1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Wagner-Ellingson-Allendorf-Acomb-Wiersum-Bergstedt-Schneider
4. Approval of Agenda
5. Approval of Minutes:
   A. September 29, 2014 special meeting
   B. November 10, 2014 regular meeting
   C. November 24, 2014 special meeting
   D. December 1, 2014 regular meeting
6. Special Matters:
   A. Retirement recognition of Wendy Turgeon
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Resolution designating the Acting Mayor and Alternate Acting Mayor for 2015
    B. Resolution and agreements with the Minnetonka School District for the CSAH 101 project, TH 62 to Hutchins Drive
    C. Proposed orders for tobacco license violations for Boulevard Sinclair and Walgreens

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11. Consent Agenda - Items Requiring Five Votes: None

12. Introduction of Ordinances:
   A. Major amendment to the master development plan for Villas at Groveland, located at 17113 Minnetonka Boulevard
      Recommendation: Introduce the ordinance and refer it to the planning commission (5 Votes)

13. Public Hearings:
   A. Application for the transfer of the cable franchise system
      Recommendation: Continue the public hearing and adopt the resolution approving the transfer (4 Votes)
   B. Resolution approving vacation of drainage and utility easements at 9900 Bren Road East
      Recommendation: Hold the public hearing and adopt the resolution (5 Votes)

14. Other Business:
   A. Resolution approving a conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road
      Recommendation: Adopt the resolution approving the request (4 Votes)
   B. Ordinance amending the city charter regarding vacation of streets and easements
      Recommendation: Adopt the ordinance (7 Votes)
   C. Third amendment to purchase agreement for 4312-4342B Shady Oak Rd and 4292 Oak Drive Lane
      Recommendation: Approve the amendment (4 Votes)
   D. Liquor licenses for Pairings Food & Wine Market, LLC
      Recommendation: No action

15. Appointments and Reappointments:
   A. Appointment of representatives to various advisory boards, commissions and committees
      Recommendation: Approve the appointments (4 Votes)
16. Adjournment
Minutes
Minnetonka City Council
Special Meeting, September 29, 2014

1. Call to order
Schneider called the meeting to order at 5:33 p.m.

2. Roll call
Council members Dick Allendorf, Patty Acomb, Brad Wiersum, Bob Ellingson, and Terry Schneider were present. Tony Wagner and Tim Bergstedt were excused.

3. Consider motion to adjourn into closed session to discuss pending condemnation litigation concerning 4312 Shady Oak Road, pursuant to attorney-client privilege; and to consider purchase of real properties at 4312 Shady Oak Road and 4292 Oak Drive Lane, Minnetonka

Schneider moved, Acomb seconded a motion to adjourn into closed session to discuss pending condemnation litigation concerning 4312 Shady Oak Road, pursuant to attorney-client privilege and to consider possible offer for the purchase of real properties at 4312 Shady Oak Road and 4292 Oak Drive Lane, Minnetonka. All voted "yes." Motion carried.

4. Adjourn into closed session

5. Closed session

Schneider called the closed session to order at 5:35 p.m.

Wagner arrived at 5:46 p.m.

Staff present were Geralyn Barone, Perry Vetter, Corrine Heine, Julie Wischnack, Lee Gustafson, Merrill King and David Maeda.

Respectfully submitted,

David Maeda
City Clerk
Minutes
Minnetonka City Council
Regular Meeting, Monday, November 10, 2014

1. Call to Order

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

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

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

4. Approval of Agenda

Wiersum moved, Acomb seconded a motion to accept the agenda with an addendum to item 14B. All voted "yes." Motion carried.

5. Approval of Minutes: None

6. Special Matters:

A. Recognition of former park board member Tom O'Reilly

Schneider read the recognition and presented a plaque to O'Reilly.

O'Reilly thanked the council, staff and other park board members.

7. Reports from City Manager & Council Members

Barone reported on the schedule for upcoming council meetings.

Schneider provided an update on the latest Southwest Light Rail Corridor Management Committee meeting.

8. Citizens Wishing to Discuss Matters not on the Agenda

Joan Suko, 12401 Wayzata Boulevard, the general manager of the Ridgedale Shopping Center, provided an update on the mall's plan for the holiday season given the ongoing construction.

9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:

A. 2015 fee schedules for consulting engineering services

Wagner asked that the item be pulled from the consent agenda. He said every year the same fee schedule was reviewed and every year there were fee increases. Being in a professional services business he noted after a certain period of time a competitive bid process was required. He suggested that over the next few years staff review all the city’s consulting service providers and look at a rebidding of the services. City Engineer Lee Gustafson said that could be done and noted the city does change firms due to poor service. Typically every three years when the contracts are renewed different firms are selected. He said the firms weren’t the important piece but rather the personnel and creativity needed for each individual project. The city was getting quality work for the costs.

Schneider said that the tendency was to hire people you know can perform the services. He said the focus should not be reviewing one to three percent increases but rather looking at the annual average hourly rates. The efficiency of having someone on call the city knows can do the right work at the right time probably saves more money than going through a competitive RFP process for each project.

Wagner said he wasn’t suggesting doing an RFP for each project but it should be done periodically as a best practice. Schneider said there were a couple opportunities to do what Wagner was suggesting. One was for major projects. More importantly the city should look for and talk with some of the newer firms entering the market. These firms could be used on smaller projects to see the quality of work they provide.

Wagner moved, Wiersum seconded a motion to approve the revised 2015 fee schedules proposed by the city’s general services consulting engineering firms, and authorize the mayor and city manager to execute the Addenda to the Agreements for Professional Services with the following firms:

- AE2S
- In Control, Inc.
- Albertson Engineering, Inc.
- Kjolhaug Environmental Services Co.
- American Engineering Testing, Inc.
- Short Elliott Hendrickson, Inc.
- Barr Engineering Company
- SRF Consulting Group, Inc.
- Bolton & Menk, Inc. Stantec.
- Hansen Thorp Pellinen Olson, Inc.
• WSB & Associates, Inc.

All voted “yes.” Motion carried.

B. Resolution for the 2015 Street Rehabilitation project

Allendorf moved, Bergstedt seconded a motion to adopt Resolution No. 2014-121 receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the 2015 Street Reconstruction Project No. 15401. All voted “yes.” Motion carried.

C. City manager performance pay

Allendorf moved, Bergstedt seconded a motion to approve a lump sum merit pay amount of $1,339.05. All voted “yes.” Motion carried.

