1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Happe-Schack-Calvert-Bergstedt-Ellingson-Acomb-Wiersum
4. Approval of Agenda
5. Approval of Minutes: None
6. Special Matters:
   A. Proclamation for Extra Mile Day
      Recommendation: Approve the proclamation
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
   A. Bids for City Hall Office Remodeling
      Recommendation: Award contract to RAM General Contracting, Inc. (majority vote)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Resolution adopting revised Hennepin County Hazard Mitigation Plan
    B. Order for liquor license stipulation
    C. Resolution authorizing the Minnetonka Police Department to enter into a Towards Zero Death Traffic Enforcement grant agreement
    D. Solar garden subscription agreement with New Energy Equity, LLC
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances:
   A. Ordinance repealing and replacing City Code 325, Sign Regulations
      Recommendation: Introduce the ordinance and refer it to the planning commission
      (4 votes)
   B. Ordinance authorizing the sale of city property adjacent to 2430 Winter Circle
      Recommendation: Introduce the ordinance and approve the purchase agreement
      (4 votes)

13. Public Hearings:
   A. Resolution vacating public drainage and utility easements at 2932 Beechwood
      Avenue
      Recommendation: Hold the public hearing and adopt the resolution (majority vote)
   B. Temporary on-sale liquor license for Episcopal Parish of St. David, 13000 St. David
      Road
      Recommendation: Hold the public hearing and grant the license (5 votes)
   C. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for DelSur
      L.L.C., 14725 Excelsior Blvd.
      Recommendation: Continue the public hearing from Aug. 27 and grant the licenses
      (5 votes)
   D. On-sale intoxicating liquor license for Olive Garden Holdings, LLC, at 11390
      Wayzata Blvd.
      Recommendation: Open the public hearing and continue to Nov. 5, 2018
      (majority vote)

14. Other Business:
   A. Items concerning VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road:
      1) Ordinance rezoning the property from B-1 and R-1 to R-3; and
      2) Resolution approving preliminary and final plats, with variances.
      Recommendations: Adopt the ordinance and the resolution approving the proposal
      (4 votes)
   B. Concept plan for Marsh Run Two Redevelopment at 11650 and 11706 Wayzata
      Blvd.
      Recommendation: Continue the discussion of the concept plan with the applicant.
      No formal action required.

15. Appointments and Reappointments: None

16. Adjournment
Brief Description: Proclamation for Extra Mile Day

Recommended Action: Approve the proclamation

Background

The Extra Mile America Foundation is a nonprofit organization that empowers individuals, organizations and cities to "go the extra mile." In 2018, 575 inspirational mayors and city leaders stood up and jointly recognized Extra Mile Day, a day to recognize the people and organizations who are creating positive change in our communities through their extra mile efforts in volunteerism and service. Each year, the organization hosts an Extra Mile Day, set this year for November 1.

The city of Minnetonka has been declared an “Extra Mile City” this year and we recognize over 1,200 volunteers have contributed over 29,000 hours for our park, recreation and trail system in the areas of recreation programming, natural resource stewardship and historical educational, an average of 25 hours per volunteer. On Tuesday, November 6 over 415 of our residents will volunteer as election judges to oversee the transparency, efficiency and accuracy of the 2018 general election, one of the most important functions established in our United States and Minnesota Constitutions and our Minnetonka City Charter.

We urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

Recommendation

Approve the proclamation for Extra Mile Day on Nov. 1, 2018.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Perry Vetter, Assistant City Manager
WHEREAS, Minnetonka, Minnesota is a community which acknowledges that a special vibrancy exists within the entire community when its individual residents collectively “go the extra mile” in personal effort, volunteerism, and service; and

WHEREAS, Minnetonka, Minnesota is a community which encourages its residents to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, Minnetonka, Minnesota is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

WHEREAS, Minnetonka, Minnesota recognizes our 1,200 volunteers that have contributed over 29,000 hours for our park, recreation and trail system in the areas of recreation programming, natural resource stewardship and historical educational, an average of 25 hours per volunteer; and

WHEREAS, Minnetonka, Minnesota recognizes 415 resident volunteers that serve as election judges to oversee the transparency, efficiency and accuracy of the 2018 special, primary and general elections, one of the most important functions established in our United States and Minnesota Constitutions and our Minnetonka City Charter.

WHEREAS, Minnetonka, Minnesota acknowledges the mission of Extra Mile America to create 575 Extra Mile cities in America and is proud to support “Extra Mile Day” on Nov. 1, 2018.

NOW THEREFORE BE IT RESOLVED that I, Brad Wiersum, Mayor of Minnetonka, Minnesota and the Minnetonka City Council hereby proclaim Nov. 1, 2018, to be Extra Mile Day. We urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

__________________________
Brad Wiersum, Mayor

Oct. 8, 2018
City Council Agenda Item #9A  
Meeting of Oct. 8, 2018

Brief Description: Bids for City Hall Office Remodeling

Recommended Action: Award contract to RAM General Contracting, Inc.

Background

The 2018-2022 Capital Improvements Program (CIP) provides for the interior refurbishment of city hall employee work areas, meeting rooms, rest rooms, employee lunchroom, main reception area and the Purgatory Creek meeting room in the community center. This project will accommodate growth, improve security and efficiency, and ensure staff remains well equipped to continue providing excellent customer service. The current office cubes have been in place since the early 1980’s and have reached the end of their life expectancy and a new office layout would provide both customer and employee efficiency benefits. Design goals are to brighten work spaces by increasing the availability of outside natural light, standardize work space sizes and lower cubical wall heights to increase openness and incorporate ergonomics to enhance employee wellness. The project will incorporate areas for collaboration, create additional enclave style meeting areas and also permanently move a number of department locations to make better use of current space. This project does not include a building expansion.

Project

The firm of Mohagen Hansen was retained in 2017 to provide space planning and design services for the city’s anticipated project. Departments were interviewed on current and future space needs and that information was the foundation for a new design layout. Department “ambassadors” along with directors were assembled to assist with design considerations. Office furniture showrooms were toured in order to view furniture design types and options. Furniture preferences were then used to solicit pricing from three vendors utilizing cooperative governmental purchasing contracts. The cost of the new furniture is $533,599.39.

To construct the new office layouts, a general contractor is needed to make the necessary building changes. This evening, staff requests approval of a contract for the general contractor.

Phased Construction

In order to make the improvements and still provide city services during the project, it will be necessary to do the construction in three phases. The first phase includes temporarily moving the legal department to the police department; the recreation services department (for the duration of the project) to the Glen Lake Activity Center; the finance department to recreation’s vacated space; and city hall reception staff to the police lobby. Activities currently programmed in the Minnehaha and Purgatory Creek meeting rooms will be moved to other available rooms in the community center. These moves vacate the spaces that are being remodeled in phase one and moves reception away from the construction traffic in the main lobby.

Phase two will move the administration and legal departments into to the renovated finance area; most of engineering to public works; community development and a portion of engineering staff to the renovated Purgatory Creek room and move the employee lunch area to the
renovated Minnehaha room. The finance department will remain in the lower level of city hall during this phase and the renovated Purgatory Creek room will become the customer service area for community development and engineering during the renovation.

Upon completion of the main level city hall (phase 2), the renovation of recreation’s original office area (lower level city hall) and the new information technology (IT) offices (old employee lunchroom) will be completed which will conclude the final phase of the remodeling plan. The current IT offices will be incorporated into facility usage options for the community center facility.

Construction is scheduled to begin after the general election on approximately November 26. Each construction phase will take approximately eight weeks and an additional week is planned between phases for relocation of staff. It is estimated that substantial completion will be by May 1, 2019 and final completion by July 1, 2019. Temporary directional signage will be added throughout all phases of the project and communications enhanced to inform customers where interim service locations will be.

Bid Results

On Thursday, Sept. 20, bids were received for the construction portion of the city hall office remodeling project, which includes: demolition, framing, wall finishes, flooring, plumbing, electrical, cabling, HVAC modifications and noise masking. The bid package was designed with eight bid alternatives and staff has selected five of the alternates for inclusion in the bid approval. Options selected include: retaining the open ceiling rather than acoustical ceiling tile, additional exterior windows to improve natural lighting, additional ceiling fans to enhance HVAC efficiency, mezzanine wall coverings and IT data cabling upgrade. The bid alternatives are included in the bid totals below and tabulated as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ram General Contracting, Inc.</td>
<td>$1,810,648</td>
</tr>
<tr>
<td>Ebert Construction</td>
<td>$1,954,484</td>
</tr>
<tr>
<td>Versacon, Inc.</td>
<td>$1,969,300</td>
</tr>
<tr>
<td>Terra Construction</td>
<td>$1,980,500</td>
</tr>
<tr>
<td>Construction Results Corp.</td>
<td>Bid Rejected - incomplete</td>
</tr>
<tr>
<td>Budget and contingency</td>
<td>$2,300,000</td>
</tr>
</tbody>
</table>

Recommendation

Based on the bid results, reference checks and an interview staff has deemed RAM General Contracting, Inc. to be the responsible bidder.

Staff recommends that the construction portion of the city hall remodeling project be awarded to RAM General Contracting, Inc. in the amount of $1,810,648.

Submitted Through:
Geralyn Barone, City Manager
Perry Vetter, Assistant City Manager
Merrill King, Finance Director
Meeting of Oct. 8, 2018
Subject: Bids for City Hall Office Remodeling

Originated by:
  Brian Wagstrom, Public Works Director
Brief Description: Resolution adopting revised Hennepin County Hazard Mitigation Plan

Recommended Action: Adopt the resolution

Background

The City of Minnetonka, through the fire department, is an active participant in the Hennepin County South Planning Group. This group consists of emergency management representatives from Bloomington, Eden Prairie, Edina, Hopkins, Minneapolis/ St. Paul International Airport, Minnetonka, Richfield and St. Louis Park.

The Hennepin County Multi-Jurisdictional All-Hazards Mitigation Plan is a revision of the original plan adopted in 2010. This revision has been approved by the Hennepin County Board, the Minnesota Division of Homeland Security and Emergency Management, and the Federal Emergency Management Agency.

The plan itself provides a county-wide framework of mitigation strategies and implementations. Should mitigation dollars from the Federal or state sources become available, then the mitigation plan would be used to help channel funds to mitigation needs.

The entire plan can be viewed in 3 pdf volumes available on the Hennepin County website at this address under the Hazard mitigation link: https://www.hennepin.us/residents/emergencies/emergency-management.

Recommendation

Staff recommends that the city council adopt the revisions to this resolution, approving the new Hennepin County Hazard Mitigation Plan.

Submitted through:
   Geralyn Barone, City Manager
   John Vance, Fire Chief

Originated by:
   Jim Flanders, Assistant Chief of Emergency Management and Planning
Resolution No. 2018-
Adoption of the Hennepin County All-Hazard Mitigation Plan

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

Section 1. Background.

1.01. The City of Minnetonka has participated in the hazard mitigation planning process as established under the Disaster Mitigation Act of 2000.

1.02. The Act establishes a framework for the development of a multi-jurisdictional County Hazard Mitigation Plan.

1.03. The Act as part of the planning process requires public involvement and local coordination among neighboring local units of government and businesses.

1.04. The Hennepin County Plan includes a risk assessment including past hazards, hazards that threaten the County, an estimate of structures at risk, a general description of land uses and development trends.

1.05. The Hennepin County Plan includes a mitigation strategy including goals and objectives and an action plan identifying specific mitigation projects and costs.

1.06. The Hennepin County Plan includes a maintenance or implementation process including plan updates, integration of the plan into other planning documents and how Hennepin County will maintain public participation and coordination.

1.07. The Plan has been shared with the Minnesota Division of Homeland Security and Emergency Management and the Federal Emergency Management Agency for review and comment.

1.08. The Hennepin County All-Hazard Mitigation Plan will make the county and participating jurisdictions eligible to receive FEMA hazard mitigation assistance grants.

1.09. This is a multi-jurisdictional Plan and cities that participated in the planning process may choose to also adopt the County Plan.

Section 2. Council Action.

The City of Minnetonka supports the hazard mitigation planning effort and wishes to adopt the Hennepin County All-Hazard Mitigation Plan dated 2018.

Adopted by the City Council of the City of Minnetonka, Minnesota, on October 8, 2018.

Brad Wiersum, Mayor

Attest:
Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on October 8, 2018.

David E. Maeda, City Clerk
City Council Agenda Item #10B
Meeting of Oct. 8, 2018

Brief Description          Order for liquor license stipulation

Recommendation           Approve the order

Background

The city council has an adopted schedule of presumptive penalties to be applied when certain liquor violations occur. Presumptive penalties are defined in city council policy 6.2 and are based on the type of liquor license, number of violations over a three year period, and participation in the Best Practices Program. The program’s purpose is to encourage liquor license holders to voluntarily undertake practices and provide additional training that will help avoid sales to underage buyers.

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

The following establishment is in violation of selling intoxicating liquor to a person who was under 21 years of age and has agreed to the penalty:

- Nordstrom Inc. (DBA Nordstrom Ruscello)

Stipulation forms were sent to the licensee. The licensee has returned the stipulations form agreeing to the penalty listed below:

<table>
<thead>
<tr>
<th>Establishment &amp; Type of License</th>
<th>Licensee</th>
<th>Date of Violation</th>
<th>Offense</th>
<th>Fine</th>
<th>Participant in Best Practices Program</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nordstrom Ruscello</strong></td>
<td>Nordstrom, Inc.</td>
<td>June 28, 2018</td>
<td>2nd Violation</td>
<td>$1000 &amp; 3 days suspension</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Establishment &amp; Type of License</th>
<th>Licensee</th>
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<td>June 28, 2018</td>
<td>2nd Violation</td>
<td>$1000 &amp; 3 days suspension</td>
<td>No</td>
</tr>
</tbody>
</table>

Recommendation

Staff recommends the city council adopt a motion issuing the enclosed Findings of Fact, Conclusion, and Orders for Nordstrom, Inc. (DBA Nordstrom Ruscello).

Submitted through:
    Perry Vetter, Assistant City Manager
    Julie Wischnack, AICP, Community Development Director

Originated by:
    Karen Telega, Community Development Assistant
Exhibit A

Presumptive Penalties

The following are the presumptive penalties for the offenses listed.

Revocation on the first violation for the following types of offenses:

- Commission of a felony related to the licensed activity
- Sale of alcoholic beverages while license is under suspension

The following chart applies to these violations, to be counted over a three-year period:

- Sale to underage person
- Sale after/before hours
- Consumption after hours
- Illegal gambling, prostitution, adult entertainment on premises
- Sale to obviously intoxicated person
- Sale of liquor that is not permitted by the license

<table>
<thead>
<tr>
<th>License Type</th>
<th>1st Violation</th>
<th>2nd Violation</th>
<th>3rd Violation</th>
<th>4th Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-sale, full</td>
<td>$500 + 1 day suspension</td>
<td>$1000 + 3 days suspension</td>
<td>$2000 + 10 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>Off-sale, full</td>
<td>$750</td>
<td>$1500 + 1 day suspension</td>
<td>$2000 + 6 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>On-sale, 3.2 &amp; beer/wine</td>
<td>$350 + 1 day suspension</td>
<td>$700 + 3 days suspension</td>
<td>$1500 + 10 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>Off-sale, 3.2</td>
<td>$250 + 1 day suspension</td>
<td>$500 + 3 days suspension</td>
<td>$1000 + 10 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>On-sale, taproom or Off-sale, brewery (growlers)</td>
<td>$350 + 1 day suspension</td>
<td>$700 + 3 days suspension</td>
<td>$1500 + 10 days suspension</td>
<td>Revocation</td>
</tr>
</tbody>
</table>
For establishments in the Best Practices Program:

<table>
<thead>
<tr>
<th>License Type</th>
<th>1st Violation</th>
<th>2nd Violation</th>
<th>3rd Violation</th>
<th>4th Violation</th>
<th>5th Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-sale, full</td>
<td>$500</td>
<td>$500 + 1 day suspension</td>
<td>$1000 + 3 days suspension</td>
<td>$2000 + 10 days suspension</td>
<td>Revocation</td>
</tr>
<tr>
<td>Off-sale, full</td>
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<td>$750</td>
<td>$1500 + 1 day suspension</td>
<td>$2000 + 6 days suspension</td>
<td>Revocation</td>
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<td>Revocation</td>
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<td>$350 + 1 day suspension</td>
<td>$700 + 3 days suspension</td>
<td>$1500 + 10 days suspension</td>
<td>Revocation</td>
</tr>
</tbody>
</table>

BEFORE THE CITY COUNCIL  
CITY OF MINNETONKA, MINNESOTA

In the Matter of:  
The Liquor License of  
Nordstrom, Inc.  
(DBA Nordstrom Ruscello)

Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the city of Minnetonka, and Nordstrom, Inc., the city council makes the following:

FINDINGS OF FACT

1. The licensee captioned above holds an On-sale Intoxicating and Sunday On-Sale liquor license issued by the City Council on Dec. 4, 2017, and conducts its licensed activity at 12441 Wayzata Blvd. (Ridgedale Mall) within the City.

2. Pursuant to Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1), no person may sell liquor to a minor, who is under the age of 21.

3. On June 28, 2018, Eustasio Martinez, a person employed by the above-captioned licensee, sold intoxicating liquor to a person who was under 21 years old.

CONCLUSION

1. The liquor licensee sold an alcoholic beverage to an underage person on June 28, 2018, in violation of Minn. Stat. § 340A.503, Subd. 2(1) and Minnetonka City Code §600.75(1).
ORDER

IT IS HEREBY ORDERED, pursuant to Minn. Stat. §340A.415 and Minnetonka City Code §600.080 and Council Policy 6.2, that the licensee captioned above is subject to the following sanctions:

(1) a $1000 civil penalty and 3-day suspension date of the liquor license

By order of the city council of the City of Minnetonka, Minnesota, Oct. 8, 2018.

__________________________
Brad Wiersum, Mayor

ATTEST:

__________________________
David E. Maeda, City Clerk

ACTION ON THIS ORDER:

Motion for issuance:
Seconded by:
Voted in favor of:
Voted against:
Absent:
Abstained:
Order issued.

I certify that the above is an accurate copy of the Findings of Fact, Conclusion, and Order issued by the City Council of the City of Minnetonka, Minnesota, at an authorized meeting held on Oct. 8, 2018.

__________________________
David E. Maeda, City Clerk
City Council Agenda Item #10C  
Meeting of Oct. 8, 2018

**Brief Description:** Resolution authorizing the Minnetonka Police Department to enter into a Towards Zero Death Traffic Enforcement grant agreement

**Recommended Action:** Adopt resolution

**Background**

The cities of Minnetonka, Plymouth, Maple Grove and Wayzata have been awarded a Towards Zero Death Traffic Enforcement grant from the Minnesota Department of Public Safety, Office of Traffic Safety. The funding from the grant will be used to conduct highly-visible, publicized, overtime projects addressing the issues of impaired driving, seatbelt use, distracted driving and speeding.

Adoption of the resolution will give authorization to the police department to enter into the grant agreement and implement the project. Minnetonka would serve as the fiscal agent and administer the grant for the cities.

**Recommendation**

Staff recommends that the city council adopt the resolution authorizing execution of Towards Zero Death Traffic Enforcement grant agreement.

Submitted through:  
Perry Vetter, Assistant City Manager

Originated by:  
Scott Boerboom, Chief of Police
RESOLUTION NO. 2018-xxx

RESOLUTION AUTHORIZING EXECUTION OF TOWARDS ZERO DEATH TRAFFIC ENFORCEMENT GRANT AGREEMENT

BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

1.01. The Minnetonka Police Department wishes to enter into a grant agreement with the Minnesota Department of Public Safety, Office of Traffic Safety for the project entitled TOWARDS ZERO DEATH TRAFFIC ENFORCEMENT during the period from Oct. 1, 2018 through Sept. 30, 2019.

Section 2. Council Action.

2.01. The Chief of the Minnetonka Police Department is hereby authorized to execute such agreements and amendments as are necessary to implement the project on behalf of the Minnetonka, Maple Grove, Plymouth and Wayzata Police Departments.

2.02. Be it further resolved that the Chief of Police of the Minnetonka Police Department is authorized to be the fiscal agent and administer this grant on behalf of the Minnetonka, Maple Grove, Plymouth and Wayzata Police Departments.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Oct. 8, 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:

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 Oct. 8, 2018.

David E. Maeda, City Clerk
City Council Agenda Item #10D  
Meeting of Oct. 8, 2018

**Brief Description:**  
Solar garden subscription agreement with New Energy Equity, LLC

**Recommended Action:**  
Approve the agreement

**Background**

In furtherance of the city’s goals to protect and enhance the natural environment and to be a responsible steward of the city’s financial resources, the city has actively sought opportunities to participate in Xcel Energy’s Solar* Rewards Community® program. Participation in the program supports renewable energy use and provides energy cost savings to the city.

The city of Minnetonka is a leader among our peer cities in converting to renewable energy. At this time not all of the solar gardens have been approved by the PUC, constructed and put into operation. However, the city is contractually subscribed for 100 percent of the city’s electricity needs. Since 2015, the city has entered into four subscription agreements with community solar garden operators: two through Innovative Power Systems [now New Equity Energy, LLC] or its financing partner WGL Energy Systems, Inc.; one with SolarStone Partners LLC, and one with an affiliated entity of MN Community Solar, LLC.

Participation in the community solar garden program is subject to a number of restrictions, including a requirement that the solar garden must be sited in a county that is adjacent to the county in which the subscriber is located. Due to the limited number of available sites and increasing demand for subscriptions, the city faces increasing challenges in finding new subscriptions.

The city’s consultant, Energy Management Systems, has obtained a proposed subscription agreement from New Energy Equity, LLC for three million kilowatt hours. The estimated savings over the 25-year term of the subscription is $424,007. As of the writing of this council letter, discussions are ongoing regarding section 2.3 of the agreement and the conditions upon which the operator could terminate the agreement. In order to prevent delay in securing the contract, staff recommends that the council delegate to the city manager and city attorney the approval of the final contract language.

**Recommendation**

Approve the agreement, subject to the city manager’s and city attorney’s approval of the final language.

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

Originated by:  
Corrine Heine, City Attorney
SUBSCRIPTION AGREEMENT
FOR
SOLAR*REWARDS COMMUNITY PROJECT

This SUBSCRIPTION AGREEMENT FOR SOLAR*REWARDS COMMUNITY PROJECT ("Agreement") for participation in an approved Solar Rewards-Community Project of Northern States Power Company ("Utility") is entered into by and between NEW ENERGY EQUITY LLC, a Maryland limited liability company ("Operator") and the CITY OF MINNETONKA, MINNESOTA, a retail electric utility customer of the Utility ("Subscriber"), pursuant to Minnesota Statutes 216B.1641 and Section 9 - Cogeneration and Small Power Production of the Utility’s Minnesota Electric Rate Book ("Tariff"), each of which as may be amended or supplemented from time to time. Operator and Subscriber may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

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

RECATALS

A. Operator intends to construct, own and operate certain solar energy facilities at multiple locations in the Utility’s Minnesota service territory (individually, a “Site” or collectively, “Sites”). Subscriber and Operator intend that a separate agreement will govern each Site and will enter into subsequent agreements as necessary to fulfill Three Million (3,000,000) kWh (DC) annually.

B. Operator intends to construct, own and operate certain solar energy facilities (“Project”) at the Sites as outlined on Exhibit H attached hereto and made a part hereof.

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

D. The Project will be interconnected with the electrical grid and Operator intends to sell all of its power production to the Utility pursuant to a standard Solar*Rewards Community Contract between Operator and Utility, a copy of which will be provided to Subscriber and shall be attached to this Agreement as Exhibit B (“Solar*Rewards Contract”). It is expressly understood by the Parties herein that this Agreement is subject to the terms and conditions of the Solar*Rewards Contract, and that Subscriber’s benefits under this Agreement may be further defined and possibly limited by the terms of said Solar*Rewards Contract, which terms and conditions are fully incorporated herein as if set forth here in full, and which terms may be from time to time amended or revised directly or as a result of statutory and/or regulatory changes.
E. Subscriber represents and warrants that it is a qualifying retail customer of Utility and desires to enter into this Agreement for the purposes of receiving monetary benefits from the Project, including receiving credits on Subscriber’s monthly Utility bills (“Bill Credits”) for Subscriber’s Utility account (“Utility Account”) in keeping with the Solar*Rewards Contract. Subscriber’s Utility account is located at 14600 Minnetonka Boulevard, Minnetonka, MN 55345 and has account number 51-6869491-9.

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

THE SUBSCRIPTION AGREEMENT

I. SUBSCRIPTION PURCHASE

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

1.2 The size of the Subscriber’s Subscription shall be defined as a percentage of the Project’s DC-rated nameplate capacity. Subscriber agrees to purchase a Subscription of no more than Three Million (3,000,000) kWh (DC) annually of that total nameplate capacity that, per the Tariff, shall not in any circumstances exceed forty percent (40%) of the monthly output from the Project.

1.3 As consideration for this Subscription Agreement, Subscriber agrees to pay Operator an amount equal to 40% of the monthly output from the Project (as and when the output is produced and Subscriber receives its corresponding Bill Credits) multiplied by the Energy Price in effect at the time of delivery as set forth in Article IX.

II. TERM AND TERMINATION

2.1 The term of this Agreement shall begin on the “Effective Date” as established and defined by the date of the last signatory below and shall expire on the same date as the expiration of the Solar*Rewards Contract referred to above (“Term”), unless terminated sooner by one or both Parties.
2.2 If the Date of Commercial Operation has not occurred within two (2) years of the Effective Date, then either Party may terminate this Agreement, without liability, upon providing notice to the other Party as provided in Section XVII below (“Notice”).

2.3 Operator may terminate this Agreement:

   a. Upon sixty (60) days prior Notice to Subscriber before the Date of Commercial Operation; or

   b. Upon Notice to Subscriber in the event the Solar*Rewards Contract is terminated for any reason other than as provided in Section 2.4(d) below; or

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

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

   a. Operator fails to achieve the Date of Commercial Operation within twenty-four (24) months of execution of this Agreement; or

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

   c. Upon thirty (30) days prior Notice to Operator in the event of an uncured Event of Default by Operator; or

   d. The Solar*Rewards Contract has been terminated due to a breach by Operator or Utility.

III. UTILITY AGREEMENT

3.1 Subject to the terms and conditions of the Solar*Rewards Contract, Operator will sell one hundred percent (100%) of the Project’s energy production to Utility.

3.2 The sale of energy to Utility shall begin on the Date of Commercial Operation and shall continue for the term of the Solar*Rewards Contract, which shall also correspond with the date the Subscriber’s bill credits begin to accrue.
3.3 Operator shall have sole responsibility for resolving any disputes with Utility regarding the amount of energy production from the Project and shall also have sole discretion over any such resolution.

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

IV. GENERAL REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party:

4.1 If the Party is an entity, that it is duly organized, validly existing, and in good standing in the jurisdiction of its organization and is qualified to do business in the State of Minnesota.

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

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

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

V. OPERATOR REPRESENTATIONS AND OBLIGATIONS

5.1 Operator represents and warrants that it shall design, construct, own operate and maintain the Project consistent with prudent industry standards, codes and regulatory requirements and will use commercially reasonable efforts to maximize the energy production by the Project over the term of this Agreement.

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

5.3 Operator shall maintain the Project’s equipment and interconnection with the electrical grid consistent with industry standards and recommendations from equipment manufacturers.
5.4 Operator shall maintain or cause to be in effect insurance coverage for liability and casualty losses associated with design, construction, operation or maintenance of the Project with a company or companies licensed or otherwise authorized to do business in Minnesota, as required by the Tariff. Operator shall promptly produce evidence of such coverage to Subscriber upon request.

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

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

New Energy Equity LLC  
2530 Riva Road  
Suite 200  
Annapolis, Maryland 21401  
ATTN: General Counsel  
Office: (443) 267-5012

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

VI. SUBSCRIBER REPRESENTATIONS AND OBLIGATIONS

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

6.2 Subscriber represents and warrants the premises served by the Utility account(s) listed for its Subscription in Recital E is/are in the same county or an adjacent county as the Project Site or Sites identified in Exhibit H.

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

6.4 Subscriber agrees to provide such Utility Account information and usage data as may be required by the Utility or Operator for purposes of verifying Subscriber eligibility and providing Subscriber’s Bill Credits. Subscriber agrees to promptly notify Operator of any actual or anticipated changes to Subscriber’s usage data or factors that would materially impact Subscriber’s eligibility for the Subscription.
6.5 Subscriber agrees to execute Utility’s Solar*Rewards Community Subscriber Agency Agreement and Consent Form attached hereto as Exhibit D.

6.6 Subscriber acknowledges and agrees that, aside and apart from the calculations of Bill Credits, it will have no interest in (i) any environmental or compliance value associated with its Subscription in the energy production of the Project (including RECs); (ii) any tax benefits arising from ownership or operation of the Project; or (iii) any incentives associated with the Project under the Minnesota Department of Commerce’s Made in Minnesota program, Utility’s Solar Rewards program, or similar programs, other than those set forth herein. Subscriber acknowledges that RECs associated with the Project will be sold by Operator to the Utility under the Solar*Rewards Contract, and the value of such RECs will be included in the Bill Credits paid to Subscriber by Utility.

VII. ANNUAL REPORT

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

1. Total annual energy production;

2. Typical Meteorological Year (“TMY”) data for the location closest to the Project site at which complete TMY data is available;

3. Analysis of the effect TMY data had on energy production;

4. Warranty actions or insurance claims submitted on behalf of the Project;

5. Delinquencies or default actions taken against any subscribers; and

6. Estimated environmental benefits for the report period and aggregated benefits since the start of commercial operations.

VIII. ASSIGNMENT OF SUBSCRIPTIONS

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

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

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

8.4 Operator shall update information with Utility within ten (10) business days of receiving Notice that an approved transfer to Subscriber Assignee is complete for purposes of reallocating Bill Credits associated with the Subscription to Subscriber Assignee, which will be prorated as of the date of transfer.

IX. SUBSCRIPTION FEES AND EXPENSES

9.1 Subscription Fees.

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

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

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

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

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

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

10.5 In connection with any such assignment by Operator, Subscriber agrees that an Operator Assignee, Financing Parties, tax equity partnership and/or third-party Project owner, as the case may be, shall be entitled to (i) assume the rights and obligations of Operator under this Agreement; (ii) receive copies of certain notices hereunder that Subscriber may provide to Operator; (iii) have the same extended cure periods to cure any Event(s) of Default by Operator hereunder; and (iv) be provided other similar or related benefits or protections as reasonably requested by the Operator, Financing Parties, tax equity partnership and/or third-party Project owner, to support the Project Financing.

XI. TAXES

11.1 Operator makes no representations concerning the taxable consequences to Subscriber with respect to Bill Credits or any other aspect of this Agreement.

XII. CALCULATION OF ESTIMATED BENEFITS TO SUBSCRIBER

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

13.1 Upon the occurrence of, and during the continuation without cure of, an Event of Default, the Party not in default ("Non-Defaulting Party") shall have the option, but not the obligation, to terminate this Agreement, and the Party in default ("Defaulting Party") shall be liable to the Non-Defaulting Party for damages for its uncured Event(s) of Default under the Agreement.

13.2 The following shall constitute an Event of Default by a Party:

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

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

13.2.3 The Party is subject to (a) a petition for dissolution or reorganization voluntary or involuntary, under the U.S. Bankruptcy Code, (b) admission in writing of its inability to generally pay its debts as they become due, (c) the passage of a resolution by the shareholders for the winding up of such Party, (d) a court order requiring its wind up. In the case of an involuntary proceeding filed against a Party by a third party, such Party shall have sixty (60) days to have such proceeding or petition dismissed before it matures into an Event of Default.

