of EIFS on façade</strong></td>
<td>Stucco and EIFS must be used in limited amounts. The quantity of EIFS is to be limited to 20-percent of the south, east and west elevations. allowed tenant façade ad determined by property owner.</td>
</tr>
<tr>
<td>Stucco and EIFS may be used in limited amounts.</td>
<td>The amount of EIFS is limited to 50% of the north elevation.</td>
</tr>
</tbody>
</table>
• To respond to the additional language, please make the following changes to page 6 of the staff report:

**Tenant 1A-1D: Rear Elevation**

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<th>Rear Elevation</th>
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</tr>
<tr>
<td>Permitted façade materials: Stone, brick, metal panels and linear siding. The quantity of EIFS is limited to 20 percent of the allowed tenant façade.</td>
<td>As shown, materials include metal panels, stone and EIFS. The amount of EIFS would need to be reduced as it is shown about 50 percent EIFS. The amount of EIFS is roughly 50 percent and would meet the criteria.</td>
</tr>
<tr>
<td>Storefront height in the development is 12 feet with clear glass.</td>
<td>No glass would be proposed for the rear.</td>
</tr>
</tbody>
</table>

**ITEM 8C – iFly**

• An additional “0” was accidently omitted from the square footage of the mall addition. The following change should be made to page one of the report:

*Phase Two: The second phase consisted of the demolition of the then existing Macy’s Men’s and Home store and construction of an addition onto the mall and a new 140,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the site.*

**ITEM 9A – Chabad**

• The attached comments were received after publication of the packet.
B. Amendments to the design criteria for the Ridgedale Restaurant Properties at 12415 Wayzata Boulevard.

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

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

Mike Blank, 12425 Wayzata Boulevard, representing the applicant, Ridgedale Center, thanked staff for working through complex issues. Cauley did a great job summarizing the need for the amendment to the May approval. Keeping the signs organized and identifying design criteria has been accomplished. He was available for questions.

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

Powers found the proposal to be reasonable.

O’Connell moved, second by Knight, to recommend that the city council adopt the resolution approving amendments to the existing master development plan at 12415 Wayzata Boulevard.

Schack, Sewall, Knight, O’Connell, Powers, and Kirk voted yes. Motion carried.
Resolution No. 2018-

Resolution approving an amendment to the design criteria for Ridgedale Restaurants at 12415 Wayzata Blvd.

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

Section 1. Background.

1.01 In May 2017, the city council approved design criteria for the property at 12415 Wayzata Blvd. (Project 17004.17a).

1.02 The property is legally described as:

Tract B, Registered Land Survey No. 1826, files of the Registrar of Titles.

1.03 Ridgedale Anchor Acquisition, LLC has proposed to amend the approved design criteria. (Project 17004.18b).

1.04 On Feb. 15, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended the city council approve the request.

Section 2. Design Criteria Standards.

2.01 Under the 2017 approval, the intent of the design criteria for the Ridgedale Restaurants is to communicate the design principals and objectives for tenants and establish the overall architectural quality of the development.

Section 3. Findings

3.01 The proposed amendments to the design criteria are reasonable as:

1. The proposed amendments would not significantly change the standards provided in the originally approved design criteria. Rather, the amendments would provide clarity to the property owner, prospective tenants and city staff.

2. The proposed amendments would allow added signage flexibility for
tenants.

3. The proposed amendments would still allow for horizontal sign organization.

Section 4. City Council Action.

4.01 The city council approves the amended design criteria for the Ridgedale Restaurant property at 12415 Wayzata Blvd. Approval is based on the findings outlined in Section 3 of this resolution and is subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the design criteria dated Jan. 26, 2018.

2. Prior to the issuance of a building permit, this resolution must be recorded with Hennepin County.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 26, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on Feb. 26, 2018.

David E. Maeda, City Clerk
City Council Agenda Item #14C
Meeting of Feb. 26, 2018

Brief Description  Concept plan review for Solbekken Villas, a residential development at 5740 and 5750 Shady Oak Road

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

Background

The combined properties at 5740 and 5750 Shady Oak Road are generally known as the Music Barn site. The roughly 2.2-acre site is currently zoned planned unit development (PUD) and guided medium-density residential. It contains at least two distinctive features: (1) the existing Music Barn building; and (2) a steep, wooded slope.

In 2015, the city approved a proposal to redevelop the site. As approved, Shelter Corporation would construct a three-story, 27-unit apartment building. The existing barn would be used as community gathering space and incorporated into the new building. All of the apartments would meet the Metropolitan Council’s affordable housing guidelines. The city understood that the project, which would be financed in part through the sale of tax credits, would not begin until financing was available.