D. Agreement with Hopkins School District and city of Eden Prairie, for fiber optic connections

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

11. Consent Agenda - Items requiring Five Votes:

A. Resolution and agreements for the CSAH 101 project, TH 62 to Hutchins Drive

Allendorf moved, Bergstedt seconded a motion to:
1) Adopt Resolution No. 2014-122 approving final plans and the cooperative agreement, for CSAH 101 Street Improvements, County Project No. 9917.
2) Authorize staff to enter into an agreement with Xcel Energy for the estimated amount of $2,045,000 to provide burial of overhead utility lines as part of the CSAH 101 Improvement Project.
3) Authorize city attorney and the city engineer to proceed with acquisition of necessary easements by negotiation or condemnation.
4) Amend the CIP.

All voted “yes.” Motion carried.

12. Introduction of Ordinances:

A. Items concerning At Home Apartments at 5709 Rowland Road
City Planner Loren Gordon gave the staff report.

Wagner noted during the concept review there was council discussion related to potential parking issues. Given the isolated location with little transit, he asked that the planning commission review the issue.

Schneider said he would like the planning commission to review the amount of enclosed parking stalls.

Community Development Director Julie Wischnack asked for clarification on the council’s expectations for the 10 percent affordability aspect. Schneider said although the city did not have any subsidy involved the tradeoff for the higher density was some affordable housing.

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

B. Major amendment to the master development plan of Minnetonka Executive Plaza at 10275 Wayzata Boulevard

Gordon gave the staff report.

Allendorf said he was interesting in discovering if there would be any parking on the street and any overt indications that the green space and trees should be removed or if it was something the owner just wanted to do.

Schneider said although it was a private driveway connecting the buildings he questioned if there would be any parking that would back up into the driveway.

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

C. Ordinance amending Section 710 of the city code regarding increases/changes in fees

Wischnack gave the staff report.

Acomb moved, Wiersum seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.

D. Ordinance regulating tobacco product sales

City Attorney Corrine Heine gave the staff report.
Acomb asked if the retail stores were checked to ensure they are not selling to underage minors. Wischnack said the stores are checked and there are occasional violations. Acomb noted she represented the city on Tonka Cares. Each of the school districts in the city does a survey. The surveys indicate that youth use of e-cigarettes is up dramatically. The products are being marketed to young people with candy and fruit flavored varieties. She wanted to make sure the stores were being checked and if there were other things that could be done to ensure the products were not being sold or marketed to minors.

Schneider said he was concerned about teenagers using the products not necessarily for tobacco, but for other substances that can be vaporized. The staff report indicated the state statute had some limitations that were not included in the proposed ordinance. He asked why those limitations were not included because he thought it was something that should be highlighted. Heine said because the prohibitions are in the statute, the city would enforce them.

Bergstedt noted that for a long time the city had prohibited tobacco use in all city parks, athletic fields and beaches. The same prohibitions would apply to e-cigarettes.

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

13. Public Hearings:

A. On-sale liquor licenses for Cocoa Loco, 11056 Cedar Lake Road

Barone gave the staff report.

Schneider opened the public hearing at 7:21 p.m. No one spoke.

Bergstedt moved, Wagner seconded a motion to continue the hearing to December 15, 2014. All voted “yes.” Motion carried.

14. Other Business:

A. Resolution repealing and replacing EXHIBIT B of Resolution 2014-018, pertaining to required rear yard setbacks within LEGACY OAKS

Gordon gave the staff report.
Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2014-123 repealing and replacing Exhibit B of Resolution 2014-18. All voted “yes.” **Motion carried.**

**B. Items concerning the redevelopment of Highland Bank at 1700 and 1730 Plymouth Road**

Gordon gave the staff report.

Wagner said during the discussion at the previous meeting the capital improvements mainly focused on the Ridgedale Drive/Cartway Lane area. There was also discussion about looking at trail connectivity as well. The neighborhood engagement process would include what improvements, if any, would be required associated with Essex Road and how that fit within the broader capital plan. He said because people would come into the village center visioning process with different levels of experience and understanding it might be helpful to have an optional introductory meeting where people could review a number of the documents to get up to speed. He would also push for starting the engagement process in mid-January.

Allendorf said it seemed things were occurring in the wrong order. There was a project that stood on its own. There’s a village center study from 2012. Whatever happened with the project would be decided while a further visioning series was underway with conclusions coming in March. It seemed to him if there was going to be a second visioning series at the end there would be a plan by which the planning commission and council could judge any proposed project for the area.

Howard Paster, Paster Properties, said his company and Bader Development were very surprised by the results of the last meeting particularly because of some of the comments received from the city over the past year. He remained very optimistic about the project. They want to build a quality project and building that the community would support and be proud of. He acknowledged that some of the neighbors have concerns about the density, the need for more green space, the scale of the project, onsite traffic flow, and the connectivity to the larger area. He requested a delay of the vote until the December 15 meeting. This would allow the concerns to be addressed and time to evaluate what types of modifications could be made to the project.

Schneider asked Paster if he thought there would be time between now and December 15 to reach out to the neighbors. Paster said they would be open to continuing to include the neighbors in the process.

Bruce Gershman, 11605 Cedar Pass, said he and his wife love the community and it was their hope that when it comes time to downsize, that
they can stay in the community. Currently when they look at potential places they could rent, they do not see anything that was attractive to them. The proposed development was attractive to them and other people in similar situations. The current site was drab, boring and doesn’t add to the community. If it was replaced by the proposed building, it would add a lot to the community.

Bob Hartman, 3460 Oakton Drive, said like the Gershman’s, he and his wife would be looking to downsize sometime in the future. He was also thinking of his boys who he would like to see live in the community in which they grew up. The proposed project was precisely the kind of development attractive to young people.

Ron Harris, 11475 Telluride Trail, said Minnetonka was a delightful place to live. He happened upon the development by accident. He caught the planning commission hearing one evening while flipping through channels on TV. He was smitten by the project and said it was important that everything be weighed against what was best for the community. The building was a beautiful mid-rise building with a lot of amenities. The building would be sitting in the middle of a huge commercial and retail area.

Alan Winter, 3425 Oakton Drive, said one of the attractions of the project was it would capture and captivate the interest of the millennials as well as his age group. The village study indicates the younger generations may find areas with shopping, dining, and transit attractive to live in. The study also indicates possible redevelopment for the area across the street could include an eight story hotel and six story office building. He said when the council makes a decision on this project that they keep in mind the dynamics for the whole area.