13.3 Remedies for Default

13.3.1 If a Subscriber Event of Default occurs, (i) Operator shall have the right to terminate this Agreement upon thirty (30) days prior written Notice to Subscriber, and (ii) Subscriber shall be liable to Operator for actual direct Damages (hereinafter defined).

13.3.2 If an Operator Event of Default occurs, (i) Subscriber shall have the right to terminate this Agreement upon thirty (30) days prior written Notice to Operator, and (ii) Operator shall be liable to Subscriber for actual direct Damages.
13.3.3 Subscriber shall be liable to Operator for any actual direct Damages, including but not limited to lost revenues for the sale of Energy caused by a Subscriber Event of Default, as defined herein under Section 13.3.4.

13.3.4 Operator may exercise any remedy it may have at law or equity, including recovering from Subscriber all resulting Damages, which damages may include, but not be limited to, projected payments for Energy generated for the remainder of the Term of this Agreement; any loss or damage to Operator due to lost or recaptured Environmental Attributes or Environmental Incentives, including, without limitation, lost revenue from the sale of Environmental Attributes to third parties (including any damages due to the early termination of any agreement for such sale) and the recapture of the investment tax credit under §48 of the Internal Revenue Code, and accelerated depreciation for the System; and all other amounts of any nature due under this Agreement (collectively, “Damages”).

13.3.5 The Non-Defaulting Party has a duty to make commercially reasonable efforts to mitigate its Damages.

XIV. REMEDIES; LIMITATION OF LIABILITY; INDEMNIFICATION

14.1 Subject to the limitations set forth in this Agreement, the Parties each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Parties hereto under this Agreement. Under no circumstances shall the total liability for either Party due to its breach of this Agreement exceed One Million Dollars ($1,000,000).

14.2 EXCEPT AS EXPRESSLY ALLOWED HEREBIN, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF A PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

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

**XV. DISPUTE RESOLUTION AND AMENDMENT**

15.1 The Parties shall make good faith efforts to resolve any claims, disputes or other matters related to this Agreement by mediation, the costs of which shall be shared equally by the parties. The mediator shall be jointly selected and if the parties cannot agree upon a mediator, this mediation requirement is waived. If mediation does not resolve the claim or dispute, either Party may invoke all legal remedies available to it, including without limitation the initiation of an action in district court.

15.2 This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by each Party to this Agreement or its successor in interest.

**XVI. FORCE MAJEURE**

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

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

**XVII. NOTICES**

Any notice required, permitted, or contemplated under this Agreement ("Notice") shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder. Such Notice(s) may be sent by registered U.S. Mail, personal delivery or recognized overnight courier, and shall be deemed effective upon receipt or, if by registered mail, three (3) days after the postmarked date.
XVIII. MISCELLANEOUS

18.1 Administration of Data. Data provided to Operator or received from Operator under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

18.2 Books and Records. Operator will maintain books, records, documents and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting practices, including all meter production records and adjustments thereto. Operator will also maintain the financial information and data used in preparation or support of the cost submission for any negotiated Agreement amendment and provide electronic, printed or copied documentation to the Subscriber as requested. These books, records, documents, and data must be retained for at least six (6) years after the Term of the Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Operator agrees to maintain them until the Subscriber and any of its duly authorized representatives have disposed of the litigation or claims.

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

18.4 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota without regard to conflicts of law provisions.

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

18.6 Binding Effect; Successors and Assigns. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
18.7 No Partnership or Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of another Party or to create a joint venture, partnership, agency or any relationship between the Parties.

18.8 No Dedication. Nothing contained in this Agreement shall be construed as an intent by Operator to dedicate the Project to public use or subject itself to regulation as a “public utility” (as such term may be defined under any applicable law).

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

18.10 Service Contract. The Parties intend that this Agreement be treated as a “service contract” within the meaning of §7701(e)(3) of the Internal Revenue Code.

[SIGNATURES APPEAR ON FOLLOWING PAGES]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

OPERATOR:

NEW ENERGY EQUITY LLC,
a Maryland limited liability company

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________

SUBSCRIBER:

CITY OF MINNETONKA, MINNESOTA

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________
EXHIBITS:

Exhibit A: Definitions
Exhibit B: Solar*Rewards Contract
Exhibit C: RESERVED
Exhibit D: Solar*Rewards Community Subscriber Agency Agreement and Consent Form
Exhibit E: RESERVED
Exhibit F: Table of Energy Prices
Exhibit G: Calculation of Estimated Benefits to Subscriber
Exhibit H: Name and Locations for CSG Solar Gardens
EXHIBIT A
DEFINITIONS

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

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

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

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

“Energy” means a Subscriber’s share of the Project’s monthly energy production as set forth in Section 1.1.

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

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

“Liability” and/or “Liabilities” have the meaning set forth in Section 14.3.

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

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

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

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

“Site” and/or “Sites” have the meaning set forth in the Recitals.

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

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

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

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

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

“Utility Account” has the meaning set forth in the Recitals.

“Solar*Rewards” Contract has the meaning set forth in the Recitals.
EXHIBIT B

SOLAR*REWARDS CONTRACT

[SEE ATTACHED]
EXHIBIT C

[RESERVED]
EXHIBIT D

SOLAR*REWARDS COMMUNITY
SUBSCRIBER AGENCY AGREEMENT
AND CONSENT FORM

[SEE ATTACHED]
EXHIBIT E

[RESERVED]
## EXHIBIT F

### ENERGY PRICE

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EXHIBIT G

CALCULATION OF ESTIMATED BENEFITS TO SUBSCRIBER

NOTWITHSTANDING THIS CALCULATION OF ESTIMATED BENEFITS, OPERATOR DOES NOT GUARANTY THE PERFORMANCE OF THE PROJECT AND SHALL NOT BE LIABLE FOR ANY SHORTFALL IN BENEFITS TO SUBSCRIBER.

### Community Solar Garden Cashflow ($.006 Guaranteed Discount)

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<th>Bill Credit per kWh</th>
<th>Annual Credit</th>
<th>PPA Cost per kWh</th>
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</table>
EXHIBIT H

NAME AND LOCATION OF CSG SOLAR GARDENS SITES

[TO BE ADDED PRIOR TO COMMERCIAL OPERATION]

CSG Site Name:
CSG Site Address:
CSG Xcel Application #:
Nameplate Capacity (Watts DC):
Subscription Size:
Estimated Commercial Operation Date:
City Council Agenda Item #12A  
Meeting of Oct. 8, 2018

**Brief Description**  
Ordinance repealing and replacing City Code 325, Sign Regulations

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

**Introduction**

Minnetonka’s first sign ordinance was adopted in 1966 and was updated in its entirety in 1991. Twenty-five years later, in 2016, staff again proposed to update the entire ordinance. The update would occur in two phases.

Phase 1 was completed in response to a United States Supreme Court decision that all sign regulations must be content-neutral. Adopted in 2016, the first phase:

- **Removed content-based regulations from the ordinance.** The previous sign ordinance was largely based on a sign’s content or wording. For example, in residential zoning districts, there were separate regulations for leasing, real estate, and construction signs. Several court cases have found constitutional issues with sign ordinances that include content-based standards. The 2015 United Stated Supreme Court decision struck down a sign ordinance involving “directional signs” as a content-based regulation. Content-based regulations are subject to higher judicial scrutiny under First Amendment analysis and are more vulnerable to legal challenge than are regulations based on size, location, and number.

- **Improved the organization and user-friendliness of the sign ordinance.** Because the city code is often downloaded and interpreted by others, it is important to make the ordinance easy to read and follow.

Phase 2 of the update is intended to focus on regulatory standards:

- **Update for current industry trends and standards.** Technology in the sign industry has changed significantly since the adoption of the 1991 sign ordinance. Additionally, staff has noticed changes in the branding and marketing goals of companies. Some examples of the branding changes include incorporating the logo into a company’s trade name and adding trade slogans or catch phrases into signs. These changes impact the types, styles and design of signage.

- **Provide for more flexibility in the ordinance.** The existing ordinance has very limited flexibility. This has resulted in an increased number of variances and sign plans reviewed by the planning commission and city council. Additional flexibility is needed to recognize differing site characteristics and visibility needs, while maintaining community aesthetics and traffic safety.

**Feedback and Outreach**

Staff presented an overview of a draft of Phase 2 updates to the city council during an October 2017 study session. The council was generally supportive of the proposed revisions.
Following the study session, outreach to the sign industry was conducted. The draft was provided to six sign contractors that regularly do work in the city. Two contractors provided responses. Below are excerpts from those respondents:

- “I have looked this over and I like the changes. It will make signs in Minnetonka much more impactful and beneficial for the community and the business owner. Thanks for taking a progressive stance and being willing to change as the needs of the community change. It is refreshing to see.”

- “…thank you for the opportunity to review and comment on the proposed sign ordinance draft. We do welcome changes to sign ordinances that make them more user friendly and reflective of the needs of businesses and residents. That said, while we see some positive changes in the draft you sent we also believe that Minnetonka will remain one of the more challenging cities in which to obtain sign permit approval.”

**Phase 2 Proposed Changes**

Staff is proposing regulatory changes identified below.

- **Definitions.** The following types of signs have been added to the Definitions Section.
  - “Blade sign” (p. 2)
  - “Conditionally permitted uses” (p. 2)
  - “Feather flag” (p. 3)
  - “Monument Area” (p. 3)
  - Changing “Multi-tenant Center” to “Multi-tenant building” (p. 3)
  - “Projecting Sign” (p. 4)
  - “Sandwich sign” (p. 4)

- **Permits, Procedure and Variances.**
  - Remove section 325.04 (3)(a)(7). This section requires that the applicant provide the name of the licensed electrician who will make the final connections of an illuminated sign. (p. 6)
  - Amend section 325.04 (3)(b). This amendment changes the review time for sign permits from 10 days to 15 business days. (p. 6)

- **General Regulations**
  - Prohibited feather flags and pennants. (p. 6)
  - Increased the changeable message size maximum from 30 percent to 50 percent (p. 9)
  - Font size requirement changed from a varying size requirement based on speed limits to a 4-inch minimum for all signs. (p. 9)
  - Increased dynamic display maximums from 30 percent to 50 percent. (p.11)
  - Removed section 325.05 (11)(a)(5). This section prohibits wall signs from projecting more than 18 inches from the face of the building.
  - Removed section 325.05 (11)(a)(8). This section requires signs be constructed to withstand the following wind loads:
    - For solid signs, 30 pounds per square foot on the one face of the sign;
ii. For other signs, 36 pounds per square foot of the total face area of the letters and other sign surface, or 10 pounds per square foot of the gross area of the sign as determined by the overall dimensions of the sign, whichever is greater.

- District Regulations
  - Residential Districts
    i. Educational, religious, institutional or nursing homes uses redefined as conditionally-permitted principal uses. (p.15)
    ii. Requirement added that non-commercial signage at least five feet from the edge of a public street, must not obstruct driver visibility at intersections and must be placed with the consent of the property owner. These changes are consistent with the standard for off-premise commercial signs. (p.17)
    iii. Conditionally-permitted principal uses to be allowed temporary signage via permit (previously allowed only through city council approval). (p.17)
  - Office Districts
    i. Buildings with multiple street frontages to be permitted a wall sign on each street frontage. (p.18)
    ii. Maximum wall sign height to be based on the number of stories of the building. (p.18)
    iii. Temporary signage times clarified. (p.19)
    iv. Sandwich board signs added as a permitted temporary sign. (p.19)
    v. Requirement added that non-commercial signage at least five feet from the edge of a public street, must not obstruct driver visibility at intersections and must be placed with the consent of the property owner. These changes are consistent with the standard for off-premise commercial signs. Currently, non-commercial signage must be setback 10 feet off all property lines. (p.19)
  - Commercial Business and Industrial Districts
    i. Combined B-2, B-3, and I-1 Districts into one signage section. (p.19)
    ii. Revised section to increase the allowed wall signage from one sign per multi-tenant leaseholder to one wall sign per exterior wall face, not to exceed two total signs. (p.20)
    iii. Projecting signage added as a permitted sign with regulations. (p.21)
    iv. Sandwich signs added as a permitted temporary sign. (p.22)
    v. Requirement added that non-commercial signage at least five feet from the edge of a public street, must not obstruct driver visibility at intersections and must be placed with the consent of the property owner. These changes are consistent with the standard for off-premise commercial signs. Currently, non-commercial signage must be set back 10 feet off all property lines. (p.22)

In an effort to efficiently relay information, many existing regulations were placed into tables and were reorganized within subsections to create more logical organization. These "rearrangements" are not expressed in the outline above, as the regulation or standard were generally not changed.
Staff Recommendation

The purpose of introducing an ordinance is to give the city council the opportunity to review the ordinance before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission review of the proposed ordinance is tentatively scheduled for Oct. 18, 2018.

Staff recommends the council introduce the Sign Ordinance and refer it to the planning commission.

Submitted through:
- Perry Vetter, Assistant City Manager
- Julie Wischnack, AICP, Community Development Director
- Loren Gordon, AICP, City Planner

Originated by:
- Drew Ingvalson, Planner
Ordinance No. 2018-

An Ordinance amending the city’s sign regulations; repealing and replacing section 325 of the Minnetonka City Code

The City of Minnetonka Ordains:

Section 1. Section 325 of the Minnetonka City Code, a copy of which is attached as Exhibit A, is repealed.

Section 2. The Minnetonka City Code is replaced by adding a new section 325, in the form of the attached Exhibit B.

Section 3. This ordinance is effective on the date of its adoption.

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: Oct. 8, 2018
Date of adoption: 
Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Ordinance adopted.

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

__________________________________
David E. Maeda, City Clerk
SECTION 325. SIGN REGULATIONS

SECTION 325.01 PURPOSE AND FINDINGS

1. Purpose. The sign ordinance is intended to establish a comprehensive and balanced system of sign control that accommodates the need for a well-maintained, safe, and attractive community, and the need for effective communications including business identification. It is the intent of this section, to promote the health, safety, general welfare, aesthetics, and image of the community by regulating signs that are intended to communicate to the public, and to use signs that meet the city’s goals by authorizing:
   a) permanent signs that establish a high standard of aesthetics;
   b) signs that are compatible with their surroundings;
   c) signs that are designed, constructed, installed and maintained in a manner that does not adversely impact public safety or unduly distract motorists;
   d) signs that are large enough to convey the intended message and to help citizens find their way to intended destinations;
   e) signs that are proportioned to the scale of, and are architecturally compatible with, principal structures;
   f) permanent signs that give preference to the on-premise owner or occupant; and
   g) temporary commercial signs and advertising displays that provide an opportunity for grand openings and occasional sales events while restricting signs that create continuous visual clutter and hazards at public right-of-way intersections.

2. Findings. The city of Minnetonka finds it is necessary for the promotion and preservation of the public health, safety, welfare and aesthetics of the community that the construction, location, size and maintenance of signs be controlled. Further, the city finds:
   a) permanent and temporary signs have a direct impact on and relationship to the image of the community;
   b) the manner of installation, location and maintenance of signs affects the public health, safety, welfare and aesthetics of the community;
   c) an opportunity for viable identification of community businesses and institutions must be established;
   d) the safety of motorists, cyclists, pedestrians and other users of public streets and property is affected by the number, size, location and appearance of signs that unduly divert the attention of drivers;
   e) installation of signs suspended from, projecting over, or placed on the tops of buildings, walks or other structures may constitute a hazard during periods of high winds and an obstacle to effective fire-fighting and other emergency service;
f) uncontrolled and unlimited signs adversely impact the image and aesthetic attractiveness of the community and thereby undermine economic value and growth;
g) uncontrolled and unlimited signs, particularly temporary signs which are commonly located within or adjacent to public right-of-way or are located at driveway/street intersections, result in roadside clutter and obstruction of views of oncoming traffic. This creates a hazard to drivers and pedestrians and also adversely impacts a logical flow of information;
h) commercial signs are generally incompatible with residential uses and should be strictly limited in residential zoning districts; and
i) the right to express noncommercial opinions in any zoning district must be protected, subject to reasonable restrictions on size, height, location and number.

3. Severability. Every section, subdivision, clause or phrase of this section 325 is declared separable from every other section, subdivision, clause or phrase. If any such part is held to be invalid by competent authority, no other part shall be invalidated by such action or decision.

SECTION 325.02. DEFINITIONS.
1. “Commercial sign” - any sign that advertises or identifies a product, business, service, entertainment, or any other matter of a commercial nature, even though the matter may be related to a nonprofit organization.
2. “Copy and graphic” - the wording and other display messages such as logos or symbols on a sign.
3. “Copy and graphic area” - the area in square feet of the smallest four-sided figure which encloses the copy and graphic of a sign.
4. “Dynamic display” - any characteristics of a sign that appear to have movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking, or animated display and any display that incorporates rotating panels, LED lights manipulated through digital input, "digital ink" or any other method or technology that allows the sign face to present a series of images or displays.
5. “Freestanding sign” - a sign which is self-supporting and affixed to a frame structure not attached to a building.
6. “Illumination, internal” - a light source within the sign.
7. “Illumination, external” - a light source which is not internal to the sign.
8. **“Items of information”** - individual copy and graphic items situated in a manner which presents separate messages. An item of information can only be a name, an address, a logo, or geographic directions.

9. **“Limited tenant building”** - a commercial retail establishment or a group of commercial retail establishments with the designed occupancy of three or less tenants. It must have shared parking and a visual appearance as a contiguous structure which may or may not be planned, constructed or managed as a total entity. This includes single tenant retail structures.

10. **“Merchandise box”** - a sign which is affixed on or located adjacent to a gas pump and used to advertise services and goods.

11. **“Monument sign”** - a sign not supported by exposed posts or poles which is architecturally designed and located directly at grade where the base width dimension is 50% or more of the greatest width of the sign.

12. **“Multi-tenant center”** - a group of commercial retail establishments with a designed occupancy of four or more tenants with shared parking and visual appearance as a contiguous structure which may or may not be planned, constructed or managed as a total entity.

13. **“Non-commercial sign”** - any sign that is not a commercial sign, including but not limited to signs that convey messages concerning political, religious, social, ideological, public service and informational topics.

14. **“On-premise sign”** - a sign relating in its subject matter to, or which directs attention to, a business, person, activity, commodity, service or entertainment located on the site where the sign is installed.

15. **“Off-premise sign”** - a sign relating in its subject matter to, or that directs attention to, a business, person, activity, commodity, service, entertainment or any other matter that is not available, or does not take place, on the same premises as the sign. A discontinued sign is an off-premise sign.

16. **“Outdoor advertising sign”** – a permanent off-premise sign.

17. **“Permanent sign”** - any sign other than a temporary sign.

18. **“Portable sign”** - a sign with or without copy and graphic that is designed or intended to be moved or transported. Examples of portable signs are: A - or T - frame signs; sandwich signs; signs designed to be transported by trailer or on wheels; signs mounted on a vehicle for advertising purposes, when the vehicle is parked and visible from public right-of-way, except signs identifying a business when the vehicle is being used in the normal day-to-day operation of that business. A sign may be a portable sign even if it has wheels removed, was designed without wheels, or is attached temporarily or permanently to the ground, a structure, or other sign.

19. **“Private road open to public travel”** has the meaning given that term under the Manual of Uniform Traffic Control Devices.

20. **“Pylon sign”** - a sign supported by a post or posts so that the sign and supports are finished to grade by encasing the posts in a material consistent with the sign
and where the base width dimension is a minimum of 10% up to and including 50% of the greatest width of the sign.

21. **“Sign”** - any writing, pictorial presentation, number, illustration or decoration, flag, banner or other device that is used to announce, direct attention to, identify, advertise, or otherwise make anything known. The term “sign” shall not be deemed to include: the terms “building” or “landscaping”, or any architectural embellishment of a building not intended to communicate information; works of art that do not convey commercial messages and that are painted on a building wall; flags that do not convey commercial messages; or any sign structure or device that is not visible from an adjacent street, property line or building on adjacent property.

22. **“Temporary sign”** - a sign constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended to be displayed for a limited period of time. This includes items such as banners, pennants, beacons, sandwich or curb signs, balloons or other air or gas filled figures.

23. **“Wall sign”** - a single faced sign attached to or erected against an exterior wall of a building with the face in a parallel plane to the plane of the building wall.

SECTION 325.03. CITATION; ADMINISTRATION AND ENFORCEMENT.

1. **Citation.**
   This section 325 may be cited as the Minnetonka Sign Ordinance.

2. **Administration and enforcement.**
   Administration and enforcement of this section 325 is governed by section 300.03.

SECTION 325.04. PERMITS, PROCEDURE AND VARIANCES.

3. **Permit not required.**
   The following signs do not require a permit but must meet the regulations in this section:
   
   a) Signs required or allowed by section 325.05, subd. 3.
   b) Temporary signs in residential districts as allowed by section 325.06, subd. 1(d)(1).

4. **Permit required.**
   a) No person may erect or install any of the following signs without first obtaining a permit from the community development director or designee:
b) All permanent signs permitted in section 325.06 require a sign permit. The permit must be received prior to installation of the sign. The permit and inspection fee for all permanent signs is specified in city code section 710.

c) All temporary signs permitted in section 325.06, subdivision 8 require a temporary sign permit. The permit and inspection fee for permitted signs, banners, search lights, or inflatable advertising devices is specified in city code section 710.

5. **Permit procedure.**

a) Application for a permit must be on a form provided by the city and must include the following information:

1) name and address of the owner of the sign;
2) street address or location of the property on which the sign is to be located, along with the name and address of the property owner;
3) the type of sign as defined in this section;
4) site plan showing the location of the proposed sign;
5) specifications and scale drawings showing the materials, design, dimensions, structural supports, method of attachment and electrical components of the sign;
6) plan showing the location and size of all existing signs located on the same premises upon city request;
7) name of licensed electrician who will make the final connection of an illuminated sign; and
8) sign permit fee as specified in city code section 710.

b) The community development director or designee must approve or deny a sign permit application within 10 days after a complete application is submitted. A decision must be made in writing and must be mailed or electronically delivered to the applicant at the address or email address provided in the application. If a permit is denied, the reason must be stated in writing.

c) An applicant may appeal a denial by submitting a request in writing within 10 days after the decision was mailed or electronically delivered. The appeal must be scheduled for planning commission review as soon as practicable, but no later than 30 days after the appeal was submitted. The applicant may appeal a planning commission denial by submitting a request in writing within 10 days after the decision. The appeal must be scheduled for city council review as soon as practicable, but no later than 30 days after the appeal was submitted. All review of a sign permit application must be based solely on whether the application complies with city ordinances.
6. **Variances.**

A variance from the regulations in this section requires a separate application, according to the procedures in section 300.07 of this code. The fee for application for variance from this section or approval of a sign plan for a development is specified in city code section 710.

7. **Permit expiration.**

A sign permit becomes null and void if the sign is not installed within 180 days after issuance of the permit, and a new application must be submitted.

**SECTION 325.05 GENERAL REGULATIONS.**

1. **Scope.** The regulations in this section 325.05 apply to signs in all zoning districts.

2. **Prohibited Signs.**
   a) Signs are prohibited in all districts unless authorized under this section 325.
   b) Portable signs are prohibited in all districts, except for temporary traffic control devices in temporary traffic control zones as required by the Manual on Uniform Traffic Control Devices.
   c) Signs designed to resemble official traffic control devices are prohibited in all districts, except signs that are used to control traffic on private property.
   d) abandoned signs;
   e) blank signs;
   f) merchandise boxes or signs not affixed to a principal structure excluding signs permitted in subdivision 8(d);
   g) permanent off-premises signs are not permitted in any zoning district.

3. **Permitted signs.**

The following signs are required or permitted in every zoning district:

   a) The owner of any property with an assigned street address must mark its property with the street address numerals, so that emergency services providers can easily identify the address from the public street. The identification may be on the curb or on the principal building of the property. The size and location of the identifying numerals must be proportional to the size of the building and the distance from the street to the building. In cases where the building is not located within view of the public street, or where the building is located more than 150 feet from the public street, the identifier must be located on the mailbox or other suitable device that is visible from the street.
b) Traffic control devices on private or public property must be erected and maintained to comply with the Manual on Uniform Traffic Control Devices adopted in this state.

c) Permanent and temporary signs required by law or ordinance for regulatory/notification purposes.

d) Permanent freestanding signs are permitted on properties with more than 20 parking spaces, provided the signs comply with the requirements in Table 325.1:

<table>
<thead>
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<th>Table 325.1 Parking lot signs</th>
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<tr>
<td>Maximum sign area</td>
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<tr>
<td>Maximum height</td>
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<tr>
<td>Location requirement</td>
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<tr>
<td>Numerical limit</td>
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e) Temporary off-premise commercial signs are permitted in all districts, provided the signs comply with the following:

1) must be at least 5 feet from the edge of a public street and must not obstruct driver visibility at intersections;
2) may not be on the right-of-way of county and state roads and municipal state-aid streets;
3) are limited to one per parcel of property as defined in subdivision 9 below for the same topic, location, event, or matter;
4) may only be displayed between 6:00 a.m. on a Thursday and 6:00 p.m. on the following Sunday; and
5) must be no larger than 3 square feet in area and no higher than 6 feet above the ground to which it is attached.

f) In all districts, any sign authorized in this chapter is allowed to contain noncommercial copy in lieu of any other copy. For new signs posted with a noncommercial message, the sign fee is waived until such time as the sign is converted to contain a commercial message.

4. Location requirements.

a) Signs may not be located on property without the permission of the property owner. For signs located in public right-of-way as allowed under subdivision 3(e)
of this section 325.05, the permission of the immediately adjacent property owner must be obtained.

b) Unless specifically noted otherwise, all signs must maintain a 10 foot setback from all lot lines. The city may require a greater or lesser setback because of public safety reasons which may include the following conditions: vehicle sight distance, distance from intersection, designation of adjacent right-of-way.

c) Signs may not be mounted on a roof surface and may not project above the roof line of a structure if either attached to the structure or cantilevered over the structure.

d) Signs may not be attached to trees or utility poles.

e) Signs may not be located within public right-of-way except for official traffic control devices and those allowed by section 3(e) of this section 325.05;

f) Signs attached to fences;

g) Signs may not be located so as to obstruct the vision of pedestrians, cyclists, or motorists traveling on or entering public streets in a manner that presents a hazard to public safety;

h) Signs may not be located so as to obstruct any window, door, fire escape, stairway or opening intended to provide light, air, ingress or egress for any structure;

5. **Approved sign plans.**
   The city may enforce, in the same manner as the requirements of this section, the terms of a sign plan or sign covenants which it has approved. Any violation of an approved sign plan or sign covenants is a misdemeanor.

6. **Changeable messages.**
   A message that is not permanently attached to the sign face but that is not a dynamic display may occupy no more than 35 percent of the actual copy and graphic area. The remainder of the sign must not have the capability to change messages even if not used.

7. **Font size.**
   Every line of copy and graphics in a sign must be at least seven inches in height on a road with a speed limit of 25 to 34 miles per hour, nine inches on a road with a speed limit of 35 to 44 miles per hour, 12 inches on a road with a speed limit of 45 to 54 miles per hour, and 15 inches on a road with a speed limit of 55 miles per hour or more.

8. **Sign illumination.**
   a) All illuminated signs must meet the following standards:
      1) External illumination on signs must be directed so that the illumination does not interfere with safe traffic operations;
2) Externally illuminated signs must not be directly oriented to any residential district;
3) No sign may be brighter than is necessary for clear and adequate visibility.
4) No sign may be of such intensity or brilliance as to impair the vision of a motor vehicle driver with average eyesight or to otherwise interfere with the driver's operation of a motor vehicle.
5) No sign may be of such intensity or brilliance that it interferes with the effectiveness of an official traffic sign, device or signal.

b) The person owning or controlling the sign must adjust the sign to meet the brightness standards in accordance with the city's instructions. The adjustment must be made immediately upon notice of non-compliance from the city. The person owning or controlling the sign may appeal the city's determination through the following appeal procedure:
1) After making the adjustment required by the city, the person owning or controlling the sign may appeal the city's determination by delivering a written appeal to the city clerk within 10 days after the city's non-compliance notice. The written appeal must include the name of a person unrelated to the person and business making the appeal, who will serve on the appeal panel.
2) Within five business days after receiving the appeal, the city must name a person who is not an official or employee of the city to serve on the appeal panel. Within five business days after the city names its representative, the city's representative must contact the sign owner's representative, and the two of them must appoint a third member to the panel, who has no relationship to either party.
3) The appeal panel may develop its own rules of procedure, but it must hold a hearing within five business days after the third member is appointed. The city and the sign owner must be given the opportunity to present testimony, and the panel may hold the hearing, or a portion of it, at the sign location. The panel must issue its decision on what level of brightness is needed to meet the brightness standards within five business days after the hearing commences. The decision will be binding on both parties.

c) All signs installed after June 25, 2007 that will have illumination by a means other than natural light must be equipped with a mechanism that automatically adjusts the brightness in response to ambient conditions. These signs must also be equipped with a means to immediately turn off the display or lighting if it malfunctions, and the sign owner or operator must immediately turn off the sign or lighting when notified by the city that it is not complying with the standards in this section.

9. Outdoor advertising displays.
Outdoor advertising signs which exist as of March 13, 1991 are nonconforming signs. A permanent outdoor advertising sign is a principal use of property. No permitted or conditionally permitted use or any part of such use may be located on the same parcel of property as such a sign. The parcel on which such a sign is located may not be subdivided to segregate the sign from the remaining property. For the purposes of this paragraph, “parcel of property” means any property for which one property identification number has been issued by the county, or all contiguous property in common ownership as of October 15, 1997, whichever is greater.

10. **Dynamic Displays.**
   a) **Findings.** Studies show that there is a correlation between dynamic displays on signs and the distraction of highway drivers. Distraction can lead to traffic accidents. Drivers can be distracted not only by a changing message, but also by knowing that the sign has a changing message. Drivers may watch a sign waiting for the next change to occur. Drivers are also distracted by messages that do not tell the full story in one look. People have a natural desire to see the end of the story and will continue to look at the sign in order to wait for the end. Additionally, drivers are more distracted by special effects used to change the message, such as fade-ins and fade-outs. Finally, drivers are generally more distracted by messages that are too small to be clearly seen or that contain more than a simple message. Time and temperature signs appear to be an exception to these concerns because the messages are short, easily absorbed, and become inaccurate without frequent changes.

Despite these public safety concerns, there is merit to allowing new technologies to easily update messages. Except as prohibited by state or federal law, sign owners should have the opportunity to use these technologies with certain restrictions. The restrictions are intended to minimize potential driver distraction and to minimize proliferation in residential districts where signs can adversely impact residential character.

Local spacing requirements could interfere with the equal opportunity to use such technologies and are not included. Without those requirements, however, there is the potential for numerous dynamic displays to exist along any roadway. If more than one dynamic display can be seen from a given location on a road, the minimum display time becomes critical. If the display time is too short, a driver could be subjected to a view that appears to have constant movement. This impact would obviously be compounded in a corridor with multiple signs. If dynamic displays become pervasive and there are no meaningful limitations on each sign's ability to change frequently, drivers may be subjected to an unsafe degree of distraction and sensory overload. Therefore, a longer display time is appropriate.
A constant message is typically needed on a sign so that the public can use it to identify and find an intended destination. Changing messages detract from this way-finding purpose and could adversely affect driving conduct through last-second lane changes, stops, or turns, which could result in traffic accidents. Accordingly, dynamic displays generally should not be allowed to occupy the entire copy and graphic area of a sign.