In 2017, Shelter Corporation notified the city that, due to significant devaluation of housing tax credits, the affordable housing project was no longer financially feasible.

The 2015 site and building plan approvals are now expired, but the rezoning and approved master development plan remain in place.

Current Concept

Great Oaks Development has submitted a new concept plan for the combined 5740/5750 Shady Oak Road properties. The plan contemplates removal of all of the existing buildings and construction of 15 new homes – three detached townhomes and twelve condominium units contained within three condo buildings. This concept would likely require: (1) repealing and replacing the existing master development plan; and (2) approval of final site and building plans.

Key Issues

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

- **Site Access:** Hennepin County has jurisdictional control of access to Shady Oak Road. Both county and city engineers would need to evaluate the access location suggested by a formal development application.

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

The Concept Plan Review process includes the following:

- **Neighborhood Meeting.** Great Oaks held a neighborhood meeting on Feb. 8, 2017. Roughly, 12 area residents attended the meeting. Residents asked questions related to setbacks, grading, landscaping, and garage and surface parking.

- **Planning Commission Concept Plan Review.** The planning commission reviewed the concept plan at its Feb. 15, 2018 meeting. While expressing disappointment that the previously approved affordable housing project was not completed, the commission expressed general support for the Solbekken Villas concept. Commissioners specifically noted that the proposed home design was unique and exciting and single-level living was needed throughout the community. There were no neighboring residents present at the meeting.

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

Staff Recommendation

Staff recommends the council provide comment and feedback on the identified key issues and any others the council deems appropriate. The comments and feedback are intended to assist the applicant in preparation of more detailed development plans and their formal application.

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

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

Making versus Applying Law

“When creating, adopting and amending land use plans and zoning ordinances, a city is making law by exercising so-called “legislative” authority. The council sits as a body of elected representatives to make plans and laws (ordinances) for an entire community to advance health, safety, and welfare. When acting legislatively, the council has broad discretion and will be afforded considerable deference by any reviewing court. In contrast, when applying existing plans and laws, a city council is exercising so-called “quasi-judicial” authority. The limited task is to determine the facts associated with a particular request, and then apply those facts to the relevant law. A city council has less discretion when acting quasi-judicially, and a reviewing court will examine whether the city council applied rules already in place to the facts before it.” ¹

Next Steps

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

- **Planning Commission Review.** The planning commission would hold an official public hearing on the formal application and would subsequently recommend action to the city council.

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

Roles and Responsibilities

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

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

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

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

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

Developer
Solbekken, LLC
Maarten Kulk and Edward Briesemeyer
P. O. Box 139, Delano, MN 55328
Contact: Ed Briesemeyer 1-404-789-4447 nab@greatocks.us.com

Civil Engineer & Surveyor
Loucks, Inc.
7200, Hemlock Lane N #300, Maple Grove, MN 55369
Contact: Michael St. Martin, PE 1-612-287-6582 MStMartin@louckshc.com

Architect & Planner
Dan Ionescu Architects & Planners / DIAP
1811, Borel Place #230 San Mateo, CA 94402
Contact: Dan Ionescu NCARB, AIA 1-650-544-6681 diones@diap.com
PROJECT DATA:
5740-5750 SHADY OAK RD, MINNETONKA MN
SITE AREA: 96,541 SQ. FT. (2.22 AC.)
NUMBER OF UNITS: 3 S.F. HOMES + 12 CONDOMINIUM HOMES
NUMBER OF CARS: 30 + 12 GUEST PARKING

SECOND & THIRD LEVELS
PRIVATE RESIDENTES

GROUND LEVEL
PRIVATE GARAGES AND UTILITY SPACES
B. Concept plan review for Solbekken Villas, a residential development at 5740 and 5750 Shady Oak Road.

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

Thomas reported. Staff recommends the planning commission provide comments and feedback that the planning commission deems appropriate. The discussion is intended to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Ed Briesemeister, applicant, stated that:

- The condominium building would be roughly the height of the barn. He described the architectural features and layout of the buildings. The design would be harmonious with the neighborhood.
- Everyone at the neighborhood meeting liked the concept plan.
- There would be a three-car garage and 2,000 square feet for each single-family house. The houses would provide everything a person needs on one level and have a basement. The market price would be $625,000 - $650,000.
- Solbekken means “sunny brook” in Norwegian.
- He described the floor plan of the condominium buildings.
- He described the proposed traffic pattern.
- The site would be engineered to deal with seven inches of rain in 30 hours.