Annette Bertelsen, 13513 Larkin Drive, said she was speaking on behalf of the Essex Hills residents group. The group represents residents from 19 different streets in the city. The group asked the council to support the public process that was outlined for the Ridgedale village center vision. They requested the process be four meetings instead of three because it was a regional center and there needed to be a big picture discussion before focusing on productively of the southwest quadrant. Ideally the public process would be completed before any properties in the Ridgedale areas were rezoned. The group was looking forward to seeing the new proposal for the Highland Bank property that addressed the council’s concerns.

Peg Palaskas, 2389 Cherrywood Road, agreed with Allendorf’s comments that the process seemed awkward and out of order. The village vision plan was not opened up to all residents to comment on. There needed to be a
fair, transparent and open process for notifying residents about vision plans. This would prevent the situation where there was a proposal being looked at before there were specific quantifiable design standards to measure the project against.

Schneider said it would be beneficial for the council to discuss the sequencing concerns Allendorf raised as well as the idea for an introductory or fourth meeting and setting the expectation on what the outcome might look like. It was unlikely that at the end there would be a list of restrictions on heights, densities, setbacks and number of units. Rather guidelines would be established like other village studies where principles and approaches and general parameters were established. He said he didn’t think there was a right answer about whether or not to approve any project before this was done. Historically during most of the significant study processes that have helped shape the community, the city could not get people to participate. Unless people are appointed to a board or task force they tend not to come out. People do come out when a project comes forward. He thanked the developer for triggering people’s interest in paying attention to the Ridgedale area. There now was an engaged area and this would be beneficial.

Wiersum said it made sense to further study some of the broader issues. As far as the sequencing it was up to the developer to decide what order he wanted to proceed. Doing the study and getting the context on what parcels really were in play would be informative.

Acomb said she was supportive of Wagner’s suggestion of starting the meetings earlier and having a fourth meeting. As far as the sequencing she didn’t disagree with Wiersum’s comments but it was her hope that the input from the neighborhoods was included for the parcels bordering the R1 neighborhoods.

Wagner said the process to discuss CIP improvements and the neighborhood meetings would help color in the lines. He said regardless of what the developer comes back with the council needed to color in some of its own lines. How does this parcel fit in better with the southwest quadrant and property across the street? This wasn’t the developer’s job but rather it was staff’s job to inform the council what the vision plan included to ensure it wouldn’t preemptively block what would be discussed at the neighborhood meetings.

Schneider said he agreed that the trail and pedestrian connections would be a top priority for the CIP discussions.
Wiersum said he was comfortable about tabling any action on the proposal until December 15. Even if the project was denied at this time it wouldn’t be the last time the council would discuss the parcel.

Bergstedt said he strongly favored tabling action until December 15. He was curious what the developer would come back with after listening to the comments at the last meeting. He hoped the new neighborhood visioning process would produce dividends far beyond this one site. It would not be in the best interest of the city to make the developer wait until next spring when the visioning process was completed.

Allendorf was also in favor of tabling the decision. He didn’t want to turn down the potential altering of the project. Hopefully the council would see a project that was changed based on the input. He didn’t want to see just a couple of tweaks to the green space and the closing of a drive thru. He said one of the benefits of a village study when there wasn’t the pressure of a project before the council was the good input from residents. The 2012 study was not as all-encompassing as what was envisioned for this study. What he did not want to see happen was a project get approved and then everything studied around the project had to conform to the model that was set.

Barone said staff would do everything possible to move up the date of the first neighborhood meeting to earlier in January. There were constraints however because council had put top priority on the Glen Lake village center process. The facilitator for that process would be the same as the one that would be likely used for this process.

Wiersum moved, Bergstedt seconded a motion to:
1) Approve the Ridgedale Village Center Vision public process for the southwest quadrant as proposed.
2) Make a motion to table action on the development proposal until December 15, 2014, as requested by the applicant.

All voted “yes.” Motion carried.

Schneider suggested looking at the possible need for a comprehensive guide plan amendment in a broader context. When the comprehensive guide plan committee last did its work it was all based on resident input. It was a well thought out process but at the time there was no thought about creating a more dynamic and vital Ridgedale vision. Since that time there was a more aggressive vision for what could happen in the area. This should shape the next guide plan. During the past few guide plan processes subcommittees were established to look at more complex topics. He suggested using the same mentality for the broader issue of what the comprehensive plan should include and starting that earlier in the
Heine said under state law the zoning ordinance had to conform with the comprehensive plan. The issue was there ambiguity in the comp plan language because the map and text designated the area as mixed use. Mixed use includes residential. There also was a clause that stated residential was not appropriate because of traffic. This created an ambiguity and the council needed to interpret what was meant. She said Ellingson indicated his interpretation was the plan states, and what the council meant at the time, was residential was not appropriate on the land. Staff’s interpretation was it was not intended that residential would never be appropriate under any circumstances. What was intended was residential was not the best fit because of traffic concerns. If traffic concerns were addressed then residential would be considered appropriate. If the council agreed with Ellingson’s interpretation then the comp plan needed to be amended. If the council agreed with staff’s interpretation then no amendment was required. She said a court should defer to the council in the interpretation of its own plan.

Ellingson said he raised the issue because it seemed there really was not much ambiguity. He was in favor of having residential at this site. When the comp plan was developed residential was not being considered for the site but the developers saw something the council didn’t see years back. He thought something would be worked out. The issue was not if an ambiguity existed but instead how to amend the guide plan. The guide plan was amended by the council voting to do so not by doing a traffic study. He was worried about legal action being taken against the city and holding up the developer because of a legal technicality.

Wiersum said he interpreted Heine’s comments as there was an inconsistency in the plan. The inconsistency concerned him. He would feel better correcting the inconsistency.

Barone noted there was a requirement for the planning commission to consider a comp plan amendment. The earliest this likely could occur was December 11.

Wagner said ambiguity was never good. The plan was created after a visioning process. He didn’t think anyone would disagree with the idea that residential was targeted for the southwest quadrant. It was clearly stated in the vision plan and the comp plan indicated the Ridgedale area needed a number of units in total. He didn’t view the amendment issue as tied to
the Highland Bank proposal but rather an ambiguity existed that could be clarified.

Schneider agreed there were two separate issues. The amendment issue could be solved on its own with the project standing on its own merit.

Wischnack said if the council wanted to move in that direction the amendment be called a “city initiated comp plan amendment.” This would help clarify it was something the city was asking for.

Wiersum moved, Ellingson seconded a motion to adopt Resolution 2014-130 directing staff to draft a city initiated text amendment to the comprehensive guide plan related to the provision about residential use in the southwest quadrant for planning commission consideration.