In conclusion, the city finds that dynamic displays should be allowed on signs but with significant controls to minimize their proliferation and their potential threats to public safety.

b) Regulations. Dynamic displays on signs are allowed subject to the following conditions:

1) Dynamic displays are allowed only on monument and pylon signs for conditionally permitted uses in residential districts and for all uses in other districts. Dynamic displays may occupy no more than 35 percent of the actual copy and graphic area. The remainder of the sign must not have the capability to have dynamic displays even if not used. Only one, contiguous dynamic display area is allowed on a sign face;

2) A dynamic display may not change or move more often than once every 20 minutes, except one for which changes are necessary to correct hour-and-minute, date, or temperature information. Time, date, or temperature information is considered one dynamic display and may not be included as a component of any other dynamic display. A display of time, date, or temperature must remain for at least 20 minutes before changing to a different display, but the time, date, or temperature information itself may change no more often than once every three seconds;

3) The images and messages displayed must be static, and the transition from one static display to another must be instantaneous without any special effects;

4) The images and messages displayed must be complete in themselves, without continuation in content to the next image or message or to any other sign;

5) Every line of copy and graphics in a dynamic display must be at least seven inches in height on a road with a speed limit of 25 to 34 miles per hour, nine inches on a road with a speed limit of 35 to 44 miles per hour, 12 inches on a road with a speed limit of 45 to 54 miles per hour, and 15 inches on a road with a speed limit of 55 miles per hour or more. If there is insufficient room for copy and graphics of this size in the area allowed under clause 1 above, then no dynamic display is allowed;

6) Dynamic displays must be designed and equipped to freeze the device in one position if a malfunction occurs. The displays must also be equipped
with a means to immediately discontinue the display if it malfunctions, and
the sign owner must immediately stop the dynamic display when notified by
the city that it is not complying with the standards of this ordinance;
7) Dynamic displays must comply with the brightness standards contained in
subdivision 15;
8) Dynamic displays existing on June 25, 2007 must comply with the
operational standards listed above. An existing dynamic display that does
not meet the structural requirements in clause 1 may continue as a non-
conforming development subject to section 300.29. An existing dynamic
display that cannot meet the minimum size requirement in clause 5 must use
the largest size possible for one line of copy to fit in the available space.

c) Incentives. Outdoor advertising signs do not need to serve the same way-
finding function as do on-premises signs. Further, outdoor advertising signs are
no longer allowed in the city, and there is no potential that they will proliferate.
Finally, outdoor advertising signs are in themselves distracting and their removal
serves public safety. The city is extremely limited in its ability to cause the
removal of those signs. This clause is intended to provide incentives for the
voluntary and uncompensated removal of outdoor advertising signs in certain
settings. This removal results in an overall advancement of one or more of the
goals set forth in this section that should more than offset any additional burden
caused by the incentives. These provisions are also based on the recognition
that the incentives create an opportunity to consolidate outdoor advertising
services that would otherwise remain distributed throughout the community.
1) A person may obtain a permit for an enhanced dynamic display on one face
of an outdoor advertising sign if the following requirements are met:
   (a) The applicant agrees in writing to permanently remove, within 15 days
       after issuance of the permit, at least two other faces of an outdoor
       advertising sign in the city that are owned or leased by the applicant,
       each of which must satisfy the criteria of parts (b) through (d) of this
       subsection. This removal must include the complete removal of the
       structure and foundation supporting each sign face. The applicant must
       agree that the city may remove the sign if the applicant does not timely
do so, and the application must be accompanied by a cash deposit or
letter of credit acceptable to the city attorney sufficient to pay the city's
costs for that removal. The applicant must also agree that it is removing
the sign voluntarily and that it has no right to compensation for the
removed sign under any law.
   (b) The city has not previously issued an enhanced dynamic display permit
       based on the removal of the particular faces relied upon in this permit
       application.
   (c) Each removed sign has a copy and graphic area of at least 288 square
       feet and satisfies two or more of the following additional criteria:
(1) The removed sign is located adjacent to a highway with more than two regular lanes and with a general speed limit of 45 miles per hour or greater, but that does not have restrictions on access equivalent to those of an interstate highway;

(2) All or a substantial portion of the structure for the removed sign was constructed before 1975 and has not been substantially improved;

(3) The removed sign is located in a noncommercial zoning district;

(4) The removed sign is located in a special planning area designated in the 1999 comprehensive plan; or

(5) The removed copy and graphic area is equal to or or greater than the area of the copy and graphic area for which the enhanced dynamic display permit is sought.

(d) If the removed sign face is one for which a state permit is required by state law, the applicant must surrender its permit to the state upon removal of the sign. The sign that is the subject of the enhanced dynamic display permit cannot begin to operate until proof is provided to the city that the state permit has been surrendered.

(e) The applicant must agree in writing that no dynamic displays will ever be used on one additional outdoor advertising sign that has a copy and graphic area of at least 288 square feet in size. This agreement will be binding on the applicant and all future owners of the sign. If the sign is subsequently removed or destroyed and not replaced, the holder of the enhanced dynamic display permit is not required to substitute a different sign for the one that no longer exists.

2 If the applicant complies with the permit requirements noted above, the city will issue an enhanced dynamic display permit for the designated outdoor advertising sign. This permit will allow a dynamic display to occupy 100 percent of the potential copy and graphic area and to change no more frequently than once every eight seconds. The designated sign must meet all other requirements of this ordinance.

11. Sign construction and maintenance.
   All signs must conform to the following standards.
   a) Construction specifications. All permanent signs must be constructed in accordance with the following:
      1) the Minnesota state building code;
      2) all electric signs must be approved and labeled as conforming to the standards of the Underwriters' Laboratories, Inc., the United States bureau of standards or other similar institutions of recognized standing. All illuminating elements must be kept in satisfactory working condition or immediately repaired or replaced. Signs that are partly illuminated must meet all electrical requirements for the portion that is illuminated;
3) all permanent freestanding signs must have self-supporting structures erected on and permanently attached to concrete foundations;
4) for wall signs, the wall must be designed for and have sufficient strength to support the sign;
5) wall signs must be mounted parallel to the building and may not project more than 18 inches from the face of the building;
6) signs may not be painted on the wall of a building;
7) Unless otherwise specified in this section, the maximum angle permitted between faces of a double face freestanding sign is 45 degrees; and
8) signs must be constructed to withstand the following wind loads:
   (a) for solid signs, 30 pounds per square foot on one face of the sign; and
   (b) for other signs, 36 pounds per square foot of the total face area of the letters and other sign surface, or 10 pounds per square foot of the gross area of the sign as determined by the overall dimensions of the sign, whichever is greater.

b) Sign maintenance and repair. All signs must be maintained in a safe, presentable and good structural condition at all times, including the replacement of defective parts, cleaning and other items required for maintenance of the sign. Vegetation around, in front of, behind, and underneath the base of ground signs for distance of 10 feet must be neatly trimmed and free of weeds. Rubbish or debris under or near the sign that would constitute a fire or health hazard must be removed.

12. **Removal of Abandoned Signs, Signs in Disrepair and Signs Located in Public Right-of-Way.**
   a) Abandoned signs and signs in disrepair. An abandoned sign or sign in disrepair is prohibited and shall be removed by the owner of the premises within 30 days after notification. If compliance with the provisions of this section is not achieved within 30 days, the city may remove the sign as a public nuisance by following the procedure as specified in section 1120.045 of the municipal code of ordinances. If an abandoned sign remains in good condition and without holes or other evidence of disrepair or damage, the sign shall not be considered as abandoned for a period of one year.

   b) Signs on public property or within public right-of-way: The city may at any time and without notice impound signs which have been installed on public property or within public right-of-way or easement. The sign owner may retrieve the signs according to the following:
   1) a fee must be paid to the city as established in city code section 710. For each subsequent impoundment in a calendar year, the specified fee shall be doubled;
2) the sign may be retrieved from a designated impound area during routine business hours and within 15 days from the date of impounding. After 15 days, the city will dispose of the sign; and
3) the city may not be held liable for any damage to impounded signs.

13. **Nonconforming Signs.**
Any sign that complied with all applicable laws and ordinances at that time that it was erected but that has been or is made nonconforming due to a subsequently enacted amendment of this city code is governed by section 300.29.

**SECTION 325.06. DISTRICT REGULATIONS.**

1. **Residential Districts.**
Within residential zoning districts, signs are permitted as provided in this subsection. Except as expressly permitted in this subsection, commercial signs are not allowed:
   a) Permanent wall signs:
      1) for each single family or multi-family residential structure, one wall sign not to exceed 2 square feet in area;
      2) for each educational, religious, public or private institution, or nursing home property one wall mounted sign that complies with the requirements in Table 325.5:
   b) Permanent monument signs:
      1) Low density residential: or each single family subdivision containing at least 6 lots and each two family subdivision containing a potential for at least 12 dwellings, one or two monument style signs, provided the signs meet the requirements in Table 325.5. A neighborhood or homeowner's association must be responsible for perpetual maintenance of the sign.
      2) Medium and high density residential: for each medium or high density residential development, one or two monument style signs, provided the signs meet the requirements in Table 325.5. The sign must be perpetually maintained by a homeowner's association or responsible property owners.
      3) Educational, religious and public institution signs: for each educational, religious, public or private institution, and nursing home property, one monument sign, provided it complies with the requirements in Table 325.5.
      4) Public and private parks: for each public or private park property, one monument sign, provided it complies with the requirements in Table 325.5.
   c) Permanent pylon signs:
      One pylon sign is allowed per athletic playing field with structured seating capacity for 2000 or fewer people, or one or more pylon signs per athletic playing field with structured seating capacity for greater than 2000 people; provided, that sign(s) must meet the requirements in Table 325.5.
   d) Temporary signs.
1) Within all residential zoning districts, temporary noncommercial signage is permitted provided it meets the requirements of Table 325.5.

2) Within all residential zoning districts, on-premises commercial signage is permitted on properties where new construction activity is taking place, provided the signs comply with the requirements in Table 325.2:

<table>
<thead>
<tr>
<th>Property type</th>
<th>Low density with at least four lots under development; medium or high density</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sign type</td>
<td>Pylon</td>
</tr>
<tr>
<td>Numerical limit</td>
<td>One per development project number, according to the records of the community development department</td>
</tr>
<tr>
<td>Maximum sign area</td>
<td>32 square feet</td>
</tr>
<tr>
<td>Maximum height</td>
<td>8 feet, but if sign width does not exceed 4 feet, then 12 feet</td>
</tr>
<tr>
<td>Maximum duration</td>
<td>Low density – when building permits have been issued for 90 percent of the lots</td>
</tr>
<tr>
<td></td>
<td>Medium and high density – 18 months after building permit issuance or 7 days after issuance of certificate of occupancy for last building, whichever is sooner</td>
</tr>
<tr>
<td>Other requirement</td>
<td>Signage under this provision is in lieu of all other permanent or temporary signage on the property</td>
</tr>
</tbody>
</table>

3) One temporary on-premises commercial sign is permitted on a low or medium density residential property that is for lease or sale, subject to the requirements in Table 325.3.

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Freestanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum area</td>
<td>6 square feet</td>
</tr>
<tr>
<td>Maximum height</td>
<td>6 feet</td>
</tr>
<tr>
<td>Maximum duration</td>
<td>Seven days after property is no longer for lease or sale</td>
</tr>
</tbody>
</table>
4) One temporary on-premises commercial sign is permitted on a medium or high density residential property that is for lease or sale, subject to the requirements in Table 325.4; except, that no temporary sign is allowed if the graphic area of a permanent monument sign, as allowed under subdivision 1(b)(2) of this section, is increased as allowed by Table 325.5.

<table>
<thead>
<tr>
<th>Sign type: choice of one:</th>
<th>Freestanding</th>
<th>Banner attached to wall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum area</td>
<td>32 square feet</td>
<td>60 square feet</td>
</tr>
<tr>
<td>Maximum height</td>
<td>12 feet, unless width exceeds 4 feet, then 8 ft.</td>
<td>30 ft.</td>
</tr>
<tr>
<td>Maximum duration</td>
<td>12 months after issuance of certificate of occupancy for last building</td>
<td>12 months after issuance of certificate of occupancy for last building</td>
</tr>
</tbody>
</table>

5) The city council may approve temporary on-premises signs on public or institutional property. The first approval for a site may allow only one use of the sign for a specified duration. Subsequent approvals for the same type of sign may allow recurring use of the sign for limited durations over a period of up to 5 years.

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Area Sign Structure</th>
<th>Max. Graphic Area</th>
<th>Max. Height</th>
<th>Illumination</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent wall sign – residential use</td>
<td>2 sq ft</td>
<td>2 sq ft</td>
<td>1 ft</td>
<td>External only</td>
<td></td>
</tr>
<tr>
<td>325.06(1)(a)(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent wall sign – educational, religious, institutional or nursing home use</td>
<td>Lesser of 50 sq ft or 10% of wall on which sign is located</td>
<td>Lesser of 50 sq ft or 10% of wall on which sign is located</td>
<td>Individual letters not more than 24 in.</td>
<td>External only</td>
<td></td>
</tr>
<tr>
<td>325.06(1)(a)(2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sign type</td>
<td>Max. Area Structure</td>
<td>Max. Graphic Area</td>
<td>Max. Height</td>
<td>Illumination</td>
<td>Other</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>---------------------</td>
<td>-------------------</td>
<td>-------------</td>
<td>--------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Permanent monument sign – low density residential use 325.06(1)(b)(1)</td>
<td>75 sq. ft per entrance</td>
<td>30 sq. ft per entrance</td>
<td>6 ft</td>
<td>External only</td>
<td>Must be in dedicated permanent sign easement. Must be at primary entrance(s). May be single or double-faced. If double, must be parallel.</td>
</tr>
<tr>
<td>Permanent monument sign – medium and high density residential use 325.06(1)(b)(2)</td>
<td>100 sq. ft per entrance</td>
<td>36 sq. ft per entrance</td>
<td>8 ft</td>
<td>External only if adjacent to or across a public right-of-way from low-density residential</td>
<td>Must be at primary entrance(s). May be single or double-faced. If double, must be parallel. Maximum size may be increased to 45 square feet for one sign, but see 325.06(1)(d)(4)(temp. sign reg)(no temporary sign allowed)</td>
</tr>
<tr>
<td>Permanent monument sign – educational, religious, institutional or nursing home use 325.06(1)(b)(3)</td>
<td>75 sq. ft</td>
<td>30 sq. ft</td>
<td>8 ft</td>
<td>Internal or external; light source may not be exposed</td>
<td></td>
</tr>
<tr>
<td>Permanent monument sign – public or park use 325.06(1)(b)(4)</td>
<td>32 sq. ft</td>
<td>32 sq. ft</td>
<td>8 ft</td>
<td>Internal or external; light source may not be exposed</td>
<td>May be single or double-faced. If double, must be parallel. Hours of 6 am to 10 pm only</td>
</tr>
<tr>
<td>Permanent sign – athletic field use with structured</td>
<td>410 sq. ft per sign face</td>
<td>410 sq. ft per sign face</td>
<td>35</td>
<td>Internally illuminated</td>
<td></td>
</tr>
</tbody>
</table>
Table 325.5: Residential District Requirements

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Area Sign Structure</th>
<th>Max. Graphic Area</th>
<th>Max. Height</th>
<th>Illumination</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>seating for 2000 or fewer people 325.06(1)(c)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent sign – athletic field use with structured seating for more than 2000 people 325.06(1)(c)</td>
<td>500 sq. ft. per sign face; 1000 sq. ft. aggregate</td>
<td>500 sq. ft. per sign face; 1000 sq. ft. aggregate</td>
<td>35</td>
<td>Internally illuminated</td>
<td></td>
</tr>
<tr>
<td>Temporary freestanding noncommercial signs – any residential use 325.06(1)(d)(1)</td>
<td>6 square feet per sign; 18 square feet aggregate per property</td>
<td>6 square feet per sign; 18 square feet aggregate per property</td>
<td>3 ft.</td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

2. Office Business District Sign Regulations.

Within the B-1, office business district, signs are permitted according to the following standards:

a) Permanent monument signs: one permanent monument sign is permitted per development, provided the sign complies with the requirements of Table 325.6.

b) Permanent wall signs: one permanent wall sign per building, either individually mounted letter type (option 1) or wall mounted type (option 2), except as provided in Table 325.6. Signs must meet the requirements in Table 325.6.

Table 325.6: Office Business District Sign Requirements

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Area Sign Structure</th>
<th>Max. Graphic Area</th>
<th>Max. Height</th>
<th>Illumination</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent monument sign – adjacent ROW is less than 100 ft in width</td>
<td>72</td>
<td>36 sq. ft.</td>
<td>15 ft.</td>
<td>Internal or external</td>
<td>Limit of three items of information per copy and graphic area</td>
</tr>
</tbody>
</table>
Table 325.6: Office Business District Sign Requirements

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Area Sign Structure</th>
<th>Max. Graphic Area</th>
<th>Max. Height</th>
<th>Illumination</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent monument sign – adjacent ROW is 100 ft. or more in width</td>
<td></td>
<td>100</td>
<td>50 sq. ft.</td>
<td>15 ft.</td>
<td>External light fixtures and sources must be screened from view</td>
</tr>
<tr>
<td>Permanent wall sign</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Must select Option 1 or Option 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Op. 1</td>
<td></td>
<td>The greater of 50 sq. ft. or 25% of length of building where sign is located</td>
<td>24 in. copy height, 36 in. logo height</td>
<td>Internal or external; if mounted above first floor; internal or external, if mounted on first floor; no exposed light sources or fixtures on external lights</td>
<td>Individually mounted letters only. Properties with more than one street frontage may have one sign per building facing each frontage</td>
</tr>
<tr>
<td>Op. 2</td>
<td></td>
<td>30 sq. ft. aggregate</td>
<td></td>
<td>Internal or external; no exposed light sources or fixtures on external lights</td>
<td>Must be mounted within first floor elevation. If more than one primary entrance, one sign allowed per entrance, subject to aggregate square foot limitation</td>
</tr>
</tbody>
</table>

3. **Limited and General Business Sign Regulations.**

Within the B-2 and B-3 business districts, the following signs are permitted:

a) Permanent freestanding signs. Except as provided in Table 325.9, one freestanding sign is permitted per development. Signs must meet the requirements in Table 325.7 and Table 325.9.
Table 325.7 Freestanding Sign Size Limitations

<table>
<thead>
<tr>
<th>principal structure (gross square feet)</th>
<th>pylon</th>
<th>monument</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Max. height</td>
<td>Max. sign size (sq. ft.)</td>
</tr>
<tr>
<td>greater than 400,000</td>
<td>30'</td>
<td>200</td>
</tr>
<tr>
<td>100,000 - 400,000</td>
<td>24'</td>
<td>100</td>
</tr>
<tr>
<td>20,000 - 100,000</td>
<td>18'</td>
<td>80</td>
</tr>
<tr>
<td>less than 20,000</td>
<td>15'</td>
<td>60</td>
</tr>
<tr>
<td>building with multiple screen theater</td>
<td>30'</td>
<td>200</td>
</tr>
</tbody>
</table>

b) Permanent wall signs.
   1) Multi-tenant wall signs. One permanent wall sign is permitted per tenant space, and must be located no closer than two feet from any lease line. Signs must meet the requirements in Table 325.8 and Table 325.9.
   2) Limited tenant wall signs. One permanent wall sign is permitted per exterior wall face on limited tenant buildings, subject to the limitations in Table 325.8 and Table 325.9.

Table 325.8 Wall Sign Size Limitations

<table>
<thead>
<tr>
<th>Principal Structure Size (Gross Sq. Ft.)</th>
<th>Individual Wall Sign Calculation</th>
<th>Total Wall Signage for Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>100,000 - 400,000 sq. ft.</td>
<td>200 sq. ft. or 10 percent of wall face, whichever is less</td>
<td>300 sq. ft.</td>
</tr>
<tr>
<td>20,000 - 100,000 sq. ft.</td>
<td>150 sq. ft. or 10 percent of wall face, whichever is less</td>
<td>240 sq. ft.</td>
</tr>
<tr>
<td>less than 20,000 sq. ft.</td>
<td>100 sq. ft. or 15 percent of wall face, whichever is less</td>
<td>150 sq. ft.</td>
</tr>
</tbody>
</table>

Table 325.9 Limited and General Business District Sign Requirements

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Area Sign Structure</th>
<th>Max. Graphic Area</th>
<th>Max. Height</th>
<th>Illumination</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent freestanding sign</td>
<td>Hotel</td>
<td>60 sq. ft.</td>
<td>15 ft.</td>
<td></td>
<td>One monument sign per development,</td>
</tr>
<tr>
<td>Sign type</td>
<td>Max. Area Structure</td>
<td>Max. Graphic Area</td>
<td>Max. Height</td>
<td>Illumination</td>
<td>Other</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>---------------------</td>
<td>-------------------</td>
<td>-------------</td>
<td>--------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Property with Drive-Thru</td>
<td>50 sq. ft.</td>
<td>N/A</td>
<td>8 ft.</td>
<td>Internal</td>
<td>Allowed in addition to sign under “Other” below Single-faced only</td>
</tr>
<tr>
<td>Other</td>
<td>Monument area cannot exceed 1.5 times allowed copy and graphic area</td>
<td>See Table 325.7</td>
<td>See Table 325.7</td>
<td>Either; no exposed light sources or fixtures on external lights</td>
<td>Signs may be single or double faced One sign per development except: For multi-tenant building or limited tenant building with more than 100,000 gross sq. ft. and with 2 or more access points, one monument sign allowed at primary access and second monument allowed at second access; height and graphic limits for second monument are 50% of those in Table 325.7</td>
</tr>
<tr>
<td>Permanent wall sign</td>
<td>Hotel</td>
<td>36 in. per letter</td>
<td>Internal</td>
<td>Individually mounted letter-type sign only One sign per development, except 2nd sign on 2nd wall allowed if neither sign is directly oriented</td>
<td></td>
</tr>
</tbody>
</table>
Table 325.9 Limited and General Business District Sign Requirements

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Area Sign Structure</th>
<th>Max. Graphic Area</th>
<th>Max. Height</th>
<th>Illumination</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi-tenant</td>
<td>See Table 325.8</td>
<td>See Table 325.8</td>
<td>36 in.</td>
<td>Internal for individual letters</td>
<td>Individually mounted letters required unless all wall signs are incorporated into architecture of structure and of similar design Must be installed within 26-in. high horizontal band of uniform background</td>
</tr>
<tr>
<td>Limited tenant</td>
<td>See Table 325.8</td>
<td>See Table 325.8</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

c) Permanent on-premises sign: In addition to, or as a modification of, of the signs allowed by paragraphs (a) and (b) above, one of the following options is allowed, provided, that any property with signage allowed under this paragraph (c) is not allowed to have temporary signage under subdivision 5(3) of this section 305.06.

1) Option 1:
   a. the principal freestanding sign shall be architecturally designed to accommodate a leasing message within the perimeter of the monument or pylon sign;
   b. the leasing message cannot exceed that of the identification monument or pylon message;
   c. leasing message is in addition to potential monument or pylon copy and graphic area; and the maximum size of the permanent freestanding sign permitted under paragraph (a) above may be increased as provided in Table 325.10.
### Table 325.10

<table>
<thead>
<tr>
<th>Principal Structure Gross Square Footage</th>
<th>Additional Square Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 20,000</td>
<td>15 square feet</td>
</tr>
<tr>
<td>20,000 - 100,000</td>
<td>20 square feet</td>
</tr>
<tr>
<td>greater than 100,000</td>
<td>25 square feet</td>
</tr>
</tbody>
</table>

2) Option 2: in addition to the permanent freestanding sign allowed under paragraph (a) above, one additional permanent freestanding sign is allowed, provided it complies with the following standards:
   a. setback 5 feet from all property lines;
   b. 8 foot maximum height and 6 foot maximum width; and
   c. maximum size of sign permitted is determined by the gross square footage of the principal structure as provided in Table 325.11:

### Table 325.11

<table>
<thead>
<tr>
<th>Principal Structure Gross Square Footage</th>
<th>Sign Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 20,000</td>
<td>12 square feet</td>
</tr>
<tr>
<td>20,000 - 100,000</td>
<td>16 square feet</td>
</tr>
<tr>
<td>greater than 100,000</td>
<td>18 square feet</td>
</tr>
</tbody>
</table>

3) Option 3: in addition to the permanent freestanding sign allowed under paragraph (a) above, a permanent wall mounted sign or banner is allowed, provided it complies with the following standards:
   a. buildings two stories or under:
      (1) one wall sign;
      (2) directly anchored to the building wall; and
      (3) maximum size of sign permitted is determined by the gross square footage of the principal structure as provided in Table 325.12:

### Table 325.12

<table>
<thead>
<tr>
<th>Principal Structure Gross Square Footage</th>
<th>Sign Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 20,000</td>
<td>12 square feet</td>
</tr>
</tbody>
</table>
20,000 - 100,000  |
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>16 square feet</td>
</tr>
<tr>
<td>greater than 100,000</td>
</tr>
<tr>
<td>18 square feet</td>
</tr>
</tbody>
</table>

b. buildings three stories or higher:
   (1) 30 square feet maximum area;
   (2) directly anchored to the building wall; and
   (3) displayed on the building's third story or any higher story.
   (4) signs up to 32 square feet in size will be permitted without time limit
       instead of option 2 or 3 if the standards in either a. or b. are met:
       a. business or industrial development directly abuts a street with
          posted speed limit of 55 m.p.h. or greater; or
       b. the principal structure is greater than four stories.
   c. If a property qualifies for a 32 square foot sign under a. or b. and
      also has a second frontage on a designated collector or arterial
      road, option 2 or 3 as found above is also permitted.

4. **Industrial Sign Regulations.**
   Within the I-1 industrial district permanent signs which comply with the following
   standards are permitted:
   a) Monument sign. One permanent monument sign is permitted per property. The
      property owner must elect from one of two options in Table 325.13, and the sign
      must meet the requirements for the selected option.
   b) Permanent signage per tenant space. For multi-tenant buildings that do not have
      a monument sign under option 2 of Table 325.13, additional permanent signage
      is permitted as provided in this subdivision 4(b). The signs must meet the
      requirements of Table 325.13. The building owner or a representative must
      designate a sign design for the tenant spaces. The designation will be recorded
      by the city and kept on record for the property. Each sign on the property must
      conform to the designated sign option, and all signs must be uniform in material,
      color, style, illumination and placement. Changes to the sign designation may be
      made upon request, and approved administratively if all signs located on the site
      are brought into conformance with the requested sign plan modification. The
      planning commission must review sign plan changes if nonconforming signs are
      created.
   c) Permanent signage for single-tenant buildings: for single tenant buildings, one or
      more permanent wall signs are allowed per building, subject to the requirements
      in Table 325.13.
   d) Permanent on-premises sign: In addition to, or as a modification of, of the signs
      allowed by paragraphs (a), (b) and (c) above, one of the sign options allowed in
      section 325.06(3)(c) is allowed in the industrial district, provided, that any
property with signage allowed under this paragraph (d) is not allowed to have temporary signage under subdivision 5(3) of this section 305.06.

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Area</th>
<th>Max. Graphic Area</th>
<th>Max. Height</th>
<th>Illumination</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent monument sign per property</td>
<td>Option 1</td>
<td>90 sq. ft.</td>
<td>60 sq. ft.</td>
<td>10 ft.</td>
<td>Allowed for properties with multi-tenant buildings only. If this option is selected, permanent per-tenant-space signs are not allowed. Option is not available in areas designated for mixed use on the comprehensive guide plan</td>
</tr>
<tr>
<td></td>
<td>Option 2</td>
<td>120 sq. ft</td>
<td>85 sq. ft.</td>
<td>10 ft.</td>
<td></td>
</tr>
<tr>
<td>Multi-tenant buildings: signs per tenant space:</td>
<td>Option A: monument or pylon</td>
<td>9 sq. ft.</td>
<td>6 ft.</td>
<td></td>
<td>One at each tenant’s primary building entrance Maximum width of 5 feet Single faced Positioned parallel to parking lot sidewalk or perpendicular to tenant walkway</td>
</tr>
<tr>
<td></td>
<td>Option B: wall sign</td>
<td>12 ft.</td>
<td>4 ft.</td>
<td></td>
<td>One at each tenant’s primary building entrance Max. distance of 8 ft from ground to top edge of sign</td>
</tr>
<tr>
<td></td>
<td>Option C: Individually mounted letters</td>
<td>18 in.</td>
<td></td>
<td></td>
<td>One at each tenant’s primary entrance No more than 2 ft from tenant’s exterior lease lines</td>
</tr>
<tr>
<td>Sign type</td>
<td>Max. Area Sign Structure</td>
<td>Max. Graphic Area</td>
<td>Max. Height</td>
<td>Illumination</td>
<td>Other</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------------------</td>
<td>-------------------</td>
<td>-------------</td>
<td>--------------</td>
<td>-------</td>
</tr>
<tr>
<td>Single-tenant buildings:</td>
<td>Wall-mounted individual letters</td>
<td>5% of building face on which sign is located or 150 sq. ft., whichever is less</td>
<td></td>
<td>One per building</td>
<td>Must be installed within 18-in. high horizontal band of uniform background</td>
</tr>
</tbody>
</table>

5. **Business and Industrial Temporary Sign Regulations.**

Within business and industrial districts, temporary on-premises commercial signs are permitted as follows:

a) Banners not to exceed 30 square feet according to the following:
   1) maximum 30 day display period to coincide with the grand opening of a business;
   2) a business may display a banner on two occasions per calendar year with a maximum 10 day display period for each occasion;

b) Search lights or inflatable advertising devices are permitted as follows: one for each development, a maximum of two occasions per calendar year with each occasion not to exceed three days; and

c) Stringers, and pendants are not permitted.

d) Temporary on-premises commercial signage is permitted on vacant properties where new construction activity is taking place, provided the signs comply with the requirements in Table 325.14.

<p>| Table 325.14 Temporary Signs During Construction |</p>
<table>
<thead>
<tr>
<th>Sign type</th>
<th>Pylon</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Numerical limit</strong></td>
<td>One per development project number, according to the records of the community development department; One additional sign if the property is over 3 acres in size with frontage on 2</td>
</tr>
<tr>
<td>Table 325.14 Temporary Signs During Construction</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>or more designated collector or arterial streets</td>
<td></td>
</tr>
<tr>
<td>Maximum sign area</td>
<td>32 square feet</td>
</tr>
<tr>
<td>Maximum height</td>
<td>12 feet</td>
</tr>
<tr>
<td>Maximum duration</td>
<td>7 days after issuance of certificate of occupancy for building</td>
</tr>
</tbody>
</table>

e) Temporary on-premises commercial signage is permitted on improved properties that are for lease or sale, provided the signs comply with the requirements in Table 325.15.

<table>
<thead>
<tr>
<th>Table 325.15 Temporary Signs on Properties for Lease or Sale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sign type</td>
</tr>
<tr>
<td>Numerical limit</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Maximum sign area</td>
</tr>
<tr>
<td>Maximum height</td>
</tr>
<tr>
<td>Maximum duration</td>
</tr>
</tbody>
</table>

6. **Planned Unit Development Districts**
   Permanent and temporary signs in planned unit development districts are regulated according to the standards for the corresponding land use and zoning category as stated in this chapter 3. A sign plan with differing requirements may be approved by the city. Factors that will be used in determining if an individual P.U.D./P.I.D. sign plan will be considered include the following:
   a) The development includes a high rise (greater than 3 story) structure;
   b) the development includes multiple structures and/or substantial site area;
   c) the development includes mixed uses;
   d) 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
e) the sign plan includes permanent sign covenants which can be enforced by the city.
SECTION 325. SIGN REGULATIONS

SECTION 325.01 PURPOSE AND FINDINGS

1. Purpose. The sign ordinance is intended to establish a comprehensive and balanced system of sign control that accommodates the need for a well-maintained, safe, and attractive community, and the need for effective communications including business identification. It is the intent of this section, to promote the health, safety, general welfare, aesthetics, and image of the community by regulating signs that are intended to communicate to the public, and to use signs that meet the city's goals by authorizing:

   a) permanent signs that establish a high standard of aesthetics;
   b) signs that are compatible with their surroundings;
   c) signs that are designed, constructed, installed and maintained in a manner that does not adversely impact public safety or unduly distract motorists;
   d) signs that are large enough to convey the intended message and to help citizens find their way to intended destinations;
   e) signs that are proportioned to the scale of, and are architecturally compatible with, principal structures;
   f) permanent signs that give preference to the on-premise owner or occupant; and
   g) temporary commercial signs and advertising displays that provide an opportunity for grand openings and occasional sales events while restricting signs that create continuous visual clutter and hazards at public right-of-way intersections.