In response to Powers’ question, Mr. Briesemeister said that the condominiums would be similar in size and price to the houses, $625,000 and 1,900 square feet.

Sewall asked if a lot of grading would be needed. Mr. Briesemeister said that the hill would not be cut into, but grading would occur up to the hill.

Mr. Briesemeister said that the bright green area, 15,000 square feet, would be dedicated as park land connected to Lone Lake Park.

Chair Kirk asked if the elevator would meet building code requirements. Mr. Briesemeister answered affirmatively. All building code requirements would be met.

Chair Kirk invited the audience to provide input. No one responded.

Knight asked the applicant if he was concerned building next to a steep bank. Thomas provided that engineering staff already reviewed a similar proposal and found it acceptable. Mr. Briesemeister said that the slope appears steeper than it is due to the
trees. Thomas noted that the topography is drawn with one-foot contours rather than the typical two-foot contours.

Mr. Briesemeister explained how the stormwater would be directed to the stormwater system.

Sewall supports the land use. The density would be appropriate. It is a unique product and site. He suggested connecting walkability to the park. Mr. Briesemeister said that there is a path connecting the cemetery and park.

Powers supports the idea. It is an exciting project. He likes the name. It is well thought through. The density is reasonably low.

Schack liked the look of the proposal. The price point is equal to the market. It is a beautiful project and is appropriate for the space.

Knight supports the proposal.

Chair Kirk liked the scale. The type of housing proposed is lacking in the city. He supports the proposal.

Chair Kirk noted that this concept plan is tentatively scheduled to be reviewed by the city council at its Feb. 26, 2018 meeting.

10. Adjournment

_Sewall moved, second by Powers, to adjourn the meeting at 10:15 p.m. Motion carried unanimously._

By:  ____________________________

Lois T. Mason
Planning Secretary
City Council Agenda Item #15A  
Meeting of Feb. 26, 2018

**Brief Description:** Appointment of Advisors for the 2018 Local Board of Appeal and Equalization

**Recommended Action:** Approve Appointment of the Advisors

**Background**

The first meeting of the 2018 Minnetonka Local Board of Appeal and Equalization is scheduled for April 16, 2018. Prior to the first meeting, the council appoints advisors to assist in the review of the market value appeals as provided by the City Charter. These advisors review each appeal, physically visit each property and offer their independent opinion of market value as of Jan. 2, 2018. The advisors’ recommendations will be presented at the reconvened meeting on April 30, 2018.

This year staff recommends the appointment of four advisors.

**John Powers:** Mr. Powers has been an agent for 29 years and has worked for Coldwell Banker Burnet for 28 years. He has been a resident of Minnetonka for 23 years. This will be his eighth year as an advisor.

**Beth Frost:** Ms. Frost has been an agent with Coldwell Banker Burnet for 5 years. She has been a resident of Minnetonka for 3 and one-half years. This is Ms. Frost’s second year as an advisor.

**Larry Kriedberg:** Mr. Kriedberg has been an agent with Coldwell Banker Burnet for 18 years. He has lived in Minnetonka for 22 years. This will be Mr. Kriedberg’s fourth consecutive year as an advisor.

**Susan Miller:** Ms. Miller has been an agent with Coldwell Banker Burnet for 6 years. She has lived in Minnetonka for 24 years and this will be her fourth year as an advisor.

**Recommendation**

Staff recommends Mr. Powers, Ms. Frost, Mr. Kriedberg and Ms. Miller be appointed as advisors for the 2018 Minnetonka Local Board of Appeal and Equalization.

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

Originated by:
- Colin Schmidt, SAMA, City Assessor
Brief Description: Appointment of EDAC vice chair

Recommended Action: Approve the recommended appointment

Background
Per Resolution 2010-022, which established the Economic Development Advisory Commission (EDAC), the mayor needs to annually appoint the chair and vice-chair position on this commission with confirmation by the city council.

Recommendation
To approve the following appointment:

- Melissa Johnston, to serve as the vice chair of the EDAC until Jan. 31, 2019

Respectfully submitted,

Brad Wiersum
Mayor
The Economic Development Advisory Commission (EDAC) advises the city council regarding redevelopment, development/finance, housing and transportation. This board is comprised of seven members who reside in the city, work in the city or own a business in the city. Members serve a two-year terms. Meetings are held as needed.

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**Staff Liaisons:**
Alisha Gray, Community Development, Ph# 952-939-8285