Heine noted the action would be initiated at the planning commission level. In order for the council to request the planning commission to consider the amendment, a resolution needed to be adopted. Otherwise the planning commission could initiate a proposed amendment without a council resolution.

Allendorf asked if the Met Council had to be informed of the change to the comp plan. Wischnack said staff would contact the Met Council but because it was a text amendment that would not change any of the numbers from the land use plan it was doubtful it would be required.

All voted “yes.” Motion carried.

Schneider called a recess at 8:34 p.m. He called the meeting back to order at 8:41 p.m.

C. Concept plan for 14217 Stewart Lane (Kinsel site)

Barone asked Heine to review the memo she prepared for the council. Heine said there were two types of decisions the council was dealing with the development. One was the ordinary zoning regulatory authority. The other was the council’s capacity of the maker of a contract. The standards that applied to those two things were different. The council approved a development contract back in 2006. The contract was restated in 2010. The contract contemplated a development that would be generally consistent with the master plan that was part of the contract. This included different types of zoning approvals. All the zoning approvals were granted in 2006 including the rezoning that remains in effect. There were variances that were granted for the site. According to the city code, what has to be done in order to keep the variance approvals alive was that they
had to be extended. The code clearly states the approvals cannot be extended for more than three years before a building permit has to be issued.

Heine said the zoning approvals had lapsed and had to be reissued but the contract had been issued. The contract said the city would use its best efforts to facilitate the development of the project including land use approvals. The council had a contractual obligation to use its best efforts. She said the courts have been pretty consistent in deciding there was a higher standard for best efforts than there was for good faith. If the developer brought forward an application with variances that were generally consistent with the development the contract proposed, and the council approved in 2006 and in the approved 2010 restated agreement and extended in April 2014, then the council needed to strongly consider the approval of the variances as long as they met the standards the law requires. She noted the project approved in 2006 and 2010 contemplated 45 to 50 units. This was the contractual obligation.

Wiersum said he understood what the city attorney had stated to be if the developer proposed exactly the same building proposed for the Kinsel Point condominiums then the council was contractually obligated to honor the variances. He asked if the building had the same footprint but the inside was totally different with a different number of units, if the contractual obligation would continue. Heine said the council never had a contractual obligation to use best efforts to facilitate a development of more than 50 units. Anything more than 50 units would fall under the council’s ordinary discretion of applying typical zoning laws. Wiersum noted that the law was a past council cannot tie the hands of a future council. He asked if that applied in this case. Heine said when the city has entered into a valid contractual obligation the contract still needed to be complied with even if the members of the council changed.

Acomb asked if meeting the best effort standard could be met if a building could be built on the site without the setback variances. Heine said the contract indicated the city would make its best attempt to facilitate this development. The master site plan was attached to the contract. The obligation was if the development came forward and the construction plans conformed to the master site plan, the contract, and the TIF plan, then the council had to approve the construction plans. She said the council would need to make the determination if a development fell within the contractual obligations based on a specific application that was submitted to the city. Acomb said while she understood the affordability requirement had been removed from the contract if it still could affect the granting of variances. Heine said that issue could have been raised at the time the contractual obligation was removed. Wischnack clarified the
affordability for the project was met. There were 43 units throughout the phases of the development that had already been built.

Ellingson said Heine’s memo indicated the ownership character of the units was significant. He asked if somebody proposed an all rental apartment building if what was being said was the council would not be as obligated to approve it. Heine said it would raise a question she would have to look into further. Ellingson asked why the number of units was important if the building were the same size. Heine said the reason the number was significant was because of what was in the approved contract. The contract called for 45 units. The TIF plan called for 45-50 units. The contractual obligation did not go any further than this. Ellingson asked if the contractual obligation applied if any other developer purchased the land. Heine said the development contract was with Glen Lake Redevelopment with Kinsel Point LLC identified as a sub-developer. The contractual rights did not automatically follow a completely separate entity but would still be enforceable by Glen Lake Redevelopment who would have the ability to assign the contract rights and the development rights under the contract to the applicant.

Wagner noted what was approved had been controversial so it was important to understand what the ground rules were. For him, if the developer could come back with some of the setback issues addressed, as well as addressing the issues raised by the neighboring townhomes, it would add positivity from the council and neighborhood. There was agreement something would happen on the parcel. Could some of the emotion involved be addressed while recognizing the property was now zoned R5 even though some were opposed to the rezoning. Maybe a few units could be removed to address some of the concerns.

Wiersum said essentially what was shown at the concept review was the same building with a few more units. Back in 2006 and 2010 the neighborhood thought the building was too massive and disliked the variances and rezoning. His instincts told him what would come before the council likely would invalidate the variances. His preference was something with a different layout that fit in better with the property. He was not comfortable with the variances that ultimately were approved because of the size of the building that would have a significant impact on the neighborhood.

Allendorf said that just about any proposal would have been objected to in 2006 by the neighbors. He noted there was a concern raised from a resident about the shadow that would impact his home with the suggestion of lowering part of the building and raising another part. Allendorf said he weighed this against good architecture and planning. Whatever was proposed should be consistent with good planning. He asked for
clarification on the importance of the number of units. Heine said if the council decided not to approve a project because it had 58 units as opposed to 50, and the decision was challenged in court as a breach of contract, she thought the city would have a good chance to prevail. Allendorf said he was not concerned if the proposal was for 58 units.

Wiersum said he was not daunted by the difference between 50 and 58 units. However if it was 58 units then the variances would need to be approved again.

Bergstedt said he also was not concerned if the proposal was for 50 or 58 units. He agreed with Wiersum that the important thing was the leverage the council would have if 58 units were proposed. If the applicant came forward with a 45-50 unit development with pretty much the same footprint, the council would have to approve it. If the developer wanted additional units he hoped they would look at lessening some of the variances. If the neighborhood concerns could be addressed the process would go a lot more smoothly.

Schneider said what was shown at the concept review was within the same footprint and was shorter in height than what was approved. The ownership issue was not an issue since the plan was not for rental. He looked at 58 units as opposed to 45 or 50 units as gaining some affordability. The reason the original number had been reduced from 50 to 45 was the developer did some market research indicating people were interested in bigger units on the top floor. In reality the units were likely too expensive for the Glen Lake market. He said the variances were not as controversial as the height and mass of the building. The variances were for open space. Tweaks could be made but unless there was a major downsizing of the building the variances could not be changed to be all that noticeable. He said if the applicant voluntarily agreed to 50 units with some of them designated for affordable, this could change the dynamics.