2. Findings. The city of Minnetonka finds it is necessary for the promotion and preservation of the public health, safety, welfare and aesthetics of the community that the construction, location, size and maintenance of signs be controlled. Further, the city finds:

   a) permanent and temporary signs have a direct impact on and relationship to the image of the community;
   b) the manner of installation, location and maintenance of signs affects the public health, safety, welfare and aesthetics of the community;
   c) an opportunity for viable identification of community businesses and institutions must be established;
d) the safety of motorists, cyclists, pedestrians and other users of public streets and property is affected by the number, size, location and appearance of signs that unduly divert the attention of drivers;

e) installation of signs suspended from, projecting over, or placed on the tops of buildings, walks or other structures may constitute a hazard during periods of high winds and an obstacle to effective fire-fighting and other emergency service;

f) uncontrolled and unlimited signs adversely impact the image and aesthetic attractiveness of the community and thereby undermine economic value and growth;

g) uncontrolled and unlimited signs, particularly temporary signs which are commonly located within or adjacent to public right-of-way or are located at driveway/street intersections, result in roadside clutter and obstruction of views of oncoming traffic. This creates a hazard to drivers and pedestrians and also adversely impacts a logical flow of information;

h) commercial signs are generally incompatible with residential uses and should be strictly limited in residential zoning districts; and

i) the right to express noncommercial opinions in any zoning district must be protected, subject to reasonable restrictions on size, height, location and number.

3. Severability. Every section, subdivision, clause or phrase of this section 325 is declared separable from every other section, subdivision, clause or phrase. If any such part is held to be invalid by competent authority, no other part shall be invalidated by such action or decision.

SECTION 325.02. DEFINITIONS.

1. “Blade sign” – see “projecting sign.”

2. “Commercial sign” - any sign that advertises or identifies a product, business, service, entertainment, or any other matter of a commercial nature, even though the matter may be related to a nonprofit organization.

3. “Conditionally permitted uses” – within residential districts, educational institutions and facilities, religious institutions and facilities, public buildings or facilities, public or private nursing homes, and commercial nurseries.

4. “Copy and graphic” - the wording and other display messages such as logos or symbols on a sign.

5. “Copy and graphic area” - the area in square feet of the smallest four-sided figure which encloses the copy and graphic of a sign.

6. “Dynamic display” - any characteristics of a sign that appear to have movement or that appear to change, caused by any method other than physically removing and replacing
the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking, or animated display and any display that incorporates rotating panels, LED lights manipulated through digital input, "digital ink" or any other method or technology that allows the sign face to present a series of images or displays.

7. **“Feather flag”** – a freestanding, temporary sign constructed of a vertical pole, tube or post supporting one edge of a sheet of cloth, vinyl or similar material.

8. **“Freestanding sign”** - a sign which is self-supporting and affixed to a frame structure not attached to a building.

9. **“Illumination, internal”** - a light source within the sign.

10. **“Illumination, external”** - a light source which is not internal to the sign.

11. **“Items of information”** - individual copy and graphic items situated in a manner which presents separate messages. An item of information can only be a name, an address, a logo, or geographic directions.

12. **“Limited tenant building”** - a commercial retail establishment or a group of commercial retail establishments with the designed occupancy of three or less tenants. It must have shared parking and a visual appearance of a contiguous structure, which may or may not be planned, constructed or managed as a total entity. This includes single tenant retail structures.

13. **“Merchandise box”** - a sign which is affixed on or located adjacent to a gas pump and used to advertise services and goods.

14. **“Monument sign”** - a sign not supported by exposed posts or poles which is architecturally designed and located directly at grade where the base width dimension is 50% or more of the greatest width of the sign.

15. **“Monument area”** - the area in square feet of an entire monument sign structure, including copy and graphic area.

16. **“Multi-tenant building”** - a building with a designed occupancy of four or more tenants with shared parking and visual appearance as a contiguous structure, which may or may not be planned, constructed or managed as a total entity.

17. **“Non-commercial sign”** - any sign that is not a commercial sign, including but not limited to signs that convey messages concerning political, religious, social, ideological, public service and informational topics.
18. “On-premise sign” - a sign relating in it subject matter to, or which directs attention to, a business, person, activity, commodity, service or entertainment located on the site where the sign is installed.

19. “Off-premise sign” - a sign relating in its subject matter to, or that directs attention to, a business, person, activity, commodity, service, entertainment or any other matter that is not available, or does not take place, on the same premises as the sign. A discontinued sign is an off-premise sign.


21. “Permanent sign” - any sign other than a temporary sign.

22. “Portable sign” - a sign with or without copy and graphic that is designed or intended to be moved or transported. Examples of portable signs are: A - or T - frame signs; sandwich signs; signs designed to be transported by trailer or on wheels; signs mounted on a vehicle for advertising purposes, when the vehicle is parked and visible from public right-of-way, except signs identifying a business when the vehicle is being used in the normal day-to-day operation of that business. A sign may be a portable sign even if it has wheels removed, was designed without wheels, or is attached temporarily or permanently to the ground, a structure, or other sign.

23. “Private road open to public travel” has the meaning given that term under the Manual of Uniform Traffic Control Devices.

24. “Projecting sign” – a sign which extends perpendicularly beyond a wall face more than 18-inches.

25. “Pylon sign” - a sign supported by a post or posts so that the sign and supports are finished to grade by encasing the posts in a material consistent with the sign and where the base width dimension is a minimum of 10% up to and including 50% of the greatest width of the sign.

26. “Sandwich sign” – a freestanding temporary sign, typically A-shaped, with two visible sides that is placed near the main entrance to a building.

27. “Sign” - any writing, pictorial presentation, number, illustration or decoration, flag, banner or other device that is used to announce, direct attention to, identify, advertise, or otherwise make anything known. The term “sign” shall not be deemed to include: the terms “building” or “landscaping”, or any architectural embellishment of a building not intended to communicate information; works of art that do not convey commercial messages and that are painted on a building wall; flags that do not convey commercial messages; or any sign structure or device that is not visible from an adjacent street, property line or building on adjacent property.

28. “Temporary sign” - a sign constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended to be displayed for a limited period of time. This includes items such as banners, pennants, beacons, sandwich or curb signs, balloons or other air or gas filled figures.
“Wall sign” - a single faced sign attached to or erected against an exterior wall of a building with the face in a parallel plane to the plane of the building wall.

SECTION 325.03. CITATION; ADMINISTRATION AND ENFORCEMENT.

1. Citation. This section 325 may be cited as the Minnetonka Sign Ordinance.

2. Administration and enforcement. Administration and enforcement of this section 325 is governed by section 300.03.

SECTION 325.04. PERMITS, PROCEDURE AND VARIANCES.

1. Permit not required. The following signs do not require a permit but must meet the regulations in this section:
   a) Signs required or allowed by section 325.05, subd. 3.
   b) Temporary signs in residential districts as allowed by section 325.06, subd. 1(d)(1).

2. Permit required.
   a) No person may erect or install any of the following signs without first obtaining a permit from the community development director or designee:
   b) All permanent signs permitted in section 325.06 require a sign permit, unless specifically noted otherwise. The permit must be received prior to installation of the sign. The permit and inspection fee for all permanent signs is specified in city code section 710.
   c) All temporary signs permitted in section 325.06, require a temporary sign permit, unless specifically noted otherwise. The permit and inspection fee for permitted signs, banners, search lights, or inflatable advertising devices is specified in city code section 710.

3. Permit procedure.
   a) Application for a permit must be on a form provided by the city and must include the following information:
      1) name and address of the owner of the sign;
      2) street address or location of the property on which the sign is to be located, along with the name and address of the property owner;
      3) the type of sign as defined in this section;
      4) site plan showing the location of the proposed sign;
5) specifications and scale drawings showing the materials, design, dimensions, structural supports, method of attachment and electrical components of the sign;

6) plan showing the location and size of all existing signs located on the same premises upon city request;

7) sign permit fee as specified in city code section 710.

b) The community development director or designee must approve or deny a sign permit application within 15 business days after a complete application is submitted. A decision must be made in writing and must be mailed or electronically delivered to the applicant at the address or email address provided in the application. If a permit is denied, the reason must be stated in writing.

c) An applicant may appeal a denial by submitting a request in writing within 10 days after the decision was mailed or electronically delivered. The appeal must be scheduled for planning commission review as soon as practicable, but no later than 30 days after the appeal was submitted. The applicant may appeal a planning commission denial by submitting a request in writing within 10 days after the decision. The appeal must be scheduled for city council review as soon as practicable, but no later than 30 days after the appeal was submitted. All review of a sign permit application must be based solely on whether the application complies with city ordinances.

4. **Variance.** A variance from the regulations in this section requires a separate application, according to the procedures in section 300.07 of this code. The fee for application for variance from this section or approval of a sign plan for a development is specified in city code section 710.

5. **Permit expiration.** A sign permit becomes null and void if the sign is not installed within 180 days after issuance of the permit, and a new application must be submitted.

**SECTION 325.05 GENERAL REGULATIONS.**

1. **Scope.** The regulations in this section 325.05 apply to signs in all zoning districts.

2. **Prohibited Signs.** The following signs are prohibited in all districts.

   a) Signs not specifically authorized under this section 325.

   b) Portable signs, except for temporary traffic control devices in temporary traffic control zones as required by the Manual on Uniform Traffic Control Devices or portable signs specifically permitted in section 325.06.

   c) Feather flags and pennants;

   d) Signs designed to resemble official traffic control devices are prohibited in all districts, except signs that are used to control traffic on private property.
e) Abandoned signs;
f) Blank signs;
g) Merchandise boxes or signs not affixed to a principal structure excluding signs permitted in subdivision 8(d);
h) Permanent off-premises signs.

3. **Permitted signs.** The following signs are required or permitted in every zoning district:

   a) An assigned street address marking its property with the street address numerals is required, so that emergency services providers can easily identify the address from the public street. The identification may be on the curb or on the principal building of the property. The size and location of the identifying numerals must be proportional to the size of the building and the distance from the street to the building. In cases where the building is not located within view of the public street, or where the building is located more than 150 feet from the public street, the identifier must be located on the mailbox or other suitable device that is visible from the street.

   b) Traffic control devices on private or public property must be erected and maintained to comply with the Manual on Uniform Traffic Control Devices adopted in this state.

   c) Permanent and temporary signs required by law or ordinance for regulatory/notification purposes.

   d) Permanent freestanding signs on properties with more than 20 parking spaces, provided the signs comply with the requirements in Table 325.1:

<table>
<thead>
<tr>
<th>Table 325.1 Parking Lot Signs*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maximum sign area</strong></td>
</tr>
<tr>
<td><strong>Maximum height</strong></td>
</tr>
<tr>
<td><strong>Location requirement</strong></td>
</tr>
<tr>
<td><strong>Numerical limit</strong></td>
</tr>
</tbody>
</table>

*Advertisement (Logos or business names) are not permitted. Sign permit not required.

e) Temporary off-premise commercial signs are permitted in all districts, provided the signs comply with the following:

1) must be at least 5 feet from the edge of a public street and must not obstruct driver visibility at intersections;

2) may not be on the right-of-way of county and state roads and municipal state-aid streets;
3) are limited to one per parcel of property as defined in subdivision 9 below for the same topic, location, event, or matter;

4) may only be displayed between 6:00 a.m. on a Thursday and 6:00 p.m. on the following Sunday; and

5) must be no larger than 3 square feet in area and no higher than 6 feet above the ground to which it is attached.

f) In all districts, any sign authorized in this chapter is allowed to contain noncommercial copy in lieu of any other copy. For new signs posted with a noncommercial message, the sign fee is waived until such time as the sign is converted to contain a commercial message.

4. Location requirements.

a) Signs may not be located on property without the permission of the property owner. For signs located in public right-of-way as allowed under subdivision 3(e) of this section 325.05, the permission of the immediately adjacent property owner must be obtained.

b) Unless specifically noted otherwise, all signs must maintain a 10-foot setback from all lot lines. The city may require a greater or lesser setback because of public safety reasons which may include the following conditions: vehicle sight distance, distance from intersection, designation of adjacent right-of-way.

c) Signs may not be mounted on a roof surface and may not project above the roof line of a structure if either attached to the structure or cantilevered over the structure.

d) Signs may not be attached to trees or utility poles.

e) Signs may not be located within public right-of-way except for official traffic control devices and those allowed by section 3(e) of this section 325.05;

f) Signs may not be attached to fences;

g) Signs may not be located so as to obstruct the vision of pedestrians, cyclists, or motorists traveling on or entering public streets in a manner that presents a hazard to public safety;

h) Signs may not be located so as to obstruct any window, door, fire escape, stairway or opening intended to provide light, air, ingress or egress for any structure;

5. Approved sign plans. The city may enforce, in the same manner as the requirements of this section, the terms of a sign plan or sign covenants which it has approved. Any violation of an approved sign plan or sign covenants is a misdemeanor.
6. **Changeable messages.** A message that is not permanently attached to the sign face but that is not a dynamic display may occupy no more than 50 percent of the actual copy and graphic area. The remainder of the sign must not have the capability to change messages even if not used.

7. **Font size.** Every line of copy and graphics in a sign must be at least four inches in height.

8. **Sign illumination.**

   a) All illuminated signs must meet the following standards:

   1) External illumination on signs must be directed so that the illumination does not interfere with safe traffic operations;

   2) Illuminated signs must not be directly oriented to any residential district;

   3) No sign may be brighter than is necessary for clear and adequate visibility.

   4) No sign may be of such intensity or brilliance as to impair the vision of a motor vehicle driver with average eyesight or to otherwise interfere with the driver's operation of a motor vehicle.

   5) No sign may be of such intensity or brilliance that it interferes with the effectiveness of an official traffic sign, device or signal.

   b) The person owning or controlling the sign must adjust the sign to meet the brightness standards in accordance with the city's instructions. The adjustment must be made immediately upon notice of non-compliance from the city. The person owning or controlling the sign may appeal the city's determination through the following appeal procedure:

   1) After making the adjustment required by the city, the person owning or controlling the sign may appeal the city's determination by delivering a written appeal to the city clerk within 10 days after the city's non-compliance notice. The written appeal must include the name of a person unrelated to the person and business making the appeal, who will serve on the appeal panel.

   2) Within five business days after receiving the appeal, the city must name a person who is not an official or employee of the city to serve on the appeal panel. Within five business days after the city names its representative, the city's representative must contact the sign owner's representative, and the two of them must appoint a third member to the panel, who has no relationship to either party.
3) The appeal panel may develop its own rules of procedure, but it must hold a hearing within five business days after the third member is appointed. The city and the sign owner must be given the opportunity to present testimony, and the panel may hold the hearing, or a portion of it, at the sign location. The panel must issue its decision on what level of brightness is needed to meet the brightness standards within five business days after the hearing commences. The decision will be binding on both parties.

c) All signs installed after June 25, 2007 that will have illumination by a means other than natural light must be equipped with a mechanism that automatically adjusts the brightness in response to ambient conditions. These signs must also be equipped with a means to immediately turn off the display or lighting if it malfunctions, and the sign owner or operator must immediately turn off the sign or lighting when notified by the city that it is not complying with the standards in this section.

9. **Outdoor advertising displays.**

Outdoor advertising signs which exist as of March 13, 1991 are nonconforming signs. A permanent outdoor advertising sign is a principal use of property. No permitted or conditionally permitted use or any part of such use may be located on the same parcel of property as such a sign. The parcel on which such a sign is located may not be subdivided to segregate the sign from the remaining property. For the purposes of this paragraph, “parcel of property” means any property for which one property identification number has been issued by the county, or all contiguous property in common ownership as of October 15, 1997, whichever is greater.

10. **Dynamic Displays.**

   a) **Findings.** Studies show that there is a correlation between dynamic displays on signs and the distraction of highway drivers. Distraction can lead to traffic accidents. Drivers can be distracted not only by a changing message, but also by knowing that the sign has a changing message. Drivers may watch a sign waiting for the next change to occur. Drivers are also distracted by messages that do not tell the full story in one look. People have a natural desire to see the end of the story and will continue to look at the sign in order to wait for the end. Additionally, drivers are more distracted by special effects used to change the message, such as fade-ins and fade-outs. Finally, drivers are generally more distracted by messages that are too small to be clearly seen or that contain more than a simple message. Time and temperature signs appear to be an exception to these concerns because the messages are short, easily absorbed, and become inaccurate without frequent changes.

   Despite these public safety concerns, there is merit to allowing new technologies to easily update messages. Except as prohibited by state or federal law, sign owners should have the opportunity to use these technologies with certain restrictions. The restrictions are intended to minimize potential driver distraction
and to minimize proliferation in residential districts where signs can adversely impact residential character.

Local spacing requirements could interfere with the equal opportunity to use such technologies and are not included. Without those requirements, however, there is the potential for numerous dynamic displays to exist along any roadway. If more than one dynamic display can be seen from a given location on a road, the minimum display time becomes critical. If the display time is too short, a driver could be subjected to a view that appears to have constant movement. This impact would obviously be compounded in a corridor with multiple signs. If dynamic displays become pervasive and there are no meaningful limitations on each sign's ability to change frequently, drivers may be subjected to an unsafe degree of distraction and sensory overload. Therefore, a longer display time is appropriate.

A constant message is typically needed on a sign so that the public can use it to identify and find an intended destination. Changing messages detract from this way-finding purpose and could adversely affect driving conduct through last-second lane changes, stops, or turns, which could result in traffic accidents. Accordingly, dynamic displays generally should not be allowed to occupy the entire copy and graphic area of a sign.

In conclusion, the city finds that dynamic displays should be allowed on signs but with significant controls to minimize their proliferation and their potential threats to public safety.

b) Regulations. Dynamic displays on signs are allowed subject to the following conditions:

1) Dynamic displays are allowed only on monument and pylon signs for conditionally permitted uses in residential districts and for all uses in other districts. Dynamic displays may occupy no more than 50 percent of the actual copy and graphic area. The remainder of the sign must not have the capability to have dynamic displays even if not used. Only one, contiguous dynamic display area is allowed on a sign face;

2) A dynamic display may not change or move more often than once every 20 minutes, except one for which changes are necessary to correct hour-and-minute, date, or temperature information. Time, date, or temperature information is considered one dynamic display and may not be included as a component of any other dynamic display. A display of time, date, or temperature must remain for at least 20 minutes before changing to a different display, but the time, date, or temperature information itself may change no more often than once every three seconds;

3) The images and messages displayed must be static, and the transition from one static display to another must be instantaneous without any special effects;
4) The images and messages displayed must be complete in themselves, without continuation in content to the next image or message or to any other sign;

5) Every line of copy and graphics in a dynamic display must be at least seven inches in height on a road with a speed limit of 25 to 34 miles per hour, nine inches on a road with a speed limit of 35 to 44 miles per hour, 12 inches on a road with a speed limit of 45 to 54 miles per hour, and 15 inches on a road with a speed limit of 55 miles per hour or more. If there is insufficient room for copy and graphics of this size in the area allowed under clause 1 above, then no dynamic display is allowed;

6) Dynamic displays must be designed and equipped to freeze the device in one position if a malfunction occurs. The displays must also be equipped with a means to immediately discontinue the display if it malfunctions, and the sign owner must immediately stop the dynamic display when notified by the city that it is not complying with the standards of this ordinance;

7) Dynamic displays must comply with the brightness standards contained in subdivision 15;

8) Dynamic displays existing on June 25, 2007 must comply with the operational standards listed above. An existing dynamic display that does not meet the structural requirements in clause 1 may continue as a non-conforming development subject to section 300.29. An existing dynamic display that cannot meet the minimum size requirement in clause 5 must use the largest size possible for one line of copy to fit in the available space.

c) Incentives. Outdoor advertising signs do not need to serve the same way-finding function as do on-premises signs. Further, outdoor advertising signs are no longer allowed in the city, and there is no potential that they will proliferate. Finally, outdoor advertising signs are in themselves distracting and their removal serves public safety. The city is extremely limited in its ability to cause the removal of those signs. This clause is intended to provide incentives for the voluntary and uncompensated removal of outdoor advertising signs in certain settings. This removal results in an overall advancement of one or more of the goals set forth in this section that should more than offset any additional burden caused by the incentives. These provisions are also based on the recognition that the incentives create an opportunity to consolidate outdoor advertising services that would otherwise remain distributed throughout the community.

1) A person may obtain a permit for an enhanced dynamic display on one face of an outdoor advertising sign if the following requirements are met:

   a. The applicant agrees in writing to permanently remove, within 15 days after issuance of the permit, at least two other faces of an outdoor advertising sign in the city that are owned or leased by the applicant, each of which must satisfy the criteria of parts (b) through (d) of this subsection. This removal must include the
complete removal of the structure and foundation supporting each sign face. The applicant must agree that the city may remove the sign if the applicant does not timely do so, and the application must be accompanied by a cash deposit or letter of credit acceptable to the city attorney sufficient to pay the city’s costs for that removal. The applicant must also agree that it is removing the sign voluntarily and that it has no right to compensation for the removed sign under any law.

b. The city has not previously issued an enhanced dynamic display permit based on the removal of the particular faces relied upon in this permit application.

c. Each removed sign has a copy and graphic area of at least 288 square feet and satisfies two or more of the following additional criteria:

1. The removed sign is located adjacent to a highway with more than two regular lanes and with a general speed limit of 45 miles per hour or greater, but that does not have restrictions on access equivalent to those of an interstate highway;

2. All or a substantial portion of the structure for the removed sign was constructed before 1975 and has not been substantially improved;

3. The removed sign is located in a noncommercial zoning district;

4. The removed sign is located in a special planning area designated in the 1999 comprehensive plan; or

5. The removed copy and graphic area is equal to or greater than the area of the copy and graphic area for which the enhanced dynamic display permit is sought.

d. If the removed sign face is one for which a state permit is required by state law, the applicant must surrendered its permit to the state upon removal of the sign. The sign that is the subject of the enhanced dynamic display permit cannot begin to operate until proof is provided to the city that the state permit has been surrendered.

e. The applicant must agree in writing that no dynamic displays will ever be used on one additional outdoor advertising sign that has a copy and graphic area of at least 288 square feet in size. This agreement will be binding on the applicant and all future owners of the sign. If the sign is subsequently removed or destroyed and not
replaced, the holder of the enhanced dynamic display permit is not required to substitute a different sign for the one that no longer exists.

2) If the applicant complies with the permit requirements noted above, the city will issue an enhanced dynamic display permit for the designated outdoor advertising sign. This permit will allow a dynamic display to occupy 100 percent of the potential copy and graphic area and to change no more frequently than once every eight seconds. The designated sign must meet all other requirements of this ordinance.

11. **Sign construction and maintenance.** All signs must conform to the following standards.

a) Construction specifications. All permanent signs must be constructed in accordance with the following:

1) the Minnesota state building code;

2) all electric signs must be approved and labeled as conforming to the standards of the Underwriters' Laboratories, Inc., the United States bureau of standards or other similar institutions of recognized standing. All illuminating elements must be kept in satisfactory working condition or immediately repaired or replaced. Signs that are partly illuminated must meet all electrical requirements for the portion that is illuminated;

3) all permanent freestanding signs must have self-supporting structures erected on and permanently attached to concrete foundations;

4) for wall signs, the wall must be designed for and have sufficient strength to support the sign;

5) signs may not be painted on the wall of a building; and

6) Unless otherwise specified in this section, the maximum angle permitted between faces of a double face freestanding sign is 45 degrees.

b) Sign maintenance and repair. All signs must be maintained in a safe, presentable and good structural condition at all times, including the replacement of defective parts, cleaning and other items required for maintenance of the sign. Vegetation around, in front of, behind, and underneath the base of ground signs for distance of 10 feet must be neatly trimmed and free of weeds. Rubbish or debris under or near the sign that would constitute a fire or health hazard must be removed.

12. **Removal of Abandoned Signs, Signs in Disrepair and Signs Located in Public Right-of-Way.**

a) Abandoned signs and signs in disrepair. An abandoned sign or sign in disrepair is prohibited and shall be removed by the owner of the premises within 30 days
after notification. If compliance with the provisions of this section is not achieved within 30 days, the city may remove the sign as a public nuisance by following the procedure as specified in section 1120.045 of the municipal code of ordinances. If an abandoned sign remains in good condition and without holes or other evidence of disrepair or damage, the sign shall not be considered as abandoned for a period of one year.

b) Signs on public property or within public right-of-way: The city may at any time and without notice may impound signs that have been installed on public property or within public right-of-way or easement. The sign owner may retrieve the signs according to the following:

1) a fee must be paid to the city as established in city code section 710. For each subsequent impoundment in a calendar year, the specified fee shall be doubled;

2) the sign may be retrieved from a designated impound area during routine business hours and within 15 days from the date of impounding. After 15 days, the city will dispose of the sign; and

3) the city may not be held liable for any damage to impounded signs.

13. Nonconforming Signs. Any sign that complied with all applicable laws and ordinances at that time that it was erected but that has been or is made nonconforming due to a subsequently enacted amendment of this city code is governed by section 300.29.

SECTION 325.06. DISTRICT REGULATIONS.

1. Residential Districts. Within residential zoning districts, signs are permitted as provided in this subsection. Except as expressly permitted in this subsection, commercial signs are not allowed:

a) Permanent signs, must comply with Table 325.2. In addition, :

1) One wall sign is permitted per building.

2) One freestanding sign is permitted per development. Sign may be single or double-faced. The sign must be perpetually maintained by a homeowners association or responsible property owner.

3) Internal illumination is not allowed if a sign faces low-density residential properties. External illumination may not include exposed light sources.
Table 325.2 Permanent Signs in Residential Districts

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Max. Area</th>
<th>Max. Copy and Graphic Area</th>
<th>Max. Height</th>
<th>Illumination Type*</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permanent Wall Signs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any Residential use***</td>
<td>2 sq. ft.</td>
<td>2 sq. ft.</td>
<td>1 ft.</td>
<td>External only</td>
<td></td>
</tr>
<tr>
<td>Conditionally permitted principal use</td>
<td>50 sq. ft. or 10% of the wall in which the sign is located, whichever is less</td>
<td>50 sq. ft. or 10% of the wall in which the sign is located, whichever is less</td>
<td>2 ft.</td>
<td>Internal or External</td>
<td></td>
</tr>
<tr>
<td><strong>Permanent Freestanding Signs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low density Residential**</td>
<td>75 sq. ft. per entrance</td>
<td>30 sq. ft. per entrance</td>
<td>6 ft.</td>
<td>External</td>
<td>Must be located at primary entrance(s), two signs permitted per development</td>
</tr>
<tr>
<td>Medium/High density Residential</td>
<td>100 sq. ft. per entrance</td>
<td>36 sq. ft. per entrance</td>
<td>8 ft.</td>
<td>Internal or External</td>
<td>Must be located at primary entrance(s), two signs permitted per development</td>
</tr>
<tr>
<td>Conditionally Permitted Use, except for public buildings and parks</td>
<td>75 sq. ft.</td>
<td>30 sq. ft.</td>
<td>6 ft.</td>
<td>Internal or External</td>
<td></td>
</tr>
<tr>
<td>Public Building and Park</td>
<td>32 sq. ft.</td>
<td>32 sq. ft.</td>
<td>8 ft.</td>
<td>Internal or External</td>
<td>Hours of illumination: 6 am to 10 pm only</td>
</tr>
<tr>
<td>Athletic Field, with structured seating for 2000 or fewer people</td>
<td>410 sq. ft. per sign face</td>
<td>410 sq. ft. per sign face</td>
<td>35 ft.</td>
<td>Internal only</td>
<td></td>
</tr>
<tr>
<td>Athletic Field, with structured seating for more than 2000 people</td>
<td>500 sq. ft. per sign face 1000 sq. ft. aggregate</td>
<td>500 sq. ft. per sign face 1000 sq. ft. aggregate</td>
<td>35 ft.</td>
<td>Internal only</td>
<td></td>
</tr>
</tbody>
</table>

* Internal illumination is not allowed when a sign faces low-density residential properties. External illumination may not include exposed light sources.

** Allowed only for single-family developments of at least 6 lots and two-family development with at least 12 dwelling units.

*** Sign permit not required.

b) Temporary non-commercial signs, must comply with Table 325.3. Temporary signs may not be illuminated.
Table 325.3 Temporary Non-Commercial Signs in Residential Districts

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Sign type</th>
<th>Max. Number of Signs</th>
<th>Max. Area</th>
<th>Max. Height</th>
<th>Duration of Display</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any residential use*/**</td>
<td>Banner or freestanding</td>
<td>3</td>
<td>6 sq. ft. per sign</td>
<td>3</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* Signs must be located at least five feet from the edge of a public street, must not obstruct driver visibility at intersections and must be placed with the consent of the property owner.

** Sign permit not required.

c) Temporary commercial signs must comply with Table 325.4. Temporary signs may not be illuminated.

Table 325.4 Temporary Commercial Signs in Residential Districts

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Sign Type</th>
<th>Max. Number of Signs</th>
<th>Max. Area</th>
<th>Max. Height</th>
<th>Display Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Properties</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low-Density*/**</td>
<td>Freestanding</td>
<td>1 per development</td>
<td>32 sq. ft.</td>
<td>8 ft.</td>
<td>Must be removed When building permits have been issued for 90% of lots</td>
</tr>
<tr>
<td>Medium/High Density**</td>
<td>Freestanding</td>
<td>1 per property</td>
<td>6 sq. ft.</td>
<td>6 ft.</td>
<td>Must be removed 18 months after a building permit has been issued</td>
</tr>
<tr>
<td>For Sale or Lease Properties</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low/Medium Density**</td>
<td>Freestanding, Banner</td>
<td>1 per property</td>
<td>32 sq. ft.</td>
<td>8 ft.</td>
<td>Must be removed 7 days after a property is no longer for sale or lease</td>
</tr>
<tr>
<td>High Density**</td>
<td>Banner attached to wall</td>
<td>1 per property</td>
<td>60 sq. ft.</td>
<td>N/A</td>
<td>Must be removed 12 months after issuance of a certificate of occupancy for the last building</td>
</tr>
<tr>
<td>General Commercial Signage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditionally Permitted Principal Use</td>
<td>Banner</td>
<td>1 per property</td>
<td>30 sq. ft.</td>
<td>N/A</td>
<td>two occasions per calendar year for a maximum of 10 day display for each occasion</td>
</tr>
</tbody>
</table>

* Allowed for low-density developments with at least four lots under development.
** Sign permit not required.

2. Office District Sign Regulations. Within the B-1, office business district, signs are permitted according to the following standards:

a) Permanent Signs.
1) Permanent monument signs: One monument sign is permitted per development provided the sign complies with the requirements of Table 325.5. In addition,

a. Signs may be single or double-faced

b. Signs may be internally or externally illuminated, except internal illumination is not allowed if a sign faces low-density residential properties. External illumination may not include exposed light sources.

2) Permanent wall signs: One permanent wall sign is permitted per building, except that buildings with frontage on more than one public street are allowed one wall sign facing each frontage. Signs must comply with the requirements of Table 325.5. In addition:

a. Signs must be comprised of individually dimensioned letters, unless all wall signs are incorporated into architecture of structure and of similar design.

b. Signs may be internally illuminated or backlit, except illumination is not allowed if a sign faces low-density residential properties.