Timothy Nichols, One Two One Development, said the company was not interested in perpetuating the past problems. Their understanding was they were buying a site that had approved development rights and they had a process and product that would result in a successful conclusion. They had done cooperative developments for a long time and had a market study that stated people were looking for this type of product in the community. He said the number of units was by and large immaterial but played a factor with the economic model. Practical affordability meant the ability for someone who had lived in the community to sell a home and purchase a cooperative unit in the community and still have money left over. He said there was a deep philosophical basis for what his company and Ecumen were trying to do. They would like to advance with the 58 unit development. The proposal would include affordable units. Three units
would comport with the Met Council’s affordability standards. The fix appreciation model would allow for a market to grow and the affordability to increase in the future. The idea was to work with all the neighbors.

Link Wilson, the project architect, asked for council feedback about 58 units if three were considered affordable. He also asked for feedback about trail location.

Schneider said environmentally and aesthetically it made sense to leave the trail where it was and connect to the park rather than having it go through big buildings and around the back. The trail could be screened where it went in front of the townhome. He noted approvals were not given during the concept review process. He asked staff how much more detail work had to be done that had not already been done to submit a formal application. Gordon said the site and building plan was the primary vehicle needed for the formal application. There were other minor things involving wetland setbacks that would be reviewed. More information about elevations to provide more perspective from different vantage points was needed.

Wischnack said the council feedback she heard was some concern about the number of units. Affordability might address some of the concerns. Trail location may still be an issue. The general location of the building may be an issue.

Bergstedt said having some affordable units was a nice feature. The units were practical affordable because they were 800 square feet not because the developer was doing something special. He said caution was needed when discussing affordable housing because it had all sorts of connotations. If there were some affordable units it would be one thing he would consider among many other things.

Wiersum said he too would consider affordability when considering the overall number of units. He has never loved the footprint of the building so if there was an opportunity to improve it, he would like to see that done. He said he was indifferent about the trail location. Whatever made the most sense for a good trail was fine.

Ellingson said a lot of the discussions about many developments came down to economics and how to get the land cost per unit down to make the project work. This wasn’t what the standards in the variance ordinance said. There had to be practical difficulties or hardships related to the land or site. He said the developers never indicate there’s an issue with the site but always inform the council how many units were needed to get the land cost down. The council approves the buildings while ignoring the ordinance standards.
Schneider said increasing the number of units to 58 was not a meaningful contradiction to the original approval. The original rationale for granting the variances was still valid.

Wagner said he supported the original development and the unit count did not necessarily bother him. In the ideal world of trying to get as much council support as possible, needing fewer variances was good.

15. **Appointments and Reappointments:** None

16. **Adjournment**

   Bergstedt moved, Wiersum seconded a motion to adjourn the meeting at 9:39 p.m. All voted “yes.” **Motion carried.**

Respectfully submitted,

David E. Maeda
City Clerk
1. Call to order
Mayor Schneider called the meeting to order at 6:02 p.m.

2. Roll call
Council members Dick Allendorf, Patty Acomb, Brad Wiersum, Bob Ellingson, Tony Wagner, Tim Bergstedt and Mayor Terry Schneider were present.

3. Closed meeting pursuant to Minnesota Statutes section 13D.03 to consider negotiation strategies with respect to 2015 wages and benefits for all employees, including all collective bargaining unit members

Wagner moved, Bergstedt seconded a motion to adjourn into closed session to consider negotiation strategies with respect to 2015 wages and benefits for all employees, including all collective bargaining unit members. All voted "yes." Motion carried.

4. Adjourn into closed session

5. Closed session

Schneider called the closed session to order at 6:06 p.m.

Staff present were Geralyn Barone, Perry Vetter, Merrill King, Sue Poulos and David Maeda.

Respectfully submitted,

David Maeda
City Clerk
Minutes
Minnetonka City Council
Regular Meeting, Monday, December 1, 2014

1. Call to Order

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

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

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

4. Approval of Agenda

Wiersum moved, Bergstedt seconded a motion to accept the agenda with addenda to items 10D, 13A, and 14A. All voted “yes.” Motion carried.

5. Approval of Minutes: October 13, 2014 regular meeting

Bergstedt moved, Wagner seconded a motion to approve the October 13, 2014 regular meeting. Wiersum, Bergstedt, Wagner, Ellingson, Allendorf, and Acomb voted “yes.” Schneider abstained. Motion carried.

6. Special Matters: None

7. Reports from City Manager & Council Members

Barone reported on the schedule for upcoming council meetings.

8. Citizens Wishing to Discuss Matters not on the Agenda

No one appeared.

9. Bids and Purchases: None

10. Consent Agenda - Items Requiring a Majority Vote:

A. Ordinance amending Section 710 of the city code regarding increases/changes in fees

Allendorf moved, Acomb seconded a motion to adopt Ordinance No. 2014-25. All voted “yes.” Motion carried.
B. **Order for liquor license stipulation for Lucid Brewing, 6020 Culligan Way**

Wiersum asked that the item be pulled from the consent agenda. He noted Lucid Brewing was doing business in the city because the council approved an ordinance changing the liquor license approach allowing an operation like theirs to have onsale service. Looking at the stipulation the thing that bothered him the most was Lucid Brewing was not part of the city’s best practices program. The city went out of its way for Lucid Brewing and for them not to participate in the program was disappointing. He encouraged them to join the program that reduces the chance of selling alcohol to a minor.

Schneider encouraged all license holders to participate in the program and noted that program participants may have penalties reduced because of their participation.

Wiersum moved, Acomb seconded a motion to issue the enclosed Findings of Fact, Conclusion, and Order for Lucid Brewing. All voted “yes.” Motion carried.

C. **Designation of the city’s official newspaper for 2015**

Allendorf moved, Acomb seconded a motion to designate Lakeshore Weekly News as the city’s official newspaper for 2015. All voted “yes.” Motion carried.

D. **Resolution approving a conditional use permit to operate a restaurant at 10982 Cedar Lake Road**

Barone asked that the item be pulled from the consent agenda to allow staff to provide information related to a parking issue at the Cedar Hills Shopping Center. City Planner Loren Gordon gave the staff report.

Wagner noted it was the 1988 CUP being brought back to the city. Gordon confirmed that was correct. Wagner said it was important to get the parking easement recorded. He agreed with the Lone Spur owners that parking can be an issue for restaurant patrons. This was a way to mitigate any proof of parking construction that may have to occur next year.