### Table 325.5 Permanent Signs in Office District

<table>
<thead>
<tr>
<th>Sign type</th>
<th>Max. Monument Area</th>
<th>Max. Copy and Graphic Area</th>
<th>Max. Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent monument sign – adjacent ROW is less than 100 ft in width</td>
<td>72</td>
<td>36 sq. ft.</td>
<td>15 ft.</td>
</tr>
<tr>
<td>Permanent monument sign – adjacent ROW is 100 ft. or more in width</td>
<td>100</td>
<td>50 sq. ft.</td>
<td>15 ft.</td>
</tr>
<tr>
<td>Permanent wall sign</td>
<td>N/A</td>
<td>Maximum wall sign height x 25% of length of building where sign is located</td>
<td>36 inches for one and two story buildings</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>48 inches for three and four story buildings</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>60 inches for five or more story buildings</td>
</tr>
</tbody>
</table>

b) Temporary Signs. On-premise signs must comply with the requirements of Table 325.6. Signs may not be illuminated.
### Table 325.6 Temporary On-Premise Signs, Office Districts

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Sign Type</th>
<th>Max. Number of Signs</th>
<th>Max. Area</th>
<th>Max. Height</th>
<th>Display Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vacant Properties, During Construction*</td>
<td>Freestanding</td>
<td>1 if property is 3 acres or less, 2 signs if property is over 3 acres in size</td>
<td>32 sq. ft</td>
<td>12 ft.</td>
<td>Must be removed 7 days after issuance of a certificate of occupancy</td>
</tr>
<tr>
<td>Improved Properties, For Sale or Lease*</td>
<td>Freestanding or Wall</td>
<td></td>
<td></td>
<td></td>
<td>Only while property is for sale or lease space is available</td>
</tr>
<tr>
<td><strong>General Temporary Signs</strong></td>
<td>Banners</td>
<td>1 sign per tenant</td>
<td>30 sq. ft</td>
<td>N/A</td>
<td>Max. 30 day period to coincide with grand opening</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Max. 2 occasions per calendar years with each occasion not to exceed 10 days</td>
</tr>
<tr>
<td></td>
<td>Sandwich Signs***</td>
<td>1 per tenant</td>
<td>12 sq. ft</td>
<td>4</td>
<td>Allowed during business hours, but must be removed at closing</td>
</tr>
<tr>
<td></td>
<td>Search Light or Inflatable***</td>
<td>1 per development</td>
<td>N/A</td>
<td>NA</td>
<td>Max. 2 occasions per calendar year with each occasion not to exceed 3 days</td>
</tr>
<tr>
<td></td>
<td>Non-commercial banner or freestanding sign****</td>
<td>3 per property</td>
<td>6 sq. ft per sign, 18 sq. ft aggregate per property</td>
<td>3 ft.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* Sign permit not required.

**Sign must be located directly in front the tenant space the sign is associated with and must not reduce sidewalk area to less than 4 ft. in width.

*** Sign must be located on the ground.

**** Signs must be located at least five feet from the edge of a public street, must not obstruct driver visibility at intersections and must be placed with the consent of the property owner.

### 3. Commercial Business and Industrial Sign Regulations
Within the B-2, B-3 and I-1 districts, the following signs are permitted:

a) Permanent signs.
1) Freestanding signs. Signs must comply with requirements of Table 325.7. In addition,

a. One freestanding sign is allowed per development, except that a second sign is allowed for properties with drive-thru windows.

b. Signs may be single or double-faced.

c. Signs may be internally or externally illuminated, except internal illumination is not allowed if a sign faces low-density residential properties. External illumination may not include exposed light sources.

<table>
<thead>
<tr>
<th>Principal Structure (gross square feet)</th>
<th>Pylon Sign</th>
<th>Monument Sign</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Structure (gross square feet)</td>
<td>Max. height</td>
<td>Max. sign size</td>
</tr>
<tr>
<td>greater than 400,000</td>
<td>30 ft.</td>
<td>200 sq. ft.</td>
</tr>
<tr>
<td>100,000 - 400,000*</td>
<td>24 ft.</td>
<td>100 sq. ft.</td>
</tr>
<tr>
<td>20,000 - 100,000</td>
<td>18 ft.</td>
<td>80 sq. ft.</td>
</tr>
<tr>
<td>less than 20,000</td>
<td>15 ft.</td>
<td>60 sq. ft.</td>
</tr>
<tr>
<td>building with multiple screen theater</td>
<td>30 ft.</td>
<td>200 sq. ft.</td>
</tr>
</tbody>
</table>

Second Sign for properties with drive-thru | 8 ft. | 50 sq. ft. | 8 ft. | 50 sq. ft. | 50 sq. ft. |

*For multi-tenant building or limited tenant building with more than 100,000 gross sq. ft. and with 2 or more access points, one monument sign allowed at primary access and second monument allowed at second access; height and graphic limits for second monument are 50% of those in outlined in this table.

2) Permanent Wall Signs:

a. Limited tenant wall signs. Signs must comply with the requirements in Table 325.8. In addition,

1. One permanent wall sign is permitted per exterior wall face.

2. Signs must be comprised of individually dimensioned letters, unless all wall signs are incorporated into the architecture of structure and of similar design.
3. Signs may be internally illuminated or backlit, except illumination is not allowed if a sign faces low-density residential properties.

<table>
<thead>
<tr>
<th>Principal Structure Size (Gross Sq. Ft.)</th>
<th>Individual Wall Sign Calculation</th>
<th>Total Wall Signage for Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>100,000 - 400,000 sq. ft.</td>
<td>200 sq. ft. or 10 percent of wall face, whichever is less</td>
<td>300 sq. ft.</td>
</tr>
<tr>
<td>20,000 - 100,000 sq. ft.</td>
<td>150 sq. ft. or 10 percent of wall face, whichever is less</td>
<td>240 sq. ft.</td>
</tr>
<tr>
<td>less than 20,000 sq. ft.</td>
<td>100 sq. ft. or 15 percent of wall face, whichever is less</td>
<td>150 sq. ft.</td>
</tr>
</tbody>
</table>

b. Multi-tenant wall signs. Each tenant is permitted one wall sign per tenant exterior wall face, but no more than two total signs. For example, a tenant that occupies a corner or endcap space is allowed two wall signs, whereas a tenant that occupies an interior space is allowed one wall sign. Signage size is regulated under Table 325.9. In addition,

1. Signs may be located no closer than 2 feet from any lease line.

2. Signs may be internally illuminated or backlit, except internal illumination is not allowed when a sign faces low-density residential properties.

<table>
<thead>
<tr>
<th>Table 325.9 Wall Signs, Multi-tenant buildings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Max. Height</td>
</tr>
<tr>
<td>Horizontal-mounted signs</td>
</tr>
<tr>
<td>36 inches for graphic</td>
</tr>
<tr>
<td>26 inches for copy</td>
</tr>
<tr>
<td>Projecting sign</td>
</tr>
</tbody>
</table>

* Signs may not project out from the face of the building by more than 48 inches.
b) Temporary Signs. On-premise signs must comply with Table 325.10. Signs may not be illuminated.

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Sign Type</th>
<th>Max. Number of Signs</th>
<th>Max. Area</th>
<th>Max. Height</th>
<th>Display Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vacant Properties, During Construction*</td>
<td>Freestanding</td>
<td>1 if property is 3 acres or less 2 signs if property is over 3 acres in size</td>
<td>32 sq. ft.</td>
<td>12 ft.</td>
<td>Must be removed 7 days after issuance of a certificate of occupancy</td>
</tr>
<tr>
<td>Improved Properties, For Sale or Lease*</td>
<td>Freestanding or Wall</td>
<td></td>
<td></td>
<td></td>
<td>Only while property is for sale or lease space is available</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Max. 30 day period to coincide with grand opening</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Max. 2 occasions per calendar years with each occasion not to exceed 10 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Allowed during business hours, but must be removed at closing</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Max. 2 occasions per calendar year with each occasion not to exceed 3 days</td>
</tr>
<tr>
<td>General Temporary Signs</td>
<td>Banners</td>
<td>1 sign per tenant</td>
<td>30 sq. ft.</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sandwich Signs*/***</td>
<td>1 per tenant</td>
<td>12 sq. ft.</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Search Light or Inflatable***</td>
<td>1 per development</td>
<td>N/A</td>
<td>NA</td>
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<tr>
<td></td>
<td>Non-commercial banner or freestanding sign*/***</td>
<td>3 per property</td>
<td>6 sq. ft. per sign, 18 sq. ft. aggregate per property</td>
<td>3 ft.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* Sign permit not required.

**Sign must be located directly in front the tenant space the sign is associated with and must not reduce sidewalk area to less than 4 ft. in width

*** Sign must be located on the ground.

**** Signs must be located at least five feet from the edge of a public street, must not obstruct driver visibility at intersections and must be placed with the consent of the property owner.
4. **Planned Unit Development Districts.** Permanent and temporary signs in planned unit development and planned I-394 districts are regulated according to the standards for the corresponding land use and zoning category as stated in this chapter 3. A sign plan with differing requirements may be approved by the city. Factors that will be used in determining if an individual P.U.D./P.I.D. sign plan will be considered include the following:

a) The development includes a high rise (greater than 3 story) structure;

b) the development includes multiple structures and/or substantial site area;

c) the development includes mixed uses;

d) 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

e) the sign plan includes permanent sign covenants which can be enforced by the city.
City Council Agenda Item #12B
Meeting of Oct. 8, 2018

Brief Description: Ordinance authorizing the sale of city property adjacent to 2430 Winter Circle

Recommended Action: Introduce the ordinance and approve the purchase agreement

Background

In the course of performing an inventory of ash trees on city-owned properties, the city’s natural resources staff discovered that the owners of 2430 Winter Circle had encroached onto adjacent city property. The owners, Richard and Martha Theilmann, had cleared vegetation on the city property and had installed landscaping improvements and a sport court with basketball hoop. It also appeared that the Theilmanns had deposited fill in wetland on the city property. Based on investigation of aerial photographs, staff determined that the sport court had been installed in the early 1990s.

Staff contacted the Theilmanns regarding the use. The Theilmanns indicated that they were unaware that the city owned the property, and they expressed an interest in purchasing the land that they had been using. The Theilmanns have worked cooperatively with city staff to restore the wetland areas that they had filled.

City staff negotiated a purchase agreement with the Theilmanns. The key elements of the agreement are:

- The area to be sold will be surveyed.
- The Theilmanns will pay a purchase price that is equal to $2 per square foot for the land purchased, plus $6,000 (in recognition of their past use of the property), but with a minimum total purchase price of $36,000. The city staff arrived at the $2 per square foot in consultation with the city assessor, recognizing that the land would be excess land area. Under tort law, the city has a claim for six years of damages for trespass. The staff proposed the $6,000 addition to the purchase price in recognition of that claim.
- The Theilmanns will need to apply for a subdivision and combination of the property, which can be handled administratively.
- In addition to the purchase price, the Theilmanns will pay all costs related to the purchase, including survey, application fees, and all costs of closing. Except for staff time, the city will not incur any costs.

The city attorney has prepared a purchase agreement consistent with the staff’s negotiations with the Theilmanns, but the Theilmanns have not had an opportunity to review the draft with an attorney. Staff would like to confirm the city’s willingness to sell the land before asking the Theilmanns to incur legal and survey costs. If the council agrees with staff’s recommendation, the staff will finalize the purchase agreement with the Theilmanns and have the legal description prepared by a surveyor before bringing the ordinance back for adoption.

As an alternative to selling the land, the city could require the Theilmanns to remove all the improvements that they have made to the property (sport court, rock mulch and landscape
boulders), restore the city property to its natural state (reforest with trees), and seek to recover damages for the past six years of use based on the rental value of the land. The staff estimated the cost of restoration at approximately $30,000. Staff has not discussed with the Theilmanns' their willingness to incur significant costs in the absence of purchasing the land. If the Theilmanns did not agree, the city could obtain some compliance through enforcement of nuisance ordinances, but the city could not recover damages for past use without bringing a legal action and incurring fees and costs in that action.

**Recommendation**

1. Introduce the ordinance.
2. Approve the purchase agreement, subject to nonmaterial changes as approved by the city manager and city attorney, and authorize the mayor and city manager to execute the final purchase agreement.

Submitted through:
- Geralyn Barone, City Manager
- Brian Wagstrom, Director of Public Works
- Jo Colleran, Natural Resources Manager

Originated by:
- Corrine Heine, City Attorney
PURCHASE AGREEMENT

This Purchase Agreement is made as of ___________________, 2018 by and between CITY OF MINNETONKA, a Minnesota municipal corporation (“Seller”) and RICHARD D. THEILMANN and MARTHA MILLER THEILMANN, who are married to each other (“Buyers”).

Recitals
A. Seller is the owner of certain real property in the City of Minnetonka, County of Hennepin, State of Minnesota, legally described as follows:

Outlot A, CHEYENNE TRAILS

(the “City Property”).

B. Buyers are the owners of certain real property in the City of Minnetonka, County of Hennepin, State of Minnesota, legally described as follows:

Lot 1, Block 3, CHEYENNE TRAILS

(the “Theilmann Property”). The Theilmann Property abuts the City Property.

C. The City Property is largely vacant, unimproved land. However, since the early 1990’s, the Buyers have altered a portion of the City Property by removing vegetation, installing landscaping improvements, and installing a sport court. The Buyers did not obtain the City’s permission prior to making those alterations.

D. The Buyers desire to purchase a portion of the City Property, as depicted on the attached Exhibit A (the “Sale Property”). The legal description will be determined as provided in paragraph 3b of this Purchase Agreement. The portion of the City Property that will not be sold to Buyer is referred to in this Purchase Agreement as the Remainder Property.

Agreement

1. Offer/Acceptance. In consideration of the mutual agreements contained in this Purchase Agreement, Buyer offers to purchase and Seller agrees to sell the Sale Property, according to the terms of this Purchase Agreement.

2. Purchase Price. The total purchase price for the Sale Property will be determined based upon the square footage as determined by the survey required by paragraph 3b and the provisions of this paragraph. The purchase price is Two Dollars ($2.00) per square foot of the Sale Property, as determined by survey, plus Six Thousand Dollars ($6,000.00) in recognition of the Buyers’ past use of the Sale Property; but in no event shall the total purchase price be less than Thirty-Six Thousand Dollars ($36,000.00). Buyers agree to pay the Purchase Price at closing.

3. Contingencies:
   a. ORDINANCE ADOPTION. The sale of the Sale Property must be approved by ordinance, according to the terms of Seller’s city charter. Seller has until Closing to satisfy this contingency. This contingency may not be waived.
b. **SUBDIVISION APPROVAL AND SURVEY.** The conveyance contemplated by this Purchase Agreement requires a subdivision of the City Property, which requires a survey.

   (1) **Survey.** The Buyers agree to obtain a survey of the Sale Property at Buyers’ sole expense. The Buyers must arrange for City staff to be present at the time the survey is performed, and City staff must approve the locations of the corner stakes before the survey is performed. The surveyor must install monuments at appropriate locations to designate the boundaries of the Sale Property; however, if for any reason the sale contemplated by this Purchase Agreement does not close, the City will remove the monuments. The square footage of the Sale Property as determined by the survey will be used to determine the Purchase Price, according to paragraph 2 above. The survey must identify the legal description of the Sale Property.

   (2) **Buyers agree to obtain City approval of the subdivision of the City Property and the combination of the Sale Property with the Theilmann Property.** Buyers are solely responsible for the costs of obtaining the subdivision and combination approval. Buyers understand that the subdivision approval may be subject to certain conditions, such as the requirement to combine the Sale Property with the Theilmann Property and the requirement to grant drainage and utility easements to the City adjacent to lot lines. Buyers agree to comply with all required conditions of the subdivision approval.

   (3) The requirements of this paragraph 3b are for the benefit of the City and may not be waived. This condition must be satisfied no later than __________, 2018. Nothing in this Purchase Agreement shall be deemed to waive the City’s right to exercise ordinary and lawful discretion as a regulatory authority, with respect to the required subdivision and combination application.

c. **MARKETABILITY OF TITLE.** This Purchase Agreement is contingent upon Buyer’s determination, prior to closing, that the condition of title to the Sale Property is satisfactory to Buyers, in accordance with paragraph 4 of this Purchase Agreement. This provision is for the Benefit of Buyers and may be waived by Buyers.

4. **Title Examination.**

   a. **TITLE EXAMINATION.** Buyers are responsible for obtaining a title insurance commitment for an owner’s policy of title insurance for the Sale Property, including copies of all encumbrances listed therein (the “Commitment”). Buyers agree to take title subject to the following:

      (1) The deed of conveyance will contain the following restriction: “This conveyance is subject to the following restriction in favor of Grantor. The real property conveyed in this deed contains floodplain and wetland areas. Any use of the real property by the Grantee and successors in title must comply with applicable floodplain and wetland ordinances.

      (2) Easements and conditions, if any, required as a condition of subdivision approval.

      (3) Easements and encumbrances of record, if any, that do not interfere with Buyers’ intended use of the Sale Property.
Buyers must notify the City in writing of Buyers’ objections to the marketability of title. City shall have ten (10) days to indicate whether the City will undertake to cure one or more of Buyers’ objections to title, but City is under no obligation to cure such objections.

b. **Cancellation.** If title is not marketable, and City opts not to cure Buyers’ objections to title, Buyers may terminate this Purchase Agreement upon notice to the City. If Buyers terminate this Purchase Agreement, the parties must execute a cancellation of this Purchase Agreement.

5. **Closing and Possession.** The closing of the purchase and sale contemplated by this Purchase Agreement (the “Closing”) will occur at a date and time mutually acceptable to the parties, but not later than [date], 20__. The closing must be conducted by a title company of the Buyers’ choice. The parties acknowledge that Buyers are already in possession of the Sale Property.

   a. **Seller’s Closing Documents.** On the Closing Date, Seller must execute and/or deliver to Buyer the following documents, all of which must be in form reasonably satisfactory to Buyers’ title company:

      (1) Quit Claim Deed conveying Seller’s interest in the Sale Property to Buyers.

      (2) Affidavit of Seller, indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving either Seller or the Sale Property, and that there has been no skill, labor or material furnished to the Sale Property at Seller’s request for which payment has not been made or for which mechanics’ liens could be filed, and that there are no unrecorded interests in the Sale Property, with the exception of Buyers’ use and possession of the Sale Property.

      (3) A non-foreign affidavit executed by Seller, containing such information as required by IRC Section 1445(b)(2) and its regulations.

      (4) All other documents reasonably determined by Buyers’ title company to be necessary to transfer the fee interest in the Sale Property to Buyers in the manner required by this Purchase Agreement.

   b. **Buyer’s Closing Documents.** On the Closing Date, Buyers must execute and/or deliver to Seller the following:

      (1) Purchase Price, subject to adjustments as provided in this Purchase Agreement, by wire transfer of U.S. Federal Funds.

      (2) Such other documents as may reasonably be required by title.

6. **Prorations, Adjustments and Allocation of Costs.** The prorations and adjustments described in this section 7 will be made between Buyer and Seller at Closing:

   a. Taxes. Seller represents that the Sale Property is tax exempt. Buyer is responsible for real estate taxes due and payable in the years following closing.
b. **ASSESSMENTS.** Seller represents that there are no levied or pending special assessments against the Sale Property. Buyer will assume the obligation to pay installments of special assessments that become pending after Closing.

c. **TITLE AND CLOSING FEES.** Buyers are responsible for all costs necessary to effectuate the closing, including, without limitation, the costs of the Commitment, all premiums required for the issuance of any owner’s policy, the fee charged by the closer, document preparation costs for closing documents, certificates of real estate value, seller’s affidavit, well disclosure certificate, recording costs, and state deed taxes.

d. **ATTORNEY FEES.** Each party will pay its own attorney fees in connection with this transaction.

7. **Seller’s Disclosures.** Seller makes the following disclosures:

a. **WELL DISCLOSURE.** Seller represents that Seller does not know of any well on the Sale Property.

b. **SEPTIC SYSTEM DISCLOSURE.** Seller does not know of any individual sewage septic system located on the Sale Property.

8. **Environmental Condition.** Buyers are purchasing the Sale Property in an “AS IS” and “WHERE IS” condition. Buyers acknowledge and agree that Seller has not made, and is not making, any representation, statement, warranty, covenant or promise to Buyers about the Sale Property, including its physical aspects and condition, the condition of the soil on the Sale Property, the presence or absence of toxic wastes, hazardous materials, pollutants of any type, oil or petroleum products, asbestos or PCBs, the feasibility, the desirability, suitability, fitness or adaptability of any part of the Sale Property for any particular use, the availability of water, sewer, natural gas, or other utilities, the assessments, fees or charges that may be assessed by any district, taxing authority, or governmental or quasi-governmental entities, or the value of the Sale Property. On behalf of itself, its successors and assigns, Buyers release and hold the Seller harmless against any claims related to the environmental condition of the Sale Property or the presence of pollutants, contaminates or hazardous substances thereon, or any alleged violations of federal or state environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Minnesota Environmental Rights Act.

9. **No Broker Involved.** The Seller and Buyers warrant to each other that there is no broker involved in this transaction with whom it has negotiated or to whom it has agreed to pay a broker commission. Each party agrees to indemnify the other for all claims for brokers’ commissions or finder’s fees in connection with negotiations for the purchase of the Sale Property arising out of any alleged agreement, commitment or negotiation by that party.

10. **CANCELLATION; CITY REMEDIES.** Buyers acknowledge that their use and occupation of the Sale Property has been without City permission and constitutes a trespass. If the sale contemplated by this Purchase Agreement does not close for any reason, Buyers agree that the City is entitled to seek any or all available remedies against Buyers, including, without limitation, enforcement of city nuisance ordinances or an action for trespass to recover damages for Buyers’ use of the Sale Property.
11. **Entire Agreement; Amendments.** This Purchase Agreement constitutes the entire agreement between the parties and no other agreement prior to, or contemporaneously with, this Purchase Agreement is effective except as expressly stated in this document. Any amendment will not be effective unless it is in writing and executed by all parties or their respective successors or assigns.

12. **No Assignment.** Buyers may not assign their rights and interest under this Purchase Agreement.

13. **Notice.** Any communication that may or must be given by one party to the other will be deemed to have been given on the date it is deposited in the United States mail, registered or certified, postage pre-paid, and addressed as follows:

   a. If to Seller: City Manager  
      City of Minnetonka  
      14600 Minnetonka Boulevard  
      Minnetonka, MN 55345

   b. If to Buyers: Richard and Martha Theilmann  
      2430 Winter Circle  
      Wayzata, MN 55391

Either party may change this location by giving written notice to the other party specifying the new location.

13. **Specific Performance.** This Purchase Agreement may be specifically enforced by any party, and the prevailing party may recover reasonable costs and attorneys fees.

14. **No merger.** The terms and conditions of this Purchase Agreement shall not merge in the deed to be provided at closing but shall survive closing.

[Signature Page Follows]
The Seller agrees to the terms of this Purchase Agreement.

SELLER:

CITY OF MINNETONKA

By
Its Mayor

By
Its City Manager

The Buyer agrees to the terms of this Purchase Agreement.

BUYERS:

________________________________________
Richard D. Theilmann

________________________________________
Martha Miller Theilmann
EXHIBIT A

Land Sale to 2430 Winter Circle
Approximate Area 15,000 square feet
Ordinance No. 2018-

An Ordinance authorizing the sale of a portion of
city-owned property adjacent to 2430 Winter Circle

The City of Minnetonka Ordains:

Section 1. Findings and Purpose.

1.01 The city of Minnetonka owns real property legally described as Outlot A,
CHEYENNE TRAILS (the “City Property”).

1.02 The owners of abutting property at 2430 Winter Circle desire to purchase a
portion of the City Property, comprising approximately 15,000 square feet of land.
The legal description of the property to be sold will be determined by survey.

1.03 The city staff has negotiated a purchase agreement with the owners of the
abutting property.

1.04 The city council finds it is in the public interest to sell a portion of the city property
to the abutting owner, in accordance with the negotiated purchase agreement.

Section 2. Authorization.

2.01. The city council approves the sale of a portion of the City Property in accordance
with the purchase agreement.

Section 3. 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:
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 #13A  
Meeting of Oct. 8, 2018

Brief Description
Resolution vacating public drainage and utility easements at 2932 Beechwood Ave.

Recommendation
Hold the public hearing and adopt the resolution

Background

The property owner at 2932 Beechwood Ave. has petitioned to vacate obsolete drainage and utility easements that are located along both sides of a remnant lot line down the middle of the parcel. The property owner is requesting the vacation in order to build a new home on the site and the easements would prohibit having a buildable area that meets setbacks.

The addressed parcel consists of two platted lots, Lot 8 and Lot 9, THORPE BROS. GROVELAND SHORES. In 1965, a lot line adjustment split Lot 8 and combined half with the property to the north, and the other half with this property (to the south). As part of that approval, easements were conveyed to the city along the newly created lot line. In 1971, the north half of Lot 8 was combined back into this parcel.

In 1993, council approved an easement vacation along the southerly lot line of the combined parcels as the owner discovered that the existing home and garage (built in 1920 and 1955, respectively) encroached into the drainage and utility easement in that area. At that time, the owner did not request to vacate the easements being requested at this time as they did not conflict with these existing structures. Only now that there is a new home being considered is there a conflict with the other easements. The existing home would be proposed to be demolished for construction of the new home, however the detached garage would be planned to remain, so a new easement would not be reestablished along the southerly lot line to replace the 1993 vacated easement.

Staff Comment

All private utilities and appropriate city staff have reviewed the plan with no objections. The owner will be required to dedicate new easements along the northerly and easterly lot lines before the vacation will be considered valid and any building permit for a new home is issued.

Recommendation

Hold the public hearing and adopt the resolution approving the vacation of drainage and utility easements.

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

Originated by:
Sarah Krake, Right of Way/Property Coordinator
Resolution No. 2018-2018

Resolution vacating public drainage and utility easements at 2932 Beechwood Ave.

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

Section 1. Background.

1.01 Jennifer Hume Jorgenson has petitioned to vacate a portion of drainage and utility easements over the property at 2932 Beechwood Ave.

1.02 The portion of easements to be vacated is described as follows: That part of those drainage and utility easements originally created by documents 3592660 and 3592661 and further described as the south 7 feet of the north half of Lot 8 and the north 7 feet of the south half of Lot 8, Block 8, THORPE BROS. GROVELAND SHORES, except the west 7 feet thereof.

1.03 As required by law, a hearing notice on said petition was published in the City of Minnetonka’s official newspaper and written notice was mailed to the owners of each abutting property.

1.04 On Oct. 8, 2018, the city council held a hearing on the request, at which time all persons for and against the granting of said request were heard.

Section 2. Standards.

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

Section 3. Findings.

3.01 The Minnetonka City Council makes the following findings:

1. The petitioner is owner of the land containing the subject drainage and utility easements and is, therefore, a proper petitioner.

2. There is no anticipated public need for the obsolete easements and the owners will be granting replacement easements. The vacation is not counter to public interest.

3. According to city staff and private utility companies, there are no utilities located within the areas proposed to be vacated.

4.01 The city council vacates the right of way easements as described in section 1.02.

4.02 This vacation is only effective upon the filing of replacement drainage and utility easements along the northerly and easterly lot lines.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Oct. 8, 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 Oct. 8, 2018.

_________________________________
David E. Maeda, City Clerk
Proposed Easement Vacation
2932 Beechwood Ave

This map is for illustrative purposes only.
CERTIFICATE OF SURVEY
Survey for: JENNIFER HUME–JORGENSEN

EXISTING EASEMENT TO BE VACATED
NEW EASEMENT TO BE CONVEYED
EXISTING EASEMENT TO REMAIN

DESCRIPTION: Lots 8 and 9, Block 8, "THORPE BROS. GROVELAND SHORES"

I hereby certify that this survey was prepared by me or under my direct supervision, and that I am a
registered land surveyor under the laws of the State of Minnesota, dated this 28th day of June, 2018.

CARLSON & CARLSON, INC.
LAND SURVEYORS
Tele. No. (952) 888-2084

Larry R. Couture, Land Surveyor
Minnesota License No. 5018

SCALE: 1" = 20'

LOT AREA = 22,213 SQ.FT.
Fences shown cross property lines back and forth.

Denotes Iron Monument Found
O Denotes Iron Monument Set
City Council Agenda Item #13B  
Meeting of Oct. 8, 2018

**Brief Description**
Temporary on-sale liquor license for Episcopal Parish of St. David, 13000 St. David 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 Episcopal Parish of St. David (St. David’s) for an indoor fundraiser event at 13000 St. David Road.

**The Event**
St. David’s is requesting approval for a temporary liquor license in connection with its annual gala on Saturday, Nov. 10, 2018. This is an annual fundraising event, which supports their Outreach Ministries. The ICA Foodshelf ministry will be featured at this year’s event.

The event will be a single-day event with all activities in the evening from 5-10 p.m. inside the church building. The event will sponsor a silent auction, dinner, live auction, and entertainment. Champagne will be available during the silent auction and wine will be served only at dinner. Tickets to this event will be sold to adults over age 21. Identifications will be checked at the entrance. All of the event activity takes place in two rooms with adult parish members ensuring that there are no liquor consumption issues. The city did not encounter any issues with the event in 2017.

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. St. David’s has completed the license application, paid the fee, and provided proof of insurance. They are a non-profit charitable organization, and are therefore eligible for a temporary liquor license.

**Recommendation**
Staff recommends the council hold the public hearing and grant the temporary liquor license for the annual gala at St. David’s.

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

Originated by:
  Karen Telega, Community Development Assistant
On Saturday November 10th, St. David’s Episcopal Church will hold its Blessing and Bounty Outreach Gala. This is our major annual fundraising event to support our Outreach Ministries. Again this year we will coordinate this event with the ICA Foodshelf, who will share in the benefits. In past years we have raised $10,000 to $15,000 through this effort.

This will be a single-day event with all activities to be held on Saturday evening, November 10th, inside the St. David’s church building at 13000 St. David’s road. From 5:00 PM to 10:00 PM we will sponsor a silent auction, dinner, live auction, and entertainment. We anticipate selling up to 96 tickets for the evening’s activities. Tickets will be sold to adults only, and ID’s will be checked at the entrance. The main entrance to St. David’s church will be the only entrance to the event. We will lock and control all other outside doors during the event, and we will have specific adult parish members in attendance and assigned the task of being alert to insure that no abuses of liquor occur.

Champagne or sparkling cider will be available during the silent auction, and wine will be served at dinner. Soft drinks, water and coffee will also be served throughout the entire event. St. David’s members will procure and pick up all liquor products, and our caterer’s staff will be the only ones pouring wine. Our caterer has an ongoing contract to regularly use our church kitchen, and is familiar with our church members.

We are looking forward to another successful fundraiser, and appreciate the support of the City of Minnetonka and the City Council in securing our temporary liquor license.

Sincerely,

William R. Jacobs, Sr. Warden, Applicant
ST. DAVID'S EPISCOPAL CHURCH

GIFTS & GREENS

OK November 2018

ST. DAVID'S TEMPORARY LIQUOR LICENSE 2016
City Council Agenda Item #13C  
Meeting of Oct. 8, 2018

<table>
<thead>
<tr>
<th>Brief Description</th>
<th>On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for DelSur L.L.C., 14725 Excelsior Blvd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>Continue the public hearing from Aug. 27, 2018 and grant the license</td>
</tr>
</tbody>
</table>

**Background**

The city has received applications from DelSur L.L.C. dba DelSur Empanadas, for on-sale wine and on-sale 3.2 percent malt beverage liquor licenses, for use at the restaurant at 14725 Excelsior Blvd.

The applicants would like to open the restaurant as soon as possible. Their conditional use permit, with variances was approved at the Sept. 17, 2018 council meeting.

**Business Ownership**

DelSur L.L.C. is owned equally by Nicolas Nikolov and Diego Montero. Both Nicolas and Diego will serve as acting managers and meet the metro-area residency requirements of the city’s liquor ordinance.

**Business Operation Description**

The restaurant will be open for lunch and dinner. Currently, the establishment is licensed to operate a commissary kitchen and food truck from the restaurant. The council approved the conditional use permit on September 17 for the business to allow for a sit down restaurant for approximately 50 people inside with 8-12 employees on staff.

The submitted business plan includes four outdoor tables located on the adjacent sidewalk. Customers would be able to take their food out of the restaurant to eat on these tables. However, staff would not serve the outdoor tables. No liquor would be allowed to be consumed outside of the restaurant. In the past, staff has not considered these types of informal seating areas as “conditionally permitted outdoor seating area/patios.” If the applicant desires a more formalized seating area, a conditional use permit is required.

Anticipated hours of operation are Monday - Sunday: 11:00 a.m. - 9:00 p.m.

It is expected that no more than 10 percent of their sales will be from wine and beer.

**Application Information**

Application information and license fees have been submitted. The police department’s investigative report is complete and is satisfactory. The report will be forwarded to the council separately.
Resident Feedback

At the August hearing, a resident spoke at the meeting and was concerned about the conditional use permit with variances.

Recommendation

Staff recommends that the city council continue the public hearing from Aug. 27, 2018 and grant the licenses.

Submitted through:
  Perry Vetter, Assistant City Manager
  Julie Wischnack, AICP, Community Development Director

Originated by:
  Karen Telega, Community Development Assistant
Location Map
Project: Del Sur
Address: 14725 Excelsior Blvd
Business Plan

OWNERS
Nicolas Nikolov and Diego Montero
Business name: DelSur LLC
Address: 14725 Excelsior Blvd Minnetonka, MN 55345
Telephone: E-mail:

Form of ownership: Partnership L.L.C.

DelSur L.L.C. was formed in June of 2014. Initially, selling ready-to-bake empanadas online. In December 2014, DelSur started doing pop-ups at craft breweries in Minneapolis. In March 2016, DelSur Empanadas Food Truck started operating in the City of Minneapolis serving mostly local breweries and special events. In February 2017, DelSur expanded to serve the greater Metro area by obtaining the Minnesota Mobile Food Vendor License and participated in all (5) Food Truck festivals around the Twin Cities. February 2018, DelSur leased a former Café Space in Minnetonka and has been using the space as commissary kitchen since. The store will become DelSur Cocina Argentina and will have seating for a maximum of 50 people. The core menu will be empanadas but will also include, salads, traditional sandwiches, dessert, wine and beer. Target opening is October 2018.

General Company Description

Mission statement: to provide the Twin Cities area with authentic, affordable, freshly made Argentinian cuisine with a strong focus on empanadas.

We operate the only Argentinian Food Truck in Minnesota and are expanding our business to include a sit-down restaurant in Minnetonka were we currently have our commissary kitchen. The restaurant will include an expanded selection of empanadas as well as other items not currently offered in the Food Truck. Made from scratch and handcrafted individually, our food meets the highest standards of quality, freshness and seasonality combining both modern-creative and traditional Argentinian styles of cooking. Argentina is well known for its meat, soccer, tango, and Malbec wine amongst other things. As the first empanada focused and Argentinian restaurant in the twin Cities area, we plan on having a small selection of wines and local craft beers to satisfy the customers that enjoy having their food with a glass of wine or a local craft brew.
Our Target
Food Truck target:
• Downtown Minneapolis and Saint Paul Lunch
• Craft Breweries
• Corporate Campuses Lunch
• Private Parties (graduations, Weddings, Birthdays, corporate fundraisers, etc)
• Festivals (community, food truck festivals, Art, Music)

Our Minnetonka Restaurant:
• Capacity for seating 50 people inside and 4 tables outside
• Hours of Operation: 11am to 9pm Monday through Sunday
• 8 to 12 employees
• Food to wine/beer ratio: 90-95% food to 5-10% wine/beer
• DelSur will participate in the Best Practices Program “Project Smart Choice” offered by the city of Minnetonka to train all new hires (servers and Managers) within 60 days from hire. DelSur shares and fully supports the goal of this program to keep alcohol out of the hands of young adults. DelSur will be responsible for clearing tables of any left behind alcohol as soon as the customer leaves the premises.
• DelSur is committed to provide a clean and comfortable space for our customers and for the customers of surrounding businesses, we will be responsible for keeping our premises free of litter generated by the operation of the restaurant or left behind by our customers.

Most important strengths and core competencies: Making empanadas from scratch is labor intensive. Over the years, we have developed a system that allows us to optimize the empanada making process to be more efficient and productive. Besides being the only Argentinian Food Truck in MN, we are the only ones selling “Baked” empanadas as well as the only ones that make our own dough mitigating the dependency on suppliers or availability of the product and adding the craftsmanship and uniqueness of our product. Food aside, our operating model gives us an advantage over other food trucks because the serving time from the moment our customers order until they get their food is second to none without compromising the quality of our product. This is super advantageous in situations such as lunch hour in Downtown or Food Truck festivals where customers do not want to wait 15+ minutes for their food.

Significant challenges the company faces now and in the near future: The biggest challenge we might be facing, as well as many food businesses, will be to get the right talent to be able to produce the amount of empanadas required to supply the Food Truck and the retail shop, we estimate we will need to produce 10000 empanadas a month.

Short-Mid term: DelSur is ready for growth. Having a dedicated commercial kitchen (commissary) allowed us to significantly increase production while also facilitating the addition of a sit-down restaurant
**Long Term:** DelSur will be able to continue to grow by offering our product wholesale to restaurants, caterers and grocery stores. To achieve this level of production we would need to scale our operation even further (~8000 empanadas/week). This will be achieved by hiring more talent and acquiring the appropriate production equipment (already identified).

In the 5-year horizon and depending on demand, we envision DelSur to replicate the model we are using in the first sit-down restaurant into smaller, satellite stores with minimal investment (not full kitchen required) without compromising the quality and freshness of the product. To sum up the 5-yr plan, DelSur will have these different revenue streams:

a) Food Truck(s)
b) Catering
c) Sit-down
d) Take-out, delivery
e) Wholesale
f) Small empanada shops

**Products and Services**

Empanadas are simple, tasty and convenient. Their popularity has spread beyond the traditional countries like Argentina to become truly international. Empanada literally means “wrapped in bread” but this description does not do justice to the wonder of this Argentine staple. But don’t make the mistake of believing all empanadas are created equal. Made from scratch and handcrafted individually, our empanadas meet the highest standards of quality, freshness and seasonality combining both modern-creative and traditional Argentinian styles of cooking.

**Products**

For the past 3 years we have gathered customer’s feedback and it has been great. Some customers would write something on social media, some will come back to the truck to tell us how the food was, we haven’t received any negative feedback thus far. We have received requests for different types of empanadas, for example another vegetarian option beside Spinach, we listened and incorporated the Caprese and sweet corn to the menu, more to come. We are working on gluten free and vegan options and have tested those options with great results and feedback. Overall customers seemed to be happy and satisfied with both, quality and price of product.

**Features and Benefits**

**Empanadas:** Our Core product. Hand-crafted, Freshness,
growing in popularity, convenient (finger food), ethnic. The customer experience is all about eating something new to them but yet with familiar ingredients.

**Lomitos:** Simple, new, familiar ingredients and yet no many customers had eaten a sandwich prepared in this manner. The options for the lomito sandwich include: steak, chicken and a vegetarian option (eggplant).

**Choripan:** Traditional and popular Argentinian Sausage sandwich

**Saladas**

**Quiche**

**Customers**

As a mobile food vendor, customer vary depending upon where we are located. For example, Downtown Minneapolis would be professionals with the core group being between 24 and 40. At a brewery the crowd can range from College students to 60 with varying income and education levels. For the sit-down in Minnetonka our customers will be mostly families looking for more food options that currently are very limited to American style pub or pizza, craft brewery goers (we are in the same shopping center as Unmapped Brewing Co.), Argentinians and people from Latin America looking for and empanada shop in the cities.

**Competition**

**Sit-Down:**
Currently there are three places to eat around our location: Gold Nugget, an American style bar, and Gina Maria’s a take-out Pizza place and Dragon Jade, a typical Chinese food restaurant.

**Food Truck:**
Every Food Truck parked around us is competition. The difference is that we are selling a unique, high quality product and are the only Argentinian Food Truck in the cities. We are not the only empanada truck in the cities but competition with the other truck is minimal since our products are very different (baked vs. deep fried; from scratch vs, store bought dough; ethnic vs. generic).

**Distribution Channels**

- Retail Shop
- Food Truck
- Food delivery services
- Catering or private events
- Food Truck Festivals
For inclusion in DelSur liquor license application.

Begin forwarded message:

From: Tim Bergstedt <tbergestdt@eminnetonka.com>
Date: October 2, 2018 at 1:46:33 AM EDT
To: Brad Wiersum <bwiersum@eminnetonka.com>, Geralyn Barone <gbarone@eminnetonka.com>
Subject: Fwd: liquor license

Hello to the both of you...sending this just as a FYI...have a great Tuesday when it starts for you!  Tim

Sent from my iPhone

Begin forwarded message:

From: CenturyLink Customer <redacted>
Date: October 1, 2018 at 10:36:26 PM GMT+1
To: tbergestdt@eminnetonka.com
Subject: liquor license

We just saw that the new restaurant in the Glen Lake Shopping Center has applied for a liquor license. That will make five such licenses within a two block range in the Glen Lake Area. We feel that this is excessive. There is now a serious parking problem in that center and the situation will only be worse. What small businesses remain in the center will be driven out by lack of parking. The brew pub has already created a problem for those of us that go there for other businesses and we only expect it to get worse, especially with the new restaurant opening in the former Dairy Queen site. Progress is not a bad thing, but this kind of progress is creating issues for the community.

Pam and Ron Olberg
City Council Agenda Item #13D  
Meeting of Oct. 8, 2018

Brief Description  
On-sale intoxicating liquor license for Olive Garden Holdings, LLC, at 11390 Wayzata Blvd.

Recommendation  
Open the public hearing and continue to Nov. 5, 2018

Background

The city has received a liquor license application from Olive Garden Holdings, LLC for an on-sale & Sunday on-sale intoxicating liquor license for a new restaurant. Olive Garden has submitted a planning application to redevelop the site of the current Avenida restaurant. The plans include removing the existing restaurant building in order to construct a new restaurant. The plans also include parking lot and landscaping improvements around the new building. The approval of the licensed premise is subject to the conditions of approval for the requested site and building plan review (no council review required) scheduled for the planning commission hearing on Oct. 18, 2018.

Business Ownership

Olive Garden Holdings, LLC has a sole member GMRI, Inc. which operates as a subsidiary of the publically traded parent company Darden Restaurants, Inc. The applicant has provided the minutes certifying the officers of the company.

Business Operations

The restaurant will be approximately 7,800 square feet and will be built on the former Avenida site near 394 and Hopkins Crossroad. The proposal anticipates seating for 255 indoor guests. The restaurant will be open the following hours:

- Sunday – Thursday: 11 a.m. - 10 p.m.
- Friday - Saturday: 11 a.m. – 11 p.m.

Projected food to liquor ratio will be 90% food and 10% alcohol.

The company has not selected a general manager of the restaurant at this time.

Staff will receive in-house alcohol training for alcohol service to ensure no issues occur (see business plan).

Applicant Information

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

Staff recommends that the city council open the public hearing and continue the hearing to Nov. 5, 2018.

Submitted through:
  Perry Vetter, Assistant City Manager
  Julie Wischnack, AICP, Community Development Director

Originated by:
  Karen Telega, Community Development Assistant
BUSINESS PLAN

APPLICANT: Olive Garden Holdings, LLC

SOLE MEMBER: GMRI, Inc.

PARENT COMPANY: Darden Restaurants, Inc., whose stock is publicly traded on the New York Stock Exchange

LICENSE FILED FOR: On-Sale & Sunday On-Sale Intoxicating

PROPERTY LEASED FROM: CSM West Ridge, Inc.

SEATING: 255 seats

SQUARE FOOTAGE: 7,794 square foot restaurant

PROPOSED OPENING DATE: approximately 10/7/19

EMPLOYEES: Approximately 100

HOURS OF OPERATION: Sunday – Thursday – 11 a.m. to 10 p.m.  
Friday & Saturday – 11 a.m. to 11 p.m.

PROJECTED REVENUE: 90% Food, 10% Alcohol

IN-HOUSE ALCOHOL TRAINING PROGRAM: Olive Garden has an extensive alcohol awareness training program which addresses the following:

- Proper carding procedures (must card anyone who appears to be under the age of 30
- Acceptable ID’s
- Spotting the Fakes
- Signs of Intoxication
- Preventive Measures
- Guidelines for Dealing with an intoxicated guest
- Employee is tested and signs acknowledgment of training policy
FURNISHINGS SCHEDULE

GENERAL NOTES:
- Simple sketches of furniture to be reviewed by Client
- Furnishings to be supplied by Contractor

TABLE TOPS

- Finish code color on table top is to be reviewed by Contractor

FURNISHINGS AND FLOOR FINISH PLAN

FLOOR FINISH PLAN

- 11390 Wayzata Blvd.
  Minnetonka, MN 55305

SEATING COUNT - PT16 REN

- Dining Room: 8-27-18
- Northeast Contractors

11390 Wayzata Blvd.
Minnetonka, MN 55305

A1.2
City Council Agenda Item #14A
Meeting of Oct. 8, 2018

Brief Description
Items concerning VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road:

1) Ordinance rezoning the property from B-1 and R-1 to R-3; and

2) Resolution approving preliminary and final plats, with variances.

Recommendation
Adopt the ordinance and the resolution approving the proposal

Background
In 2017, Quest Development, Inc. presented a concept plan for redevelopment of two, single-family residential properties at 5517 and 5525 Eden Prairie Road. The plan contemplated development of five villa homes, sometimes referred to as detached townhomes. At 3.3 units per acre, the plan would be consistent with the sites’ low-density designation in the 2030 Comprehensive Guide Plan. Low density is defined as up to four units per acre. The city council generally indicated that the housing type was desirable, though the number of units and site design details would need to be evaluated in greater detail.

Proposal
Quest Development has now submitted formal applications for redevelopment of the two sites. Though the location of the access drive has shifted, the submitted plans are similar to the concept plans.

Planning Commission Review and Recommendation

The planning commission considered the proposal on Sept. 20, 2018. The commission report, associated plans, and meeting minutes are attached. Staff recommended approval of the proposal, finding:

1. The proposal is generally consistent with the 2016 Glen Lake Neighborhood Study and specifically consistent with site’s low-density designation in the 2030 Comprehensive Guide Plan.

2. The requested variances are reasonable. They would not impact the already eclectic development pattern in Glen Lake.

3. The anticipate site impact is reasonable. The current plans represent a significant improvement to the plans originally submitted, in that the plans protect the spruce and pines along the west side of the site and several deciduous trees along the north property line. Area property owners, commissioners, and councilmembers had requested that efforts be made to reduce impacts to these areas.
At the commission meeting, a public hearing was opened to take comment. Two area property owners addressed the commission, expressing concerns about stormwater management and tree removal. Following the public hearing, the commission discussed the proposal and asked a variety questions of related to stormwater and snow storage. On a 6-0 vote, the commission recommended that the city council approve the redevelopment.

**Staff Recommendation**

Staff recommends that the city council adopt the following related to VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road:

1) Ordinance rezoning the property from B-1 and R-1 to R-3; and

2) Resolution approving preliminary and final plats, with variances.

Submitted through:
- Perry Vetter, Assistant City Manager
- Julie Wischnack, AICP, Community Development Director
- Loren Gordon, AICP, City Planner

Originated by:
- Susan Thomas, AICP, Assistant City Planner
Brief Description

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

1) Rezoning from B-1 and R-1 to R-3;

2) Preliminary and Final Plats, with variances; and

3) Variances for detached dwellings and setbacks.

Recommendation

Adopt the ordinance and resolution approving the proposal

Background

In 2017, Quest Development, Inc. presented a concept plan for redevelopment of two, single-family residential properties at 5517 and 5525 Eden Prairie Road. The plan contemplated development of five villa homes, sometimes referred to as detached townhomes. At 3.3 units per acre, the plan would be consistent with the sites’ low-density designation in the 2030 Comprehensive Guide Plan. Low density is defined as up to four units per acre. The city council generally indicated that the housing type was desirable, though the number of units and site design details would need to be evaluated in greater detail.

Formal Application

Quest Development has now submitted formal applications for redevelopment of the two sites. Though the location of the access drive has shifted, the submitted plans are generally consistent with the concept plans. The proposal requires:

- **Rezoning.** To facilitate the proposed development, the properties would be rezoned to R-3, low-density residential.

- **Preliminary and Final Plats, with variances.** Under the subdivision ordinance, all lots must have frontage on the public right-of-way from which they will take their access. As proposed, three would be developed without frontage on a public street.

- **Variance for Detached Dwellings and Setbacks.** Within the R-3 zoning district, attached (townhome) dwelling units are allowed. The proposal is for detached homes.

Proposal Summary

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

- **Existing Site Conditions.**
The roughly 1.5-acre site is located on the east side of Eden Prairie Road, just south of Stewart Lane. The site contains a several noticeable natural features, including a steep slope – or bluff, as defined by the shoreland ordinance – and 20 high-priority trees. Until recently, the site also contained two single-family residential homes.

- **Proposed Lots.**

As proposed, the combined site would be divided into five lots served by a private driveway.

<table>
<thead>
<tr>
<th>Lot Area</th>
<th>Lot Width</th>
<th>Lot Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>REQUIRED</td>
<td>10,000 sq.ft.</td>
<td>N/A</td>
</tr>
<tr>
<td>Lot 1</td>
<td>10,300 sq.ft.*</td>
<td>80 ft</td>
</tr>
<tr>
<td>Lot 2</td>
<td>10,855 sq.ft.*</td>
<td>90 ft</td>
</tr>
<tr>
<td>Lot 3</td>
<td>14,155 sq.ft.</td>
<td>65 ft</td>
</tr>
<tr>
<td>Lot 4</td>
<td>12,770 sq.ft.</td>
<td>50 ft</td>
</tr>
<tr>
<td>Lot 5</td>
<td>15,500 sq.ft.</td>
<td>55 ft</td>
</tr>
</tbody>
</table>

* requires slight shift of property line, per staff-drafted plan.
All numbers rounded down to nearest 5 square feet or 5 ft

- **Proposed Homes.**

The current proposal is for subdivision of the property only. If approved, a separate builder would be commissioned for construction of the homes. The specific design of the homes would be administratively reviewed through the building permit application process.

The applicant’s intent, as outlined during the concept plan and the more recent city council introduction, is that the homes would offer single-level living. Conceptual floorplans and renderings suggest roughly 2,000 square foot footprints and 1½ story front facades. The more specific site plans illustrate the following setbacks from property lines.

<table>
<thead>
<tr>
<th>Front *</th>
<th>Side*</th>
<th>Rear*</th>
</tr>
</thead>
<tbody>
<tr>
<td>REQUIRED</td>
<td>50 ft</td>
<td>15 ft</td>
</tr>
<tr>
<td>Lot 1</td>
<td>35 ft</td>
<td>10 ft</td>
</tr>
<tr>
<td>Lot 2</td>
<td>35 ft</td>
<td>30 ft</td>
</tr>
<tr>
<td>Lot 3</td>
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<td>20 ft</td>
</tr>
<tr>
<td>Lot 4</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Lot 5</td>
<td>n/a</td>
<td>10 ft</td>
</tr>
</tbody>
</table>

* from exterior lot lines
v variance required
Primary Questions and Analysis

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

- **Is the proposed land use and density appropriate?**

  Yes. Within the 2030 Comprehensive Guide Plan the site is designated for low-density residential development. Low-density is defined as four or less units per acre. The proposal would result in a development density of 3.3 unit per acre. As such, the proposed land use and density is specifically appropriate. From staff’s perspective, the proposal is also generally appropriate in light of the 2016 Glen Lake Neighborhood Study. That study envisioned residential development on the site that differs from code-standard, R-1, 22,000 square foot lots. (The Glen Lake Neighborhood Study can be found here: [https://eminnetonka.com/current-projects/planning-projects/1140-glen-lake-study](https://eminnetonka.com/current-projects/planning-projects/1140-glen-lake-study).)

- **Are the requested variances reasonable?**

  Yes. The proposal requires several variances. In staff’s opinion, these variance are reasonable.

  ✓ **Lots Without Frontage.** There are several residential developments in the surrounding area that contain properties without frontage on a public right-of-way, including both townhome developments and single-family lots. Given this, the proposed lots would not out of character.

  ✓ **Detached Homes.** The arrangement of an attached townhome development on the site would likely be different that the proposed site arrangement. However, in staff’s opinion, the difference in site design would result in very little – if any – difference in overall site impact. Given this, whether the residential product is attached or detached matters little from a site perspective.

  ✓ **Front Yard Setback.** As proposal includes 35-foot setbacks from the Eden Prairie Road Property line. The actual separation between the homes and the paved surface of the roadway would be roughly 60 feet. Further, the 35-foot setback would be allowed if the property were zoned R-2 or R-1A. The proposal also includes 10 foot side yard setbacks from the development’s south property line. These setbacks could be increased to 15 feet with a northward shift of property lines and homes. However, such shift would likely impact several trees along the development’s north property line. Area property owners, commissioners, and councilmembers had requested that efforts be made to reduce impacts to this area.

- **Are the proposed site impacts reasonable?**

  Yes. To accommodate the proposed development grading would occur on the westerly half of the site. Generally, one to five feet of excavation would be necessary. The plans submitted suggest that this grading activity would result removal of, or significantly impact to seven of the site’s high priority trees. This 35 percent removal/impact would meet the standards of the tree protection ordinance. However, this level of removal/impact is
predicated on very “tight” construction limits. Staff is concerned that that removal/impact would likely increase to eight, or 40 percent, during actual construction. To ensure the ordinance is met, staff is suggesting a slight change to the grading plan in the area of spruce and pines adjacent to Eden Prairie Road. No grading or tree removal would occur with the code-defined bluff or bluff impact zone.

The current plans represent a significant improvement to the plans originally submitted, in that the plans protect the spruce and pines along the west side of the site and several deciduous trees along the north property line. Area property owners, commissioners, and councilmembers had requested that efforts be made to reduce impacts to these areas.

Summary Comments

The VILLAS OF GLEN LAKE would result in a visual change to the immediate area. However, in staff’s opinion, it would not negatively impact the character of the area. The development site is uniquely located within the Glen Lake Village Center. With access to a county road, the site abuts a small office building, a medium-density townhome development, and a conditionally-permitted, licensed residential care facility. The VILLAS OF GLEN LAKE would not disrupt any clear development pattern or aesthetic character. Further, the proposal would be consistent with the Comprehensive Plan, the Glen Lake Neighborhood Study, and the already eclectic mix of land uses and residences in the area.

Staff Recommendation

Recommend the city council adopt the following, pertaining to the properties at 5517 and 5525 Eden Prairie Road.

1) An ordinance rezoning the properties to R-3, low-density residential; and

2) A resolution approving the preliminary and final plats, with variances, of VILLAS OF GLEN LAKE

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

**Surrounding Land Uses**
- North: office building, zoned B-1
- South: licensed residential care facility, zoned R-1
- East: retail/warehouse property, zoned commercial
- West: Eden Prairie Road and single-family homes beyond

**Planning**
- Guide Plan designation: low-density residential
- Existing Zoning: B-1 and R-1

**Steep Slopes and Bluffs**
The highest point of the subject property is situated in the northwest corner of the site. The property slopes downward in all directions from this point. The easterly third of the site (roughly) slopes downward toward Glen Lake and is defined as a steep slope/bluff.

By city code, a steep slope is one in a slope that: (1) has an average grade of 20 percent or more; (2) that covers an area at least 100 feet in width; and (3) that rises at least 25 feet above the toe – or bottom – of the slope to the top of the slope. The code goes on to define how the toe and top of slope are determine, which may or may not correspond to the visual bottom and top of the slope. Depending on the grade percentage, certain development and construction actives may be allowed within steep slope areas located outside of the shoreland overlay district.

With the shoreland overlay district, steep slopes are called “bluffs.” This different wording is required by the Minnesota Department of Natural Resources. Very limited actives are allowed within bluffs and a bluff impact zone, which is essentially a 20-foot setback from top of the bluff. The proposal would not encroach within the bluff or bluff impact zone.

**Grading**
To accommodate the proposed development grading would occur on the westerly half of the site. Generally, the knoll on the site would be lowered, with excavation of one to five feet of soil.

**Tree Impact**
The property contains a total of 76 regulated trees. Based on the submitted plans:

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<tr>
<th></th>
<th>Existing</th>
<th>Removed*</th>
<th>% Removed</th>
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<tr>
<td>High Priority</td>
<td>20</td>
<td>7**</td>
<td>35%</td>
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<tr>
<td>Significant</td>
<td>56</td>
<td>16</td>
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* By city code, a tree is considered removed if 30 percent or more of the critical root zone is compacted, cut, filled or paved.
** with slight grading modification, which is a condition of approval.

The level of tree removal/impact would be permitted under the tree protection ordinance.
Tree Mitigation

Based on the anticipated tree removal, seven, six-foot evergreen trees and two, two-inch deciduous trees must be planted as mitigation for tree removal. The applicant’s submittal includes a landscape plan that would exceed this mitigation requirement.

Stormwater

As proposed, stormwater runoff would be directed to several catch basins and directed via pipe to an underground facility. This facility would outlet to an infiltration basin, which would ultimately outlet to the public storm sewer system.

Engineering staff has reviewed the plans associated with the proposal and believes, with some technical modifications, it can meet city stormwater rules. As a condition of approval, final plans must meet both the city’s Water Resources Management Plan standards and Nine Mile Creek Watershed District rules.

Utilities

Public water and sewer facilities are available in Eden Prairie Road. As proposed, new sewer and water mains would be extended into the site and private services would then be connected to these mains.

Homeowners Association

As a condition of approval, a homeowners association would need to be established to ensure maintenance of the private driveway, private utilities, stormwater facilities, and landscaping.

Traffic

It has not been the city’s practice to commission traffic studies for single-family residential developments. The city’s traffic consultants have frequently suggested that single-family homes generate, on average, 10 vehicle trips per day. This is number is supported by Institute of Transportation Engineers (ITE) data that suggests 9.57 vehicles trips per day. Using these numbers, the proposal would generate roughly 50 daily trips. This would certainly be more trips than the two homes previously located on the site. However, given that Eden Prairie Road carries approximately 7,300 vehicles per day, staff does not anticipate that these trips would impact the roadway operations.

The proposal was forwarded to Hennepin County for review. The county requested dedication of additional right-of-way and easement, which has been shown on the current plans, and restriping of Eden Prairie Road to provide for a center turn lane, which has been included as a condition of approval.

Pedestrian Improvements

At the request of city staff, the proposed plans include construction of a sidewalk between the site and the north property line. However, the sidewalk would not meet Hennepin County standards and would likely impact a stand of pine and spruce trees that must be saved for the tree ordinance standards to be met. As such, staff is no longer suggesting that the sidewalk be constructed at this time. However, staff would support such construction as part of a larger county roadway project in the future.
Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with the staff recommendation. In this case a motion should be made recommending the city council adopt the ordinance 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 five members, due to the variances.

Neighborhood Comments

The city sent notices to 223 property owners and has received no written comments to date.

Deadline for Action

OCTOBER 22, 2018
Project: Villas of Glen Lake
Address: 5517 & 5525 Eden Prairie Rd

Subject Properties
CONCEPT PLAN
• Reviewed a concept plan for Dominium apartments that would be located in Opus. The use and density was found to be appropriate. Integrating parks and trails in Opus was discussed.

There was a comprehensive guide plan meeting December 11, 2017 and the next one will be in January 2018. Please check the city’s website, eminnetonka.com, to confirm the date.

The next planning commission meeting will be January 4, 2017.

6. Report from Planning Commission Members

Schack reported on how the comprehensive guide plan meeting focused on economic development. She encouraged everyone to watch the presentation and discussion on line. Powers agreed that it is good to get involved and learn how a city operates.

Calvert attended the mountain bike meeting that had over 200 interested parties in attendance. There is a lot of education needed to learn about mountain-bike trails.

7. Public Hearings: Consent Agenda

No item was removed from the consent agenda for discussion or separate action.

Calvert moved, second by Powers, to approve the item listed on the consent agenda as recommended in the staff report as follows:

A. Time extension for a parking lot setback variance from 20 feet to 5 feet at 11311 K-Tel Drive.

Approve a 12-month time extension.

Knight, O’Connell, Powers, Schack, Sewall, Calvert, and Kirk voted yes. Motion carried and the item on the consent agenda was approved as submitted.

Chair Kirk stated that this motion may be appealed to the city council if requested in writing within 10 days to planning staff.

8. Public Hearings: None

9. Other Business

A. Concept plan review for The Villas of Glen Lake at 5517 and 5525 Eden Prairie Road.

Chair Kirk introduced the proposal and called for the staff report.
Thomas reported. Staff recommends that the planning commission provide comments and feedback on the identified key issues and other issues 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.

Blaine Waters, Quest Development, applicant, stated that:

- He lives in the Glen Lake community.
- There is a desire for this type of housing priced below the $800,000s.
- The intent is for the area to be walkable and this type of housing would fit with that vision.
- He welcomed comments and questions.

Powers asked for the price point. Mr. Waters was hoping for $550,000 to $650,000. It would be difficult to have the price any lower due to land and building costs. There would be 1,450 square feet on the main level and another 1,000 square feet in the basement. Mr. Waters was still researching if a second-story option would be offered. He predicted that most of the houses would be rambler style.

Chair Kirk confirmed with Mr. Waters that the houses would have walk-out basements.

In response to Powers’ question, Mr. Waters said that the backyards would be minimal and geared toward empty nesters. There would be small areas to congregate and entertain. The steep-slope, wooded area would not be able to be developed.

Chair Kirk invited those present to provide comments.

Greg Olson, owner of the office building at 5509 Eden Prairie Road, stated that:

- He would like a buffer between his lot and the proposed site. He would like a fence and landscaping.
- A five-foot setback seems too small.
- He invited commissioners to walk the property. He marked the property line. The corner of his office building is 17 feet from the property line.
- He is worried about water flooding his basement and parking lot on the east side.
- He thought five houses would be considered high-density residential. He was concerned with the amount of hard cover surface.
- He was worried about losing trees located on the property line.
- Neighbors have walked through his property for years with dogs and people have dumped garbage in his dumpster. Neighbors have dumped grass clippings on his property. He has had people sleep in their vehicles in the parking lot or leave their vehicles in the lot overnight.
- He takes pride in the parking lot. The plan upset him.
- He was worried about people walking through his parking lot.
• When Highway 169 was closed, traffic was backed up along Eden Prairie Road.
• He was concerned that the proposal’s snow would be dumped in his parking lot.
• The vehicle lights would shine in his windows.

Thomas appreciated the drainage, buffering, and setback questions which would be looked at if a formal application would be submitted. The concept plan may fit zoning for a PUD or R-3, low or medium density residential district.

Sewall stated that there should be an increase in buffering that corresponds with a decrease in the size of setbacks. As much natural buffering as possible would be the best option. He did not think empty nesters would walk around a parking lot too much.

Calvert suggested maintaining the mature trees between the properties to maintain the buffer and natural feel.

Chair Kirk stated that new townhomes at an affordable price are needed in the city. However, the proposal would sacrifice too much in terms of the volume of space that would be covered by hard surface. The root zones of the neighbors’ trees should be protected. That would require a little more than the five-foot setback. He struggled with the density. He was not as concerned with the hydrology, but the trees on the north and south would have to be protected. There could be a problem if the street would be widened or a sidewalk or trail added.