Schneider asked what CUP the condition was being added to. Gordon said the condition would go on to the Play and Learn Café CUP. Schneider said the owner was being looked at to enforce the provision. Gordon indicated that was correct. Barone noted the addendum had a typo that said “bought back” instead of “brought back.”
Mark Ravich, 11300 Overlook Drive, one of the owners of Lone Spur and the shopping center to the west, said he was the developer of the building Lone Spur was located in but was not the owner of that building. When the restaurant went into the building the proof of parking that was created was created exclusively for the burden required on the Lone Spur restaurant under the city ordinances in terms of the parking calculation. If the calculation was done at the time to determine what the requirement was under the ordinance there wouldn’t have been enough parking on the site. It was also felt that the restaurant wouldn’t need that amount of parking. The proof of parking was created in case the additional parking was needed. He said the restaurant has never needed additional parking during the past 25 years. There was also an agreement with the city that Lone Spur would be the only restaurant because there already was a shortage of 40 stalls for the one restaurant. The original lease included a clause providing exclusive restaurant use for Lone Spur. The current landlord removed the clause when the lease came up for renewal.

Ravich said because of the ownership of the shopping center to the west they have always been able to make the parking work. During November his restaurant manager went out ever Wednesday, Thursday, Friday, and Saturday to observe the parking. Generally the lot was basically full during the 6 p.m. to 7 p.m. period. If the lot was full customers park at the other building’s lot. The new restaurant coming in would add 106 seats. He felt this would add 40-50 cars. He said the cross easement issue was not the real issue. The issue was there was not enough parking. Adding to the issue was the building currently was only half full so eventually there would be other tenants adding to the parking problem. The parking next door would be used up as the businesses in that building mature. He didn’t object to the new use coming in but with 25 years of experience it was known there would not be enough parking. It was the front of the lot where the issue needed to be addressed because no one would park in the back of the building and walk around to the front at night. Part of the proof of parking was 40 stalls and two locations of new stalls. If the 40 new stalls were added the parking would likely work. Additional parking could also be added by re-striping a nine foot stall to an eight and a half foot stall. He said as a first line of defense this wasn’t the best idea because of the amount of damage that might occur to vehicles.

Roger Johnson, the architect for Play and Learn Café, said the business had done a parking study. The study was conducted over a week and indicated there was not a parking problem. He noted the restaurant was geared toward young mothers with young children six years old and under. More than half the customers would not be old enough to drive. He said the parking in back according to the 1988 staff information was supposed to be used for employee parking. He didn’t believe the building
owners were enforcing this. He said he went out to study the situation for eight straight days between the hours of 9 a.m. and 7 p.m. Those were the hours the Play and Learn Café would be open. He determined there was never less than 36 parking stalls available during that time. The average during that time was 110 available parking spots. He said he would like to see the 1988 conditional use for cross access easement enforced.

Ali Mishkee, the general manager of Lone Spur, said as the general manager for the past 20 years he has seen the traffic flow increase and decrease depending on the time of the year. Business increased last summer when the patio opened. The biggest problem during his time with the restaurant has been traffic and parking. The back parking lot is mostly taken by the 12-14 Lone Spur employees and other businesses. During the middle of the week the parking lot is very busy due to all the sports teams that play at the high school and nearby park. He questioned where more cars could be accommodated with another restaurant.

Schneider indicated how the city typically uses proof of parking. Traditionally it wasn’t known if the proof of parking was needed so green space was left open. If a problem was identified the parking was then required to be put in. This had to be committed to ahead of time. Usually the person was fine with this because they don’t have to pay for the extra paving unless it was needed. He asked with the reverse situation where the city might not think the parking was needed but the business did, if the business had the right under the original plan to install the parking. Did the city have the some ability to control the process? Gordon said the city preferred not to have parking built if it was not needed. This was why the proof of parking provision of the city code exists. He said in this situation the reason the condition was being revisited was the expectation from the beginning for shared parking. The preference was to have this done first. He said if the business wanted to add the parking the city would evaluate the situation more definitely by doing a parking study conducted by a neutral third party. Schneider said the study probably should be done during peak times.

Wagner said the cross access easement was the right first step. The last thing the city would want was one property owner to not allow people to park that were visiting another business. This was not the intent of the original approval. He said staff needed to be vigilant monitoring the parking because it could become crowded and the building has not been at full occupancy since he has been on the council with one tenant being an insurance agency that had little traffic. The city should also encourage the owner to have the proof of parking plan ready in case it was needed.
Wiersum said if a parking study was to be done he would prefer it wasn’t done during the summer because restaurants in Minnesota typically take a big hit during the summer when people have a lot of outdoor activities.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2014-124 with the corrected change memo approving a conditional use permit to operate a restaurant at 10982 Cedar Lake Road. All voted “yes.” Motion carried.

E. Resolution approving a lot division with variance for Bethlehem Lutheran Church at 5701 Eden Prairie Road

Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2014-125 approving the request. All voted “yes.” Motion carried.

F. Resolution approving the final plat of Westburgs Subdivision Second Addition at 16512 Excelsior Boulevard

Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2014-126 which grants final plat approval of Westburgs Subdivision Second Addition. All voted “yes.” Motion carried.

G. Resolution approving joint and cooperative agreement for use of law enforcement personnel and equipment

Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2014-127. All voted “yes.” Motion carried.

11. Consent Agenda - Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

A. On-sale wine liquor license for Davanni’s, 15200 State Highway 7

Barone gave the staff report.

Allendorf noted a typo in the change memo. It should read “card swipe” and not “car swipe.”

Tasha Satter, general manager for Davannis, said the restaurant would like the license approved.

Barone noted Davannis had agreed to participate in the best practices program.
Schneider closed the public hearing at 7:08 p.m. He noted adding wine would enhance the dining experience at Davannis.

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

B. Items concerning Zuhrah Shriners, 6120 Blue Circle Drive

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

Schneider opened the public hearing at 7:12 p.m. No one spoke.

Schneider closed the public hearing at 7:13 p.m.

Wiersum moved, Allendorf seconded a motion to:
1) adopt Resolution No. 2014-128 approving a conditional use permit for gathering space at 6120 Blue Circle Drive for Zuhrah Trustees Incorporated.
2) grant the license.

All voted “yes.” Motion carried.

14. Other Business:

A. Item concerning Tonkadale Nursery at 3739 Tonkawood Road

Wischnack and Gordon gave the staff report.