Calvert agreed that new, single-level housing stock is in desperate need. The natural buffer and preserving the root zones of the mature trees located between the site and neighbor are important. The houses would be located close to Eden Prairie Road which could become problematic if the street would be expanded or a sidewalk or trail added.

Schack concurred. The tree ordinance provides specific requirements that could be met by preserving the trees on the steep slope, but clear-cutting trees adjacent to the neighbor is not appealing. She encouraged incorporating the wooded areas into the plan.

Powers said that if the villas already existed and a commercial building would be proposed where it is now, then the commercial building would not be allowed to have such a small setback to the property line.

O’Connell asked if the city would have the ability to build a sidewalk north of the site. The trees located between the properties are important. He asked for the amount of buildable area and setbacks for an office building on the property zoned for an office building. He supports this type of housing. The proposal would provide a transition from an office building to single-family residential housing.

Calvert asked if there would be sustainable aspects to the proposal. Mr. Waters explained that the building code now requires many sustainable practices. The proposal
would meet or exceed code requirements. It would be cost prohibitive to utilize geothermal or solar power for five villas.

Chair Kirk thought that the Groveland Pond villas are too large for the setbacks. The volume of the houses in The Sanctuary creates a more aesthetically pleasing development.

Calvert liked that the proposal would provide a transition from commercial to single-family housing.

Knight did not have a problem with the setbacks between the proposed houses, but he did not like the north side yard setback. That would be too tight. He asked how the private drive would be regulated. Thomas answered that the city must approve a private street, it was not a given. A private street must be able to support the weight and turning radius of the largest fire truck. There is a minimum private drive/street width requirement of 20 feet and 14-foot vertical requirement.

Calvert noted the issues of guest parking and snow removal.

Knight noted the large setback on the south side. He suggested moving the houses further south.

The city council is tentatively scheduled to review the concept plan on January 8, 2018.

10. **Adjournment**

   *Calvert moved, second by Powers, to adjourn the meeting at 7:27 p.m. Motion carried unanimously.*

   By: __________________________________
   Lois T. Mason
   Planning Secretary
Acomb moved, Wagmer seconded a motion to continue the public hearing to Feb. 26, 2018. All voted “yes.” Motion carried.

14. Other Business:

A. Resolution declaring vacancy in the council seat for Ward 3

Barone gave the staff report.

Wagner moved, Calvert seconded a motion to adopt resolution 2018-003 declaring vacancy in the council seat for Ward 3. All voted “yes.” Motion carried.

Wagner what the process would be once the council called for a special election. City Clerk David Maeda indicated staff was working on a calendar that would identify key dates for the election including when candidate filing and absentee voting would occur. This would be provided to the council at its Jan. 22 meeting.

B. Concept plan review for The Villas of Glen Lake at 5517 and 5525 Eden Prairie Road

City Planner Loren Gordon gave the staff report.

Acomb asked what the different requirements were for a private drive and a public street. Gordon said the two primary differences were who owns it and who maintains it. For access reasons, the city generally likes to have the streets built to pretty similar standards. The city code standard is for a 24 foot wide road and that standard was what was proposed for the private street. He said staff generally prefers a public street over a private street because long term there was more benefit to the residents who would otherwise incur more costs over time.

Ellingson asked what restrictions existed for building in the bluff area. Gordon presented a graphic that showed the restrictions. A twenty foot buffer represented what the setback would be from the top. Ellingson asked if the council could grant a variance. Gordon indicated a variance could be granted to minimize the impacts.

The developer, Blaine Waters, 5068 Holiday Circle, said the five units were consistent with the city’s overall vision for the area. The plan was also in line with the city’s housing goals and bringing in a variety of housing stock. The hope was to bring in five units that would provide mostly main level living to the Glen Lake area.

Wagner asked Waters to explain why he chose the layout he did. Waters said there were multiple iterations of what a layout might look like with the type of unit in mind. One of the bigger reasons he ended up with this concept was based on the bluff line. A topographic survey and tree inventory were done. He said it wasn’t entirely clear through the process where the actual bluff line was. He
came to find there was a defined equation on determining the bluff line. This plan took that into account. Wagner said, similar to this plan, there was a development on Williston Road that he shudders every time he drives by because the home’s back porch faces a major county road. This make it feel less residential. This combined with the setback gave him pause about the concept plan. He said the proposed use was a needed use in the city. He liked that the plan protects a sensitive natural area. He had concerns with the setbacks because five feet felt too close. He wasn’t sure he could support the current layout.

Acomb said she shared some of Wagner’s concerns in large part with the setback to the north. She thought the layout could be done differently. The homes were close together because the whole width of the property could not be used. She said she would like to see a sidewalk along County Road 4. This would help address some of the concerns that were raised at the planning commission meeting. She appreciated the woodland preservation area. She hoped the builder would be mindful of some of the existing trees in the building area.

Calvert noted she was on the planning commission when the concept plan was presented. She shared all the concerns that were raised. She was appreciative of the mindfulness of the woodland preservation area. She also would like to see the sidewalk. She said in some ways the plan was a nice transition from the very large lot single family homes to the more commercial area. However the proximity to Eden Prairie Road when the rest of the homes were set so far back felt strange. She shared the concern about having the back of the house up against County Road 4. She also heard the business owner’s concern about not having adequate buffer between the development and his business.

Ellingson said he was concerned about the tree loss and the grading that would happen. He noted another property on Williston Road north of the daycare where the houses were removed and all the trees are gone. Because of the topography of the area, he was apprehensive that everything would be leveled from Eden Prairie Road back to the bluff line.

Wiersum said the need for this type of housing made the plan attractive. He was concerned about the five foot setback. He said this was the classic Minnetonka development proposal because the city had challenging sites with the topography and trees. He liked the woodland preservation and bluff preservation area but he thought there was a lot trying to be squeezed on to the rest of the property. If there were fewer units the developer would have more space to work with but he understood the reality of the cost of land in the city and the challenge of making it all work. He said this was a good location for this type of housing.

Greg Olson, the owner of the neighboring dental office, distributed information about the trees in the area. He noted generally developers calculate setback using the foundation not the soffits. In this case using measurement from the soffits, it would mean the homes would be two to three feet from his property line and not five feet. He said there was also a water issue with the whole terrain going down to his property. He was worried about the amount of hard surface.
He said there needed to be some type of barrier between the properties to prevent the residents from walking through as well as dumping garbage on to his property. Because there was no sidewalk on the east side of Eden Prairie Road it was dangerous for pedestrians. Currently the pedestrians walk through his property to avoid walking on the road. He was concerned about the increase in traffic from the development, snow removal and the amount of trees that would be removed.

C. Concept plan review for Ridgedale Executive Apartments at 12501 Ridgedale Drive

Robert Weinstine, an attorney with the Winthrop & Weinstine law firm, said he represented the property owner. Since the council last saw the concept plan, the property owner seriously considered all the feedback he received from the council. Neighborhood issues were reflected upon. Earlier in the day there was a neighborhood meeting that was attended by five or six people and also city staff. He said the plan was generally well received. As a result of listening to the neighbors, the building height was reduced from six stories to five stories. This was a significant financial contribution from the property owner given all the amenities that were being included to make it a first class development. For comparison, he noted the building at 1700 Plymouth Road was six stories. The building southeast of the YMCA was four stories and was much closer to residential homes and the topography was much higher. In addition to reducing the size of the building, the building was moved further back on the property. As a result the closest home would be 423 feet away. The area was wooded and the plan would not affect the trees in any way. The design of the building has been softened. The proposed path was removed. He said the development would be very attractive to empty nesters and young professionals.

Gordon and Community Development Director Julie Wischnack gave the staff report.

Wagner noted the reduced height was about seven feet while most apartment buildings a story was eight to 12 feet high. He asked if part of the reason for this was the amount of parking, which was 250 parking spots for 93 units. He asked if this was discussed at the neighborhood meeting. Gordon said the information Wagner was referencing was a staff interpretation and not from the architect. He said the concept plan indicated floor to ceiling heights around 10 feet. There would also be around two to three feet between floors. As far as the parking, he noted the office building was part of the site. The plan was for two to three spots per unit, visitor parking spots, plus spots for the office building. Staff would do more analysis on the parking if an application was submitted.

Jesse Hamer, from Momentum Design Group, the architect for the project, said the revised height of the building would be about 65 feet, about a nine foot reduction. The current plan met the city’s full parking requirement. There were two spaces per units and 57 spaces for the office building. He said in addition to moving the building back, there was an effort to increase the connection to the pedestrian walk area. There also was a plaza area added in front of the building.
FORMAL APPLICATION
April 26, 2018

Susan Thomas
Asst. City Planner
14600 Minnetonka Blvd
Minnetonka, MN 55345

RE: Preliminary Submittal for VILLAS OF GLEN LAKE development

Dear Ms. Thomas:

On behalf of the Applicant/Developer, Mr. Jim Waters, Quest Development, Inc., Loucks is submitting the attached Preliminary Plat documents for VILLAS OF GLEN LAKE, a new single family residential subdivision. We offer the following comments regarding this submittal:

**Preliminary Plat:**

The existing site includes two single family residential dwellings. The proposed Preliminary Plat includes a total of 5 new single family lots. The plat includes a common driveway, combining the two existing driveways into one access from Eden Prairie Road (CR 4). An ingress/egress easement will be obtained for all lots for access rights.

The site contains a ‘Bluff’ along the east end of the site. A 20’ buffer is shown from the bluff edge which will be preserved with no disturbance to the existing ground.

**Rezoning:**

The current zoning is B-1 & R-1. The applicant is requesting rezoning to R-2, Low Density Residential District. All of the lots meet the required setbacks. The only exception is the lot area. The minimum lot area in R-2 is 12,500 SF. The proposed lots 1 & 2 are 10,651 and 10,795 SF, respectively. The average lot area = 12,964 SF. The impetus for the smaller lots is the requirement to not disturb the bluff including the 20' bluff setback area. Therefore, the rear lots are extra-large to protect the bluff area.

The proposed rezoning is consistent with the land use plan and is compatible with the zoning of adjacent properties.

**Stormwater Management:**

The VILLAS OF GLEN LAKE development has been designed to efficiently and sensitively handle stormwater management concerns. Both NURP standards and infiltration basins are used to address the runoff from the site. The overall effect meets pre-development runoff rates for both rate and volumes while protecting adjoining parcels from negative drainage concerns. The requirements of the Nine Mile Creek Watershed District are also included in the design.
Wetlands:
There are no delineated wetlands on the site

Tree Preservation:
The tree preservation plan includes an inventory of the existing trees within the property boundary. Existing trees outside of the property lines are shown on the plan for context, but are not included on the inventory list or calculations. The allowable tree removal area per the City’s code is shown on the tree preservation plan (20’ outside of the building footprint and 10’ outside of the interior drives). There are 74 existing trees on site and 30 of them are planned to be removed. All but one of the removed trees are within the allowable removal limits, the proposed landscape plan should clearly cover the mitigation requirement. All of the tree preservation calculations are shown on sheet L1-0.

Landscaping:
The landscaping plan shows the primary ground cover and trees needed to achieve the city’s minimum landscape value amount. The cost opinion of the proposed landscaping is on the landscape plan, we have included an amount for foundation plantings, but have not shown them on the landscape plan. Tree species were chosen both for their compatibility with the surrounding trees and aesthetic qualities.

Phasing:
The development is expected to be built in one phase.

We look forward to your comments on the proposed plans. Please let us know if there is other information you need from us or Quest Development.

Sincerely,
Loucks

Paul Kangas, LA
Project Manager

CC: Jim Waters, Quest Development
VILLAS OF GLEN LAKE
MINNETONKA, MN
PRELIMINARY PLANS
FOR 5-LOT SUBDIVISION SITE GRADING, UTILITIES, STORMWATER BASINS, DRIVEWAY AND LANDSCAPE.

GENERAL NOTES:
1. UNDERGROUND UTILITIES ARE BASED ON INFORMATION PROVIDED BY OTHERS. LOUCKS DOES NOT GUARANTEE THE ACCURACY OF INFORMATION PROVIDED BY OTHERS.
2. GUARD THE SURVEY POINTS AND OTHER markers FROM DISTURBANCE. THESE MARKERS ARE PREPARED TO HELP LOCATE THE UNDERGROUND UTILITY LOCATIONS AT A LATER DATE.
3. THE SURVEY STATIONS AND OTHER MARKERS SHOWN ON THE DRAWINGS WERE PREPARED FROM RECORD DRAWINGS. SNOW AND ICE CONDITIONS DURING WINTER MONTHS MAY OBSCURE OTHERWISE VISIBLE EVIDENCE OF A BURIED STRUCTURE OR SERVICE TO AN ADJOINING SITE CROSSES THIS SITE OR A SERVICE TO AN ADJOINER'S SITE CROSSES THIS SITE.
4. SERVICE TO AN ADJOINING SITE CROSSES AN ADJOINER, IT MAY NOT BE LOCATED SINCE THOSE UTILITY OPERATORS THAT DO RESPOND, OFTEN WILL NOT CONSISTENTLY RESPOND TO LOCATE
5. SHOULD AN UNDERGROUND UTILITY BE DAMAGED DURING CONSTRUCTION OF THE COST TO THE CUSTOMER.
6. THE SURVEY STATIONS AND OTHER MARKERS SHOWN ON THE DRAWINGS WERE PREPARED FROM RECORD DRAWINGS. SNOW AND ICE CONDITIONS DURING WINTER MONTHS MAY OBSCURE OTHERWISE VISIBLE EVIDENCE OF A BURIED STRUCTURE OR SERVICE TO AN ADJOINING SITE CROSSES THIS SITE OR A SERVICE TO AN ADJOINER'S SITE CROSSES THIS SITE.
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11. SHOULD AN UNDERGROUND UTILITY BE DAMAGED DURING CONSTRUCTION OF THE COST TO THE CUSTOMER.
18. Subject to easement for eave overhang as shown in Quit Claim Deed, dated September 3, 1987, recorded March 11, 1988, as part of Lot 7, Northerly of a straight line running from a point on the Easterly line of said lot distant 364 feet from the most Northerly corner thereof to a point on the

Parcel 1:

That part of Lot 7, Glen Lake Park, lying Southeasterly of a line drawn parallel to and 115 feet North of the Southerly line of the following described property: That Westerly line of said lot, distant 125 feet from the Southwest corner of same, subject to existing roadways.

Parcel 2:

That part of Lot Seven (7), Glen Lake Park, described as follows: Commencing on Westerly line of Lot Seven (7) at a point 64.75 feet Northerly from Southwest corner of said lot, thence due North 115 feet, thence East 15 feet, thence due South 15 feet, thence West 15 feet to place of beginning.  

HENNEPIN COUNTY PUBLIC WORKS
B-1 Office Business District  (Parcel 1)
Zone; Map No. 27053C0339F, Community Panel No. 2701730339F, effective date of November 4, 2016.

3. This property is remainders to Zone 2, (unless determined to be outside the 0.2% annual chance floodplain) per Flood Insurance Rate Map No. 27053C09F, Drawn By: CENTURYLINK, XCEL ENERGY, and MNDT. 

4. The address, if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork is

5. The address, if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork is

6. The address, if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork is

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18. The address, if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork is

19. The address, if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork is
DEMOLITION NOTES

1. BACKGROUND INFORMATION IS BASED ON A FIELD SURVEY BY LOUCKS AND RESPONSIBLE PARTY MAY NOT BE PRECISE. LOUCKS DOES NOT GUARANTEE THE ACCURACY OF INFORMATION PRESENTED BY OTHERS.

2. THE CONTRACTOR IS RESPONSIBLE FOR DETERMINING THE LOCATION OF EXISTING UTILITIES PRIOR TO COMMENCEMENT OF WORK. IMPROPERLY CONDUCTED GROUND PERTURBATION MAY CAUSE THE REMOVAL OF UTILITIES. IT IS THE CONTRACTOR'S RESPONSIBILITY TO PREVENT SUCH INCIDENCES.

3. THE CONTRACTOR WILL BE RESPONSIBLE FOR PROVIDING AND MAINTAINING TRAFFIC CONTROL DEVICES. TRAFFIC CONTROL DEVICES SHALL BE APPROPRIATE FOR THE PROJECT AND LOCATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION AND MAINTENANCE OF SUCH DEVICES. TRAFFIC CONTROL DEVICES SHALL BE PROVIDED AS EXHIBITED ON SHEET C3-1 AND C3-2.

4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES TO THE NEAREST 0.01' BEFORE DIGGING. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS BEFORE DVING TO CONDUCT CONSTRUCTION WORK ON THE CONTRACTOR'S PREMISES. IT IS THE CONTRACTOR'S RESPONSIBILITY TO REGULARLY MEET WITH THE CONTRACTOR TO CONFIRM THE LOCATION OF UTILITIES.

5. THE CONTRACTOR'S RESPONSIBILITY TO CALL FOR LOCATIONS OF UTILITIES SHALL BE LIMITED TO NORMAL WORKING HOURS.

6. PROTECT EXISTING SITE FEATURES THAT ARE NOT NOTED FOR REMOVAL. IF DISCREPANCIES ARISE, NOTIFY ENGINEER IMMEDIATELY FOR RESOLUTION.

7. THE CONTRACTOR SHALL OBTAIN A CITY & COUNTY PERMIT FOR OBSTRUCTIONS AND WORK WITHIN RIGHT-OF-WAY. PERMIT IS REQUIRED PRIOR TO REMOVALS OR INSTALLATION.

8. TEMPORARY STREET SIGNS, LIGHTING & ADDRESSES SHALL BE PROVIDED DURING ALL CONSTRUCTION ACTIVITY INCLUDING STOCKPILING, STAGING & PARKING MUST TAKE PLACE ON-SITE.

9. TREE REMOVAL

10. REMOVE CONCRETE

11. REMOVE EXISTING STRUCTURES

12. REMOVE SHED

13. REMOVE EXISTING LIGHT POLES

14. REMOVE EXISTING BUILDINGS

15. REMOVE EXISTING CONCRETE

16. REMOVE EXISTING BITUMINOUS

17. REMOVE OVERHEAD GAS LINE

18. REMOVE UNDERGROUND UTILITIES

19. REMOVE ROCK ENTRANCE PAD AT ALL POINTS OF VEHICLE EXIT FROM THE PROJECT SITE. SAID ENTRY/EXIT PADS SHALL BE LIMITED TO NORMAL WORKING HOURS.

20. EROSION CONTROL PLAN

21. PRELIMINARY PLAT

22. LANDSCAPE PLAN

23. ALTA/NSPS SURVEY

24. GRADING & DRAINAGE PLAN

25. DEMOLITION PLAN

26. REMOVAL OF EXISTING BUILDINGS TO BE CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, THE MINNESOTA DEPARTMENT OF TRANSPORTATION STANDARDS. TRAFFIC CONTROL DEVICES SHALL CONFORM TO THE APPROPRIATE NPDES PERMIT REQUIREMENTS, BEST MANAGEMENT PRACTICES, CITY REQUIREMENTS AND THE DETAILS SHOWN ON SHEET C3-2 AND IN ACCORDANCE WITH NPDES PERMIT REQUIREMENTS, BEST MANAGEMENT PRACTICES, CITY REQUIREMENTS AND THE DETAILS SHOWN ON SHEET C3-3 OF THE PROJECT.

27. REFER TO SHEET C1-0 FOR LOCATION AND SHEET C3-3 FOR DETAILS. CONTRACTOR WILL BE HELD RESPONSIBLE FOR ANY DAMAGES TO UTILITY DRAWINGS FROM THE CITY. LOUCKS DOES NOT GUARANTEE THE ACCURACY OF INSTRUMENTS OR PERMITS. LOUCKS IS NOT RESPONSIBLE FOR DISPROPORTIONATE COSTS FOR REPAIR OR REPLACEMENT DURING DEMOLITION.

28. PERMIT IS REQUIRED PRIOR TO REMOVALS OR INSTALLATION.

29. IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA.

30. COMPLETE THE JOB SITE, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY DURING THE CONSTRUCTION PHASE OF THIS PROJECT. THE CONTRACTOR WILL BE HELD RESPONSIBLE FOR ANY DAMAGES TO THE SITE DURING CONSTRUCTION.

31. THESE PROJECTS, GLEN LAKE, VILLAS OF GLEN LAKE, GLEN LAKE VILLAS, RIVER VILLAS, PINES OF GLEN LAKE, GAMELOK VILLAS, LAKE VILLAS, VILLAS OF LAKE VILLAS, MUST BE PERMITTED, ADDITIONAL INFORMATION, ADDITIONS, OR DELETIONS, CONSTRUCTION, SUBMITTAL/REVISIONS MUST BE MADE IN WRITING. NO PHOTOCOPIES OR NOTIFICATIONS TO THE CITY WILL BE CONSIDERED.

32. THESE PROJECTS, GLEN LAKE, VILLAS OF GLEN LAKE, GLEN LAKE VILLAS, RIVER VILLAS, PINES OF GLEN LAKE, GAMELOK VILLAS, LAKE VILLAS, VILLAS OF LAKE VILLAS, MUST BE PERMITTED, ADDITIONAL INFORMATION, ADDITIONS, OR DELETIONS, CONSTRUCTION, SUBMITTAL/REVISIONS MUST BE MADE IN WRITING. NO PHOTOCOPIES OR NOTIFICATIONS TO THE CITY WILL BE CONSIDERED.

33. THESE PROJECTS, GLEN LAKE, VILLAS OF GLEN LAKE, GLEN LAKE VILLAS, RIVER VILLAS, PINES OF GLEN LAKE, GAMELOK VILLAS, LAKE VILLAS, VILLAS OF LAKE VILLAS, MUST BE PERMITTED, ADDITIONAL INFORMATION, ADDITIONS, OR DELETIONS, CONSTRUCTION, SUBMITTAL/REVISIONS MUST BE MADE IN WRITING. NO PHOTOCOPIES OR NOTIFICATIONS TO THE CITY Will BE CONSIDERED.

34. THESE PROJECTS, GLEN LAKE, VILLAS OF GLEN LAKE, GLEN LAKE VILLAS, RIVER VILLAS, PINES OF GLEN LAKE, GAMELOK VILLAS, LAKE VILLAS, VILLAS OF LAKE VILLAS, MUST BE PERMITTED, ADDITIONAL INFORMATION, ADDITIONS, OR DELETIONS, CONSTRUCTION, SUBMITTAL/REVISIONS MUST BE MADE IN WRITING. NO PHOTOCOPIES OR NOTIFICATIONS TO THE CITY Will BE CONSIDERED.
KNOW ALL PERSONS BY THESE PRESENTS: That Qwest Development, a Minnesota corporation, for reasons of the following described property situated in the County of Hennepin, State of Minnesota, do(es) hereby execute and tender this instrument of conveyance to QWEST DEVELOPMENT, a Minnesota corporation, of the above described property, for the sum of $10.00, or less, in lawful money of the United States, for and in consideration of the covenants herein contained, the receipt and adequacy of which is hereby acknowledged.

The foregoing instrument was acknowledged before me this ______ day of _________________________, 20______, by Max L. Stanislowski, a Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this plat, are shown and delineated on the Plat, and all public ways are shown and labeled on this plat. I hereby certify that the within plat of VILLAS OF GLEN LAKE was recorded in this office this ______ day of ______, 20____, at ______ o'clock _____ M.

By: _________________, Mayor  By: ______________________, Clerk

City Council, Minneapolis, Minnesota

By: ______________________, County Auditor

Mark V. Chapin, County Auditor

I hereby certify that taxes payable in 20______ and prior years have been paid for land described on this plat, dated this ______ day of __________, 20______.

By: ______________________, County Recorder

Chris F. Mavis, County Recorder

I hereby certify that the within plat of VILLAS OF GLEN LAKE was recorded in this office this ______ day of ___, 20______, at ______ o'clock _____ M.

By: ______________________, County Recorder

Martin McCormick, County Recorder

This plat of VILLAS OF GLEN LAKE was approved and accepted by the City Council of Minnetonka, Minnesota, at a regular meeting thereof held this ______ day of ______, 20____, if applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been reviewed by the City or the prescribed 30-day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 366.05, Subdivision 2.

QWEST DEVELOPMENT

VILLAS OF GLEN LAKE

MINNETONKA, MINNESOTA

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

By: ______________________, City Manager

Mark W. Chapman, City Manager

I hereby certify that the plat was prepared by me or under my direct supervision, and I am a duly Licensed Land Surveyor in the State of Minnesota, that I am a duly Licensed Land Surveyor in the State of Minnesota, that I am a duly Licensed Land Surveyor in the State of Minnesota, that all mathematical data and labels are correctly designated on this plat, that all monuments depicted on the plat have been, or will be correctly set within one year, that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this plat, are shown and delineated on the Plat, and all public ways are shown and labeled on this plat.

By: (Printed Name)

Max L. Stanislowski, Licensed Land Surveyor

Minnesota License No. 69944

VILLAS OF GLEN LAKE

MINNESOTA

COUNTY OF HENNEPIN, MINNESOTA

COUNTY OF ____________________________________________

The foregoing instrument was acknowledged before me this ______ day of _________________________, 20______, by Max L. Stanislowski, a Licensed Land Surveyor.

By: ______________________, County Recorder

Martin McCormick, County Recorder

I hereby certify that the within plat of VILLAS OF GLEN LAKE was recorded in this office this ______ day of __________, 20______, at ______ o'clock _____ M.

By: ______________________, Deputy County Recorder

By: ______________________, Deputy County Recorder

By: ______________________, Deputy County Recorder

COUNTY RECORDER

MINNESOTA

COUNTY OF HENNEPIN

COUNTY OF ____________________________________________

By: (Printed Name)

Max L. Stanislowski, Licensed Land Surveyor

Minnesota License No. 69944

VILLAS OF GLEN LAKE

MINNESOTA

COUNTY OF HENNEPIN, MINNESOTA

COUNTY OF ____________________________________________

The foregoing instrument was acknowledged before me this ______ day of _________________________, 20______, by Max L. Stanislowski, a Licensed Land Surveyor.

By: ______________________, County Recorder

Martin McCormick, County Recorder

I hereby certify that the within plat of VILLAS OF GLEN LAKE was recorded in this office this ______ day of __________, 20______, at ______ o'clock _____ M.

By: ______________________, Deputy County Recorder

By: ______________________, Deputy County Recorder

By: ______________________, Deputy County Recorder

COUNTY RECORDER

MINNESOTA

COUNTY OF HENNEPIN

COUNTY OF ____________________________________________

By: (Printed Name)

Max L. Stanislowski, Licensed Land Surveyor

Minnesota License No. 69944
THE BEARINGS FOR THIS SURVEY ARE BASED ON THE WESTERLY LINE OF LOT 7, GLEN LAKE PARK, ASSUMED TO HAVE A BEARING OF NORTH 08 DEGREES 30 MINUTES 45 SECONDS WEST.

SCALE       IN       FEET

DENOTES 1/2 INCH X 14 INCH IRON MONUMENT SET, MARKED "LS 48988"

DENOTES 1/2 INCH OPEN IRON MONUMENT FOUND UNLESS OTHERWISE SHOWN

DENOTES RECORD DOCUMENT
EXCERPTS FROM GLEN LAKE NEIGHBORHOOD STUDY
FIGURE 4.3 DEVELOPMENT SITES MAP
### DEVELOPMENT TOTALS

<table>
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<td>10</td>
<td>11</td>
<td>8</td>
<td>21 SFR</td>
<td>2.3 Unit/ Acre</td>
<td>4.1 Unit/ Acre</td>
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</table>

**NOTE:** Concepts do not represent actual development proposals and are for discussion purposes only. They do not imply that development is or will be supported by property owners.

**FIGURE 5.5 CENTRAL SITE - CONCEPT A**
FIGURE 5.6 CENTRAL SITE - CONCEPT B

NOTE: Concepts do not represent actual development proposals and are for discussion purposes only. They do not imply that development is or will be supported by property owners.
DATE: September 15, 2018

TO: Minnetonka City Planning Commission/ City Council Members

RE: Proposed plan for Villas of Glen Lake

FROM: Greg & Kris Olson, property owners
      5509 Eden Prairie Rd.
      Minnetonka, MN 55345

Dear Planning Commission members and City Council Members,

After reviewing the most recent proposal for the Villas of Glen Lake, we found several details omitted that concern us. They are as follows:

1) The initial problem with this development plan for these properties is that it is on a hill and, as an adjacent property owner downhill from this development, our property will be severely impacted by water drainage. As in the original plan, the new erosion control plan, the drainage pattern arrows have been omitted where the snow pile from plowing would be located. As the current proposal stands, all drainage will be directed downhill, potentially causing damage to property/buildings. A significant berm would need to be added in order to divert the snowmelt/drainage.

2) We noticed that the setback has been moved back, but the new plan does not specify the distance. We would like to see what the proposed setback is for the current plan.

3) Other concerns raised during the past two proposals but have not been addressed are: a) the traffic flow/study of the driveway connected to a curve on this busy Excelsior Blvd. location. b) The lack of sidewalk/safety concern when residents of new development want to walk into Glen Lake. Without walking access, the tendency will be (and has been) to walk through the Glen Lake Professional Building property, as the alternative is to cross Excelsior blvd. to the sidewalk, or walk on the road (which is dangerous and busy). We’d like to see a solution to this issue.

4) The shed we had built on our property to house valuable maintenance
equipment, etc. is again mislabeled- It IS NOT a trash enclosure. This is a structure that can potentially sustain damage from runoff caused by improper/ineffective drainage path.

5) With the snow and road salt draining onto our property, and aggressive clear-cutting and grading to the soil, our three oak trees and the existing maple tree, all sensitive and vulnerable according to the city of Minnetonka, are at risk.

6) The roofline of the proposed development is not in sync with the three adjacent property rooflines, unnecessarily high and obtrusive.

7) Also omitted from the current plan is a significant tree we’d like to see preserved. It stands next to the Blue Spruce #1310 that is scheduled to be eliminated.

In closing, we ask that the developer, Paul Kangas, consider reducing the scope of the development to 4 structures to allow for better water erosion practices and protect the current landscape.

Sincerely,

Gregory A. Olson, D.D.S.
Glen Lake Family Dentistry, PLLC
(952)938-6038 (office)
(952)-935-9175 (Fax)

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient or the individual responsible for delivering the email to the intended recipient, please be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying, of this email is strictly prohibited. If you receive this email in error please shred and or disregard the information.
September 20, 2018

City of Minnetonka
14600 Minnetonka Blvd
Minnetonka, MN 55345

Dear City Council Members, Planning Commissioners and City Staff:

I’m writing with feedback on the September 11, 2018 revised concept plan for the Villas of Glen Lake on Eden Prairie Rd. This project had an initial concept plan slated for review at the June 28 Planning Commission meeting but was withdrawn for revisions and is now back for further review.

I live west of the proposed development, directly across Eden Prairie Rd from what would be the new driveway. There are two storm sewer inlets on EP Rd approximately a half-block downhill from the site that outlet directly onto my property. On June 19, 2018, I wrote a letter expressing my concerns about issues affecting me specifically: the infiltration basins and potential water runoff onto my property and the impact of snow removal on Eden Prairie Rd and the neighborhood. In addition, as a Glen Lake resident I had concerns about the destruction of topography of this longtime secluded wooded and hilly parcel and the subminimum lot size requested for the 5 new homes.

I have met with city staff to review the revised plan and understand the applicants have made changes in some of these areas that have mitigated many of at least the staff’s concerns, and they now recommend approval of the plan. I appreciate the opportunity to add additional observations and questions.

**Infiltration Basins and Water Runoff**

In response to the city’s request that the applicants retain more of the mature trees, I understand that the grading plan has been changed to retain the major clump of trees facing Eden Prairie Rd and other trees throughout the parcel. This required eliminating the north infiltration pond.