Jessie Jacobson, representing Tonkadale Nursery, said the application for the parking lot expansion was withdrawn due to feedback from the neighborhood. The goals moving forward were to make sure there was full compliance with the newly adopted CUP. Tonkadale would also like to reduce its impact on the neighborhood while still attaining its business goals. They acknowledged compliance with the CUP didn’t mean there were no other nuisance items occurring. She noted that two years ago Tonkadale changed the way it received its bagged good items for retail sale. In the past large quantities of the items were warehoused. They have worked with a vendor with knowledge of the inventories so they can deliver on time. This would not have too big an impact on the business while reducing a lot of the storage issues.

Jacobson said Tonkadale had heard the concerns about what was happening at 3740 Tonkawood Road. They are reducing the amount of things being grown at that location by over 75 percent. In the future it
might be possible the space would no longer be needed. A new bobcat had been ordered. It will be less messy and less noisy. The way retail products are stored has been looked at. She said it appeared they were in compliance. Efficiencies have been gained on how retail space was being used versus the production space. A lot of the production has been moved off site thus less onsite storage was needed. She said they continue to work with vendors to receive deliveries in the most efficient manner possible. She reads portions of a letter from a vendor to confirm those efforts and instructions Tonkadale gives to delivery drivers. Best practices have been developed as a training tool so employees understand the provisions of the CUP as they apply to the daily operations. She showed slides of where screening could be added. Alternative parking options for peak traffic periods were being looked at.

William Maruska, 15812 Day Place, said he appreciated what the planning staff had done to help address the concerns with the neighbors. He thought Tonkadale had come a long ways to address the concerns.

John McCrady, 3708 Tonkawood Road, said he was speaking on behalf of the neighborhood residents who had been opposed to the proposal to expand the parking lot. He commended Tonkadale for the major progress that had been made since the proposal was first presented. Agreement had been reached on addressing some issues. There was an agreement to work together to address other issues. There was one issue where both sides had a better understanding of the other’s perspective. He said the neighborhood’s concerns had been truck traffic, parking management, commercial use of surrounding properties, compliance with the CUP, and planning for the future of the property. The neighbors felt it was essential Tonkadale maintain 58 spots in their parking lot at all times. He said the neighbors believed the best use of the 3740 Tonkawood Road property was single family housing. The long term planning should be the planned conversion of the property. He said the neighbors would like to see the elimination of on street Tonkadale parking. He showed photos of cars parked that potentially could cause safety issues. He questioned the difference between 3723 Tonkawood Road, where no business operations are allowed and 3740 Tonkawood Road. The neighbors believe the CUP footprint has reached its limit and should not expand.

Wiersum said he sensed a level of cooperation between Tonkadale and the neighbors. This was in everyone’s best interest. He asked if the city had the right to regulate the agricultural use on the R1 3740 Tonkawood Road property. Heine said this could only be done by amending the zoning ordinance. Wagner noted that the current use would be grandfathered in if the ordinance prohibited agricultural use. Heine said by state law the existing use must be allowed to continue although expansion of the use could be prohibited. Wiersum asked if the amendment to the
zoning ordinance could be done in part of the city or if it would have to apply citywide. Heine said spot zoning is not allowed so separate districts would have to be created. This would require a rational basis. Wiersum said the CUP does not cover 3740 Tonkawood Road. He asked if it was correct the city could not make it part of the CUP. Heine said as long as the property owner was operating under the permitted use, they could not be forced to apply for a CUP for the property. If an activity was occurring on the property outside the permitted use, the city could either make them come into compliance or apply for a CUP.

Schneider said there was a fine line involved in stretching the true intent of allowing agricultural use only. An example would be storing mulch on the 3740 Tonkawood Road property that could be sold across the street. He said informally clarifying how the operation would be run might be helpful.

Wagner said on the issue McCrady raised of why there was a difference between what was happening at the 3723 property versus the 3740 property, the answer was there really was no difference. Tonkadale was not growing anything on the 3723 Tonkawood Road property but could choose to do so. Heine confirmed that was correct.

Schneider said one of the issues he was concerned about was the seminars that have a large number of people attending and the corresponding parking issues. He liked the suggestion of coming up with a way to spread out the attendance such as establishing registration. He also agreed with restricting parking in the areas by the intersections and trails. He suggested the neighbors work with Tonkadale, and Tonkadale work with the city to take a look at the whole front area to figure out a way to have better traffic flow, better truck deliveries, and better circulation. This potentially could add a few parking spaces. Having a quality traffic designer come up with different scenarios for the council to look at would be beneficial. He said one of the principle things to ensure was that trucks did not have to back up anywhere for the deliveries.

Gordon said to implement the changes to improve the front area Tonkadale would need an amendment to the CUP. Neighbors would be noticed and Tonkadale encouraged to meet with the neighbors to work out details prior to the item coming to the planning commission. Limiting parking on the street would require council action. Wischnack said one option would be to have temporary event parking on the street similar to what’s done for other events in the city. Gordon indicated the resolution included a provision that would limit the footprint to its current size.

Wiersum said when the parking lot expansion came before the council he viewed it as an expansion of the business and did not support it. Tonkadale had the right to operate under the conditions of the CUP. He
said the staff’s recommendation to clarify the language was exactly the right thing to do. He didn’t want to get the city in the business of running Tonkadale’s business. There may be opportunities to improve the parking situation but that was Tonkadale’s decision to make as a business. If they want to expand the parking lot they can bring that before the council. He said the dialogue has been very helpful. Tonkadale better understood some of the concerns of the neighbors. He thought the neighborhood was overreaching a little bit on some of its expectations but the situation has dramatically improved. He appreciated Tonkadale withdrawing the application to expand the parking lot. The city’s role was to enforce the existing laws. He did not support putting up no parking signs in the immediate neighborhood. The unintended consequence would be limiting parking for the neighbors for things like a graduation party. He’d be open to ideas to improve the parking.

Schneider said he would like staff to come up with the parking restrictions in key safety areas that he previously mentioned. Wagner said he supported that. Wagner said he thought the idea to limit the intensity of 3740 Tonkawood Road would result in more deliveries. He thought there should be further discussions about how to address the delivery issues. This was not staff’s job but rather it was up to the business and the neighborhood to work on potential solutions.

Allendorf thanked staff for its work. He also thanked Tonkadale for addressing the issues. He thanked the neighbors for their input. As far as the issue related to the seminars what would work would be to not only have registration, but have registration with a limit.

Wischnack noted that staff would only enforce the conditions in the CUP. Things that Tonkadale agreed to do that were not in the resolution would not be enforced by staff. She also clarified that the resolution indicated area “F” as allowing retail from May through June.