My concern now is whether one pond is sufficient. I understand that an underground water infiltration mechanism has been added to compensate, but the packet says the “underground facility …would ultimately outlet to the public storm sewer system”. Keep in mind, “outlet to the public storm sewer system” means running onto my property! Overall, both the city’s engineers and the Nine Mile Creek Watershed feel the grading and runoff plan will meet the city’s condition that new development doesn’t change the amount of runoff from the current land use. This goes some way towards relieving my concerns about added runoff to my property from the increased impermeable surfaces from 5 roofs and driveways. I welcome the city regulations in place that require a commercial developer create a master plan to handle runoff (such as the use of infiltration basins), and that this may be an advantage over five individually developed houses.
But what would my recourse be, if the runoff plan isn’t sufficient: if, for example, the infiltration pond overflows more frequently than the models and runs down Eden Prairie Rd? Or if the runoff from impermeable surfaces in general is greater than expected, and correspondingly I see more water flowing onto my property through the storm sewer inlets? My concern is that the plan looks okay based on predictive models of average rainfall, infiltration rates, etc., but if the project drainage as built proves to be insufficient for actual rainfall, whom do I go to?

I appreciate the changes the developers have made to accommodate the city’s concerns. But rezoning to a higher density and replacing 2 houses with 5 is a substantial change for this corner of Glen Lake, and additional scrutiny should apply.

**Snow Removal**

In my June letter, I raised concerns about snow removal from the site. I wrote, “The concept plan adds substantial new single-family housing onto the two parcels. Is there room on the property to hold all plowed snow throughout the winter? Will it be trucked off?”

These are important issues for you to consider. I would like understand:

+ How will the driveways be plowed?
+ Will the snow be stored on-site?
+ Where will it be stored?
+ How often would snow be removed/trucked-off the site?

My concern is that snow not be plowed out from the property, potentially onto the right of way of Eden Prairie Rd. If stored on-site, it can’t be stored where its volume would impact the infiltration basins and storm sewers when it melts in the spring.

**Eden Prairie Rd Traffic**

Finally, staff’s packet suggests that Eden Prairie Rd will be striped to have a southbound center turn lane to accommodate this new development’s residents turning across traffic into the driveway. Is this a finalized plan? Is there space on Eden Prairie Rd effectively to add another lane?

Thank you for considering my addition questions and concerns.

Sincerely,

Anne Malm Hossfeld
14616 Glendale St
Minnetonka, MN 55345
6. **Report from Planning Commission Members**

Powers stated that he and Knight toured the proposed Hennepin County Medical Examiner’s Office site and found the tour beneficial. Having another tour outside of work hours was suggested.

Sewall mentioned that Rock at Ridgedale will be held Sept. 22, 2018.

7. **Public Hearings: Consent Agenda**: None

8. **Public Hearings**

   A. **Items concerning Villas of Glen Lake, a five-lot residential development at 5517/5525 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.

Sewall asked how holding pond locations would be determined. Thomas explained the site’s topography and drainage pattern. She explained how the city holds financial guarantee from the developer until the project is completed according to plans approved by the city engineer.

In response to Chair Kirk’s question, Thomas reviewed the proposed stormwater treatments to be used including an underground vault and infiltration basin. A stormwater maintenance agreement would be required.

Blaine Waters, of Quest Development, applicant, stated that Thomas did a great job of presenting the project. He was available for questions.

Powers asked if he considered four units. Mr. Waters stated that the applicant hoped to have six lots with R-1 Qzoning. Due to site restrictions, the applicant opted for five lots. The economics of the end product require the density to keep the desired price point and five lots would create a sense of community. The goal is to keep the price around $550,000 to $650,000. That would be a good fit for the area.

Sewall asked how snow would be handled. Mr. Waters stated that the applicant would work with staff to create an acceptable snow removal and storage plan. It is a condition of approval.

In response to Henry’s question, Thomas explained that the applicant was amenable to including a sidewalk in the project, but after considering the county’s requirements to construct a sidewalk, the overhead power lines, and the number of trees that would need to be removed, staff determined that it would be better to wait until a larger project...
provided an opportunity to add a sidewalk along a longer stretch of Eden Prairie Road rather than the 200-foot portion this project would provide.

The public hearing was opened.

Ann Hossfeld, 14616 Glen Dale Street, stated that:

- The public storm sewer system is on her property. She provided photos of the stormwater inlets on Eden Prairie Road. Water flows into the inlet on her property. There is a pond on her property today.
- She was concerned that the proposal’s hard-surface coverage would add more water running onto her property.
- She met with staff on Monday. Staff were very responsive and she appreciated Thomas talking with her and showing her the diagrams of the proposed grading. She learned that the project triggers a requirement for stormwater management. The plan includes infiltration basins and adds protection for stormwater management. There would be a place to hold water and infiltrate it on the site without the water running onto Eden Prairie Road.
- The stormwater management plan was reviewed by the city engineers and the Nine Mile Creek Watershed District staff who approved the plan. Development is not allowed to alter a water-flow pattern or increase the volume. The proposal would not increase the amount of water that would flow onto Eden Prairie Road. So the proposal would not increase her current water problems.
- She was concerned the models could be wrong; there could be many more 100-year storms; the infiltration basins could overflow; and the volume of water could cause more water to flow onto her property. She questioned what her options would be if that would happen. Staff gave her an answer, but she has not processed that information yet. She knows that the city could monitor the infiltration basin and fixes could be made to solve a problem. She accepts the explanation from the city, understands it, and hope it works.
- She referenced her letter that lists her concerns with snow management. Snow management has been addressed by a condition of approval.
- She quoted the staff report that made a suggestion to restripe a center turn lane on Eden Prairie Road. She asked if that would happen.

Kris Olson, part owner of 5509 Eden Prairie Road, stated that:

- She was concerned with a plow making a large snow pile on the north side that would melt down the hill and into the building. She asked that be considered when creating the snow removal plan.

No additional testimony was submitted and the hearing was closed.
Chair Kirk asked if the basin would usually be dry. Thomas answered affirmatively. Water would sit in the basin after a heavy rain, but it should be dry within 48 hours. The design would accommodate a 2-year, 10-year, and 100-year storm. There is a one-percent chance of a 100-year storm happening every year. A property owner is required to control the rate and volume traveling off of a site post-development to the same level as it was pre-development. A 100-year storm is equal to 7.2 inches of rain falling within 24 hours.

Chair Kirk asked if three houses would require stormwater management. Thomas explained that a three-house subdivision on the proposed site would also be required to have stormwater management because of the site’s proximity to Glen Lake.

Thomas stated that Eden Prairie Road currently has a striped median area. It would not require an expansion of the paved area of the street to restripe it and create a turn lane. The county would acquire seven additional feet of road easement.

In response to Henry’s question, Thomas explained that the pre-development stormwater runoff rate and volume are provided by the applicant’s engineer. That is reviewed by the city engineer and watershed district engineer. There is also a model to show the post-development stormwater rate and volume.

Colleran explained that the watershed district rules were just updated to reflect the increase in precipitation.

Chair Kirk asked if Tree 1310 would be impacted. Colleran answered affirmatively. The tree is a Colorado blue spruce, 12 inches in diameter. Grading of the site would require the tree to be removed. It appears that the tree north of Tree 1310 would probably survive the grading, but she will confirm that before the city council meeting.

Chair Kirk was concerned with snow removal management.

Powers noted that the Olson’s were concerned that people would walk on their property to reach Eden Prairie Road. Thomas stated that a property owner may choose to add a permanent barrier to prevent trespassing. Mr. Waters was sympathetic. Landscaping might be the most aesthetically pleasing deterrent. He did not foresee the future homeowners creating an issue by trespassing.

In response to Powers’ question, Mr. Waters stated that he spoke to the Olson’s at a neighborhood meeting at Unmapped Brewing and other meetings. In response to the Olson’s request, the applicant tried to add a sidewalk to the project and the north setback was increased from 5 feet to 20 feet to preserve a number of trees. Having people walk on someone else’s property is not a new or unique issue for the area. It has been happening for a long time. The applicant is willing to do what can be done with landscaping. The landscape plan would be approved by staff.
Chair Kirk was not as concerned with trespassing. There is a four-foot contour change over about 30 feet. The proposal would not be an apartment complex.

Chair Kirk was concerned with vehicles being able to turn around. Mr. Waters explained that the applicant’s engineers discussed the plan with the city’s engineers and the plan reflects that agreement. Thomas noted that there appears to be some room to extend the north and south sides without impacting the grading plan. The proposed drive width is 16 feet. A standard parking stall is 18 feet deep. Colleran noted that extending the driveway north would have to take into consideration the root zones of the Olson’s trees.

Chair Kirk thought that the rooflines appear massive. Mr. Waters stated that the houses were included in the plan to provide an illustration of what could possibly be built. His vision did not include that architectural design. Each house would go through building permit review. There are a number of variations that could fit in each footprint.

Knight likes the rearrangement of the driveway better in this proposal than the earlier proposal.

Powers likes this proposal better than the previous one. He would prefer four lots. He likes the developer’s attitude toward the neighbors and city staff. It is a very good idea and adds vitality to the Glen Lake area.

Chair Kirk clarified that he would rather see the layout of the house and driveway change than the extension of the turnarounds moved closer to the property lines. He recognized that the price points would have to increase if the number of lots would be decreased to four, so he accepts five lots.

Henry supports staff’s recommendation. The proposal is well thought out. He could see an issue with the driveways of Lots 1 and 5 butting up against each other and vehicles having trouble backing if there would be a parked vehicle in the other driveway. The plan could be modified to address that issue. He was a little concerned with pedestrian access. He was glad there would be a condition to prevent storing snow on the north side.

_Powers moved, second by Sewall, to recommend that the city council adopt the following pertaining to the properties at 5517 and 5525 Eden Prairie Road: an ordinance rezoning properties to R-3, low-density residential, and a resolution approving the preliminary and final plats with variances for the Villas of Glen Lake._

_Knight, Powers, Sewall, Hanson, Henry, and Kirk voted yes. Motion carried._

Chair Kirk stated that the city council is tentatively scheduled to review this item on Oct. 8, 2018.

9. Adjournment
Sewall moved, second by Knight, to adjourn the meeting at 8:30 p.m. Motion carried unanimously.

By: ____________________________
    Lois T. Mason
    Planning Secretary
Ordinance No. 2018-

An ordinance rezoning the properties at 5517 and 5525 Eden Prairie Road to R-3, low or medium density residential district

The City Of Minnetonka Ordains:

Section 1.

1.01 The subject properties at 5517 and 5525 Eden Prairie Road are hereby rezoned to R-3, low or medium density residential district.

1.02 The properties area legally described as:

That part of Lot 7, Glen Lake Park, lying Southerly of a line drawn parallel to and 115 feet North of the Southerly line of the following described property: That part of Lot 7, Northerly of a straight line running from a point on the Easterly line of said lot distant 364 feet from the most Northerly corner thereof to a point on the Westerly line of said lot, distant 125 feet from the Southwest corner of same, subject to existing roadways.

Together with that part of Lot Seven (7), Glen Lake Park, described as follows: Commencing on Westerly line of Lot Seven (7) at a point 64.75 feet Northerly from Southwest corner thereof; thence Northerly along said line 60.25 feet; thence Easterly to a point on Northeastery line of Lot Seven (7) distant 364 feet Southwesterly from most Northerly corner thereof; thence Southwesterly along said Northerly line 60.3 feet; thence Westerly to beginning, except road.

Hennepin County, Minnesota
Abstract Property

Section 2.

2.01 This ordinance is based on the following findings:

1. The rezoning would be consistent with the intent of the zoning ordinance and of the comprehensive guide plan.

2. The rezoning would be consistent with the public health, safety, and welfare.

2.04 This ordinance is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:
Ordinance No. 2018-


Section 3. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on Oct. 8, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this ordinance:

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

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on Oct. 8, 2018.

David E. Maeda, City Clerk
Resolution No. 2018-

Resolution approving the preliminary and final plats, with variances, of
VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road

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

Section 1. Background.

1.01 Villas of Glen Lake, LLC. has requested approval of the VILLAS OF GLEN LAKE preliminary and final plats. The proposal includes the following variances:

- Variance for three lots without frontage on a public right-of-way;
- Variance for detached homes;
- Front yard setback variances from 50 feet to 35 feet; and
- Side yard setback variances from 15 feet to 10 feet.

1.02 The subject site is located at 5517 and 5525 Eden Prairie Road. It is legally described of Exhibit A of this resolution.

1.03 On Sept. 20, 2018, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council grant approval of the proposal.

Section 2. General Standards.

2.01 City Code §400.030 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution.

2.02 City Code §400.055 outlines the variance standard for lots without frontage on a public right-of-way. These standards are incorporated by reference into this resolution.
2.03 City Code §300.07 outlines that variances may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties means: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

Section 3. Findings.

3.01 The proposed plats would generally meet the design requirements as outlined in City Code §400.025.

3.02 The requested variances lots without frontage on a public right-of-way would meet the variance standard outlined in City Code §400.055:

1. A right-of-way extension would adversely impact natural resources, including mature trees and a code-defined bluff.

2. While five lots would share access off of a private drive, two of these lots would technically have frontage on a public right-of-way.

3. As a condition of this resolution, a common access easement is required outlining the responsibilities of future property owners.

4. There are several residential developments in the surrounding area that contain properties without frontage on a public right-of-way, including both townhome developments and single-family lots. Given this, the proposed lots would not alter the essential character of the neighborhood.

3.03 The requested variance for detached structures and the requested setback variances would meet the variance standard outlined in City Code §300.07 Subd. 1(a):

1. Purpose and Intent of the Zoning Ordinance:
   a) Detached Structures.

   The intent of R-3 ordinance is to allow for locations within the community where attached townhomes can be constructed. The proposed detached structures are not contrary to this purpose. The arrangement of an attached townhome development on the subject site would likely be different than the proposed site arrangement. However, the difference in site design would result in very little – if any – difference in overall site impact. Given this, whether the residential product is attached or detached matters little from a site perspective.
b) Setbacks.

1) The intent of the front yard setback requirement is to provide appropriate separation between the traveled portion of a roadway structures for both safety and aesthetic reasons. The proposed 35-foot setback would meet this intent. The homes would be located roughly 60 feet from the traveled portion of Eden Prairie Road. Further, the proposed 35-foot setback would be allowed where the lots zoned R-2 or R-1A.

2) The intent of side yard setback requirements is to appropriately locate structures within the width of individual properties. The proposed 10-foot side yard setback from the south property line would meet this intent. The homes would be no closer to the side yard than single-family homes would be allowed within the R-1 district.

2. Consistent with Comprehensive Plan: The requested variances would support a low-density residential development, which is consistent with the site's comprehensive guide plan designation.

3. Practical Difficulties: There are practical difficulties in complying with the ordinance:

a) Reasonableness:

1) Detached Structures. General planning principals suggest that zoning ordinances outline the highest intensity land uses allowed in individual zoning districts and that less intense land uses would be reasonable. Detached homes would be considered a less intense land use than attached homes.

3) Setbacks. The proposed homes would be located roughly 60 feet from the traveled portion of Eden Prairie Road. Further, the proposed 35-foot setback would be allowed where the lots zoned R-2 or R-1A. Similarly, the homes would be no closer to the side property lines than single-family homes would be allowed within the R-1 district. Further, these side yard setbacks could be increased to 15 feet with a northward shift of property lines and homes. However, such shift would likely impact several trees along the development's north property line. Area property owners, commissioners, and councilmembers had requested that efforts be made to reduce impacts to this area.

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

1. Prior to release of the final plat for recording, submit the following:

   a) Documents for the city attorney’s review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.

      1) Title evidence that current within thirty days before release of the final plat.

      2) A common access easement between the public right-of-way and individual lots.

      3) Private utility easements for services crossing private property lines.

      4) A private fire hydrant maintenance agreement.

      5) A stormwater maintenance agreement.

      6) Documents establishing a homeowners’ association. The association must be responsible for maintaining any common areas, common drives, private utilities, private fire hydrants, and required stormwater facilities approved by the City.

      7) A legal document outlining that the driveway, utilities, and hydrant on site will be privately constructed and maintained. The document must be recorded against the individual properties after the filing of the plat.

      8) A Contract for Residential Development

   b) A revised final plat drawing that clearly illustrates the following:

      1) Dedication of 7-feet of right-of-way adjacent to existing Eden Prairie Road right-of-way.
2) Minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.

3) Utility easements over existing or proposed public utilities, as determined by the city engineer.

4) Drainage and utility easements stormwater management facilities, as determined by the city engineer.

c) Two sets of mylars for city signatures.

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

e) Park dedication fee of $15,000.

2. Subject to staff approval, VILLAS OF GLEN LAKE must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

- Site Plan, dated Aug. 23, 2018
- Grading and Drainage Plan, dated Aug. 23, 2018
- Utility Plan, dated Aug. 23, 2018
- Preliminary Plat, dated Aug. 23, 2018
- Tree Preservation Plan, dated Aug. 23, 2018
- Landscape Plan, dated Aug. 23, 2018

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

a) The following must be submitted for the grading permit to be considered complete.

1) Evidence of filing the final plat at Hennepin County and copies of all recorded easements and documents as required in section 4.01(1)(a) of this resolution.

2) An electronic PDF copy of all required plans and specifications.

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

a. Final grading plan must:
b. Final stormwater management plan. The plan must demonstrate conformance with the following criteria:

- **Rate.** Limit peak runoff flow rates to that of existing conditions from the 2-, 10-, and 100-year events at all points where stormwater leaves the site.

- **Volume.** Provide for onsite retention of 1-inch of runoff from the entire site’s impervious surface.

- **Quality.** Provide for all runoff to be treated to at least 60 percent total phosphorus annual removal efficiency and 90 percent total suspended solid annual removal efficiency.

c. Final utility plan must:

- Confirm existing sewer and water main locations.

- Clearly label which utilities are public and which are private. Note, the water main from wet tap to hydrant and all service lines would be private. Similarly, sanitary sewer main extended eastward into the site and all services lines would be private.

d. Final landscaping and tree mitigation plans must:

- Meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.
• Include taller shrubbery adjacent to evergreens 1301-1305 to create a buffer to Eden Prairie Road.

• Not include new plantings of any trees in easements containing public utilities or within right-of-way.

• Illustrate all deciduous plant material placed at least 15 feet behind the curb of Eden Prairie Road. Evergreen trees must be at least 20 feet behind the curb. Natural resources staff may allow slightly less setbacks for columnar species.

4) A snow removal plan. The plan must depict the areas to be used for snow stockpiles or outline if/when snow will be removed from the site. Snow may not be stockpiled along the north property line.

5) A construction management plan. The plan must be in a city approved format and must outlined minimum site management practices and penalties for non-compliance.

6) A copy of the approved MPCA NPDES permit.

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

8) All required administration and engineering fees.

9) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct utility improvements, comply with grading permit, wetland restoration, tree mitigation 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 streets and utilities have 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.

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

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

b) Prior to issuance of the grading permit:

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

2) The following permits from outside agencies must be submitted:
   - Access modification permit and right-of-way permit (for utility work) from Hennepin County.
   - Sanitary sewer extension permit from Minnesota Pollution Control Agency.
   - Stormwater permit from Nine Mile Creek Watershed District.

3) Provide evidence that coordination of Eden Prairie Road striping improvements is underway. The roadway must be restriped to incorporate a center turn lane as required by Hennepin County.

4. Prior to issuance of a building permit for the first new house within the development, submit the following documents:

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

   b) Proof of subdivision registration and transfer of NPDES permit, if required.

5. Prior to issuance of a building permit for any of the lots within the development:
a) Submit the following items for staff review and approval:

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

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

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

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

If the builder is the same entity doing grading work on the site, the cash escrow submitted at the time of grading permit may fulfill this requirement.

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

d) Submit all required hook-up fees.

6. All lots and structures within the development are subject to the following:

a) Required setbacks from exterior lot lines.

<table>
<thead>
<tr>
<th></th>
<th>Front</th>
<th>Side</th>
<th>Rear</th>
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<tbody>
<tr>
<td>Lot 1</td>
<td>35 ft</td>
<td>10 ft</td>
<td>n/a</td>
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<tr>
<td>Lot 2</td>
<td>35 ft</td>
<td>30 ft</td>
<td>n/a</td>
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<td>Lot 3</td>
<td>n/a</td>
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<td>120 ft</td>
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<tr>
<td>Lot 4</td>
<td>n/a</td>
<td>n/a</td>
<td>165 ft</td>
</tr>
<tr>
<td>Lot 5</td>
<td>n/a</td>
<td>10 ft</td>
<td>195 ft</td>
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</tbody>
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b) Maximum floor area ratio on each lot is 0.25. Floor area is defined as the sum of the following as measured from exterior walls: the fully exposed gross horizontal area of a building, including attached garage space and enclosed porch areas, and one-half the gross horizontal area of any partially exposed level such as a walkout or lookout level.

c) Minimum floor elevation on Lots 1 and 2 must be two feet above the 100-year elevation of the proposed infiltration basin.

d) Homes must be protected with a 13D automatic fire sprinkler system or an approved alternative system.

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

8. Unless the city council approves a time extension, the final plat must be recorded by Oct. 8, 2019.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Oct. 8, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Oct. 8, 2018.

David E. Maeda, City Clerk
EXHIBIT A

That part of Lot 7, Glen Lake Park, lying Southeasterly of a line drawn parallel to and 115 feet North of the Southerly line of the following described property: That part of Lot 7, Northerly of a straight line running from a point on the Easterly line of said lot distant 364 feet from the most Northerly corner thereof to a point on the Westerly line of said lot, distant 125 feet from the Southwest corner of same, subject to existing roadways.

Together with that part of Lot Seven (7), Glen Lake Park, described as follows: Commencing on Westerly line of Lot Seven (7) at a point 64.75 feet Northerly from Southwest corner thereof; thence Northerly along said line 60.25 feet; thence Easterly to a point on Northeasterly line of Lot Seven (7) distant 364 feet Southeasterly from most Northerly corner thereof; thence Southeasterly along said Northerly line 60.3 feet; thence Westerly to beginning, except road.

Hennepin County, Minnesota
Abstract Property
Brief Description | Concept plan for Marsh Run Two Redevelopment at 11650 and 11706 Wayzata Blvd.
---|---
Recommendation | Continue discussion of the concept plan with the applicant. No formal action required.

Background

In August 2018, the city council reviewed a concept plan to redevelop the combined 2.5-acre site. The plan contemplated a removal of the existing office buildings to construct a six-story, 235-unit, apartment building. At that meeting, the city council expressed support of the residential use of the property and the plan’s energy-efficiency and affordability components. The council also expressed concern related to the project’s density, mass and integration into the surrounding neighborhood.

Site Overview

The properties at 11650 and 11760 Wayzata Blvd. currently contain three office buildings and associated surface parking lots. An area of green space exists between the three buildings. The site is relatively flat with a gradual 10-foot change across the entire site. Site access from Wayzata Blvd. is located in the southeastern portion of the property and two additional accesses are from Fairfield Rd. to the west. Utilities are generally available to the site via Fairfield Rd. and Wayzata Blvd. The site is currently zoned PID, Planned I394 District, and guided service commercial in the 2030 comprehensive guide plan. Surrounding land uses include a mix of office, commercial and residential uses.

Proposal

Responding to the comments received, Doran has submitted a second concept plan. The revised concept plan contemplates the construction of a 190-unit apartment building. The plan indicates a varied height building, with a reduced building height near the residential properties to the north.

![Figure 1: View looking east. Residential neighborhood would be to the left and Wayzata Boulevard to the right of the image.](image)

Consistent with the previous concept plan, the plan indicates a mixture of 1-story townhomes, alcoves (studio apartments), and 1- and 2-story apartments. The plan also indicates roughly 300 interior parking stalls accommodated within two levels of structured parking. Additional parking would be accommodated within a surface parking lot on the west side of the property. The revised concept plan no longer includes a surface parking lot along the north side of the building.
Per the applicant’s narrative, the architecture is influenced by the nearby residential townhomes and condominium projects and integrates wood, plank siding, brick, and stone materials. While no formal action is required at this time, staff anticipates the following city actions may be necessary based on the current concept plan: (1) comprehensive guide plan amendment; (2) rezoning; (3) preliminary and final plats; and (4) site and building plan approval.

Review Process

- **Neighborhood Meeting.** Doran held a neighborhood meeting to review the concept plan of a six-story building on Aug. 15, 2018. The meeting was attended by roughly 30 area residents. Attendees expressed concern related to: (1) traffic particularly at the intersections within the existing neighborhood under existing and proposed conditions; (2) impacts of the concept on the wetland to the north; and (3) aesthetics, mass, density, and height of the concept.

- **Planning Commission Meeting.** The planning commission reviewed the six-story building concept on Aug. 16, 2018. Eleven area property owners addressed the commission, voicing concerns related to traffic, noise, and density. Planning commissioners generally expressed support of the residential use of the property. However, the commissioners commented that the concept was too intense for the neighborhood, possibly too “urban” in appearance and cited concern related to the amount and length of time that shadows would be cast on adjacent properties.

- **City Council Meeting.** The city council reviewed the six-story building concept on Aug. 27, 2018. Seven neighboring property owners addressed the council, voicing additional concerns related to: (1) the environment; (2) density; (3) parking; and (4) traffic. Two partners representing the property owners of the proposed project location also addressed the council and expressed support of Doran’s residential redevelopment of the property.

Ultimately, the council expressed support of the residential use of the property, as well as the incorporation of affordability and energy efficient features. However, the council echoed the commissioners’ comments and felt that the concept was too intense for the site and that the concept would not “fit” into the surrounding neighborhood.

- **Neighborhood Meeting – Moline Tour.** Doran hosted an open house at The Moline apartment building in Hopkins, MN on Sept. 29, 2018. Roughly 20 people attended the open house and took a tour of the apartments. The attendees expressed concern related to: (1) vehicular and pedestrian traffic on Fairfield Road; (2) parking; and the (3) mass and character of the concept.

- **Neighborhood Meeting.** Doran will hold a neighborhood meeting onsite on Oct. 3, 2018. A summary of this meeting will be available for the city council meeting.

- **City Council Concept Plan Review.** The city council Concept Plan Review is intended as a follow up to the city council’s review of the previous concept on Aug. 27, 2018. No staff recommendations are provided, the public is invited to offer comments, and the council members are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.
Key Issues

Staff requests the council provides feedbacks/comments on the following key issues and other issues the council deems appropriate. The comments/feedback provided are intended to assist Doran should the company decide to move forward and assemble a formal application package. However, the council decision on any formal redevelopment application are not suggested or restricted by the concept plan review comments/feedback.

- **Change of land use**: The property is currently guided for service commercial by the 2030 Comprehensive Guide Plan. As such, if a formal proposal were submitted, a comprehensive guide plan amendment to high-density residential would be needed. The city council generally expressed support of the residential use during its previous concept plan review. Any additional comments related to the land use change are appropriate.

- **Density and mass**: Based on the previous comments received, Doran reduced the number of units from 235 to 190. The revised concept plan also reduces the number of stories from six-stories to a stepped building with four-stories on the north side and five-stories on the south side. This results in a density of 76 units per acre. Comments related to the building height, mass and density are requested.

- **Traffic**: During the previous concept plan review, several neighbors expressed concern that the proposed apartment would exacerbate existing traffic issues within their neighborhood. Should the developer proceed forward with a formal application, the city would commission a traffic study to evaluate existing and proposed traffic conditions.

Staff Recommendation

Staff recommends the city council provide comment and feedback on the identified key issues and any others that the council deem appropriate.

Through:  
Perry Vetter, Assistant City Manager
Julie Wischnack, AICP, Community Development Director
Loren Gordon, AICP, City Planner

Originator:  
Ashley Cauley, Senior Planner
ADDITIONAL INFORMATION

Next Steps

- **Formal Application.** If the developer chooses to file a formal application, notification of the application would be mailed to area property owners. Property owners are encouraged to view plans and provide feedback via the city’s website. Through recent website updates: (1) staff can provide residents with ongoing project updates, (2) residents can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) residents may provide project feedback on project; and (4) and staff can review resident comments.

- **Council Introduction.** The proposal would be introduced at a city council meeting. At that time, the council would be provided another opportunity to review the issues identified during the initial Concept Plan Review meeting, and to provide direction about any refinements or additional issues they wish to be researched, and for which staff recommendations should be prepared.

- **Planning Commission Review.** The planning commission would hold an official public hearing for the development review and would subsequently recommend action to the city council.

- **City Council Action.** Based on input from the planning commission, professional staff and general public, the city council would take final action.

City Roles and Responsibilities

- **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.

- **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 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.
September 24, 2018

Ashley Cauley  
Senior Planner  
City of Minnetonka  
14600 Minnetonka Blvd.  
Minnetonka, MN 55345

Re: Marsh Run Redevelopment – Proposed Multifamily Development

Dear Ashley,

Marsh Development, LLC (“Applicant”) is seeking additional concept plan feedback from the City Council for a proposed apartment building on part of the Marsh Run offices site at 11650 and 11706 Wayzata Blvd in Minnetonka, Minnesota. Currently the two parcels are occupied by three one-story office buildings and associated surface parking. The existing buildings would be razed to allow for redevelopment. The purpose of this second Concept Plan review is to obtain feedback on our revised architectural design.

We previously submitted a concept plan for a 6-story building containing approximately 235 units of luxury market-rate apartments. The Planning Commission, City Council and members of the neighborhood all raised concerns about the massing and density of the project. We also received feedback that the architectural design was too urban and too modern, and we were challenged by City staff to better align the architectural style with the adjacent shopping center, condo and townhome developments.

This revised plan reduces the total units by 45 from 235 to 190 apartments, reduces the massing of the building by eliminating two stories from a portion of the project closest to the neighbors and one story closest to the highway, eliminates parking on the north side of the building, and maintains a setback on the north side of the building roughly equal to the north façade building height. The north setback is now 43 feet to the property line and 103 feet between buildings. This allows for the preservation of the existing berm and enhancement to the screening between the projects.

The revised architectural style is influenced by the more traditional look of the nearby residential townhome and condo projects. Stone mixed with warm wood accents highlight the entrance. Plank siding and brick complement the dark cap and architectural projections at key points along the building. The use of wood, stone and plank siding is intended to echo elements found at both the neighboring shopping center and condos.

The proposed multifamily project would be a new 4/5-story structure with two levels of parking containing approximately 300 parking stalls, one level at grade and one level of below grade parking. Wrapping the parking ramp will be townhomes and architectural details to hide the ramp from the street. The project would include a mixture of 1-story townhomes, alcoves, 1-bedroom and 2-bedroom apartments. The project would also include on site management and a leasing office, approximately 10,000 square feet of indoor amenities and common areas, and an exceptional outdoor recreational space with additional amenities.
In addition to comments provided by the Council and the public at the meeting October 8th, we will also be hosting an open house on September 29th at the Moline and another meeting on the subject site on October 3rd to solicit additional neighborhood feedback.

**Concept Plan and Future Entitlement Applications**

The concept plan of the proposed redevelopment is expected to be reviewed by the City of Minnetonka’s Council on October 8th. Comments from that meeting will be considered when preparing the subsequent entitlement applications. The applications anticipated to allow for the redevelopment include: rezoning of the site to R-5 High Density Residential District, a comprehensive plan amendment to conform with the proposed 2040 plan, a floor area ratio variance, a front yard setback variance, a side and rear yard setback variance, a variance for off-street parking, a preliminary plat and final plat applications.

Thank you for reviewing our concept plan and we look forward to having the project fully entitled to allow for the redevelopment of this site.

Please let me know if you have any questions.

Sincerely,

Cody Dietrich
Senior Development Associate
Marsh Development, LLC