Acomb and Bergstedt noted they would like staff to come back with a resolution prohibiting parking across the trails.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2014-129 which approves amending, replacing and combining both a conditional use permit for a commercial nursery and a detached garage in excess of 1,000 square feet. All voted “yes.” Motion carried.

Jacobson said Tonkadale had asked permission to park its van behind the garage with the 28 foot trailer. Wischnack said that was not allowed in the approved resolution. Schneider said Tonkadale could request that be allowed as part of the revised circulation plan.
Schneider called a recess at 8:53 p.m.

He called the meeting back to order at 9:02 p.m.

**B. Major amendment to the master development plan of Minnetonka Executive Plaza at 10275 Wayzata Boulevard**

Gordon gave the staff report.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2014-26 approving the request. All voted “yes.” Motion carried.

**C. Conditional use permit for telecommunications facility at 10500 Hillside Lane West**

Gordon gave the staff report.

Wiersum asked for more information on the coverage map and how it corresponded to the signal bars on his phone. Gordon said the map indicated where dropped calls were more likely to occur.

Acomb asked how the 80 foot height for the school location was determined. Gordon said that was the height of the existing light poles at the football field.

Wagner said the staff report indicated that height could be raised ten more feet. Gordon said there was an administrative allowance to raise it another 15 feet.

Schneider said there was also a provision if there were certain separations allowing co-location of other services. He asked if the pole was extended another 15 feet if this would provide the opportunity for T-Mobile or Verizon to add on. Gordon said that would have to be evaluated by the consultant engineer.

Christopher Rohr, from SAC Wireless, said he represented AT&T. He appears before many towns and cities throughout the state and his litmus test was if the decision making process was fair. He didn’t feel this process had been fair. The planner said at the planning commission meeting that she did not understand the industry. A consultant was hired and indicated the light pole would work fine. Rohr said the pole was 10 feet shorter plus another five feet from topography and would provide less coverage. He said according to the FCC, AT&T had a legal right if there was a willing property owner for a legal purpose within the city’s ordinance to put up the tower. The planning commission chair agreed. The stealth 90 foot tower would be pretty close to I394 and would be as innocent a
cellular installation that could be done with no antennas hanging off of it. He said the staff recommendation would likely lead to a third tower. There would be a better coverage map with where AT&T wanted to go. He questioned how the consultant came to the conclusion without having a set of plans to review. He asked the item be referred back to the planning commission for further review.

Schneider said the council had spent numerous hours over the past 10-15 years trying to come up with an ordinance that prioritizes where the city would like cell towers located. Many consultants have been hired to assist with the effort. Groups including AT&T were brought into the discussion. The ordinance was created indicating the priorities of locations. Staff was administering the ordinance the council adopted. He said Rohr could work with the consultant if he disagreed with the consultant’s conclusion.

Wagner said the city had a policy and ordinance that states the city prefers co-location over new installations when there is not a reasonable alternative that can provide reasonable coverage. Rohr said “reasonable” was too subjective.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2014-131 denying a conditional use permit for a telecommunications tower at 10500 Hillside Lane West. All voted “yes.” Motion carried.

D. Conditional use permit, with location variance, for Glen Creek Lodge at 5708 Glen Avenue

Gordon gave the staff report.

Carol Ackley, 5708 Glen Avenue, said everyone agreed the purpose of the variance was to avoid extra cars and traffic on smaller roads. With the request there would be no additional traffic or cars. Nothing would change externally. It would give two more men the opportunity to heal and get well with no neighborhood impact. She asked the council to reconsider the recommendation for denial.

Carrie Stowers, 5724 Glen Avenue, read a statement from Melissa Ketelsen, 5637 Glen Avenue, asking the council to support the staff and planning commission recommendation. Ketelsen and her husband supported the state law’s intent of locating small residential treatment facilities in neighborhoods. However they believe once facilities get larger they start to feel more institutionalized. Stowers said she loves their peaceful neighborhood and supported the city’s ordinance. The ordinance serves the orderly expansion of residential care facilities specifically on arterial collector roads preserving the low density single family residential character. She noted a similar request for a facility on Crown Drive was
denied on June 2. Glen Avenue is a smaller street and has children walking to school on it.

Pat Coty, 5716 Glen Avenue, said Ackley’s facility might be run perfectly but his understanding was the variance goes along with the property. If the facility was sold there was no guarantee the new owner would run things as well.

Ackley said she understood Coty’s concern and it was a valid one. She said her legal counsel indicated a provision could be included within the variance to restrict it to the same business or same number of beds.

Bob Trojan, 5653 Glen Avenue, said business models change all the time. He said he appreciated what Ackley said to address the concern and appreciates her work, but he thought a change in the business model could cause issues. He thought the ordinance was thoughtful and progressive and asked the council to support the denial.

Schneider asked Heine to address the issue of putting conditions on the variance. Heine said the ordinance was regulating land use impacts and not the specifics on how a particular business operates. When the council adopted the ordinance the idea was if there were going to be more than eight people in a licensed facility in an R1 neighborhood the location had to be on a collector street. The city was not looking at each particular business but rather was looking at the broad spectrum of everybody that operates licensed residential facilities. There might be some specific businesses that do not have traffic impacts but other businesses will have traffic impacts. The regulation was put in place to cover the broad spectrum and the general impacts on the property and neighborhood of those businesses. She said this particular application does not meet the legal requirements for a variance. To be granted a variance the applicant has to show characteristics unique to the property and not the business.

Schneider said in addition to the property characteristics there had to be practical difficulties demonstrated and that was not being done with this request. He noted the council had spent a fair amount of time discussing the ordinance. Part of the idea was finding the balance between protecting what the council felt was a valid state statute allowing group homes with six people and under to be located anywhere in the city as a right. Agreeing to allow more than six people in a facility could lead to the statute being watered down and eventually changed. There was a broader issue involved than the use of a van.

Wiersum said he strongly supported both group homes and the ordinance. The ordinance was in the best interest of group homes because group homes going into residential neighborhoods were somewhat controversial.
Having the state regulate the facilities and giving the city no say in approving or denying a facility with six or fewer people empowers group homes. He said group homes really needed to be good neighbors and needed to be considerate about the impacts they have on the neighborhood. There would be greater impacts if the city allowed more than six people in the facility. Nobody was saying the two additional residents would not have visitors or would never see a counselor or staff. He said the state statute was in the best interest of the city because it keeps the city out of the issue of people not wanting group homes in their neighborhood.

Bergstedt said there were many group homes in the city and overall things have worked well. He had the opportunity to meet with Ackley and she was running a very good operation in two different locations in the city as well as other locations in the metro area. He said she did an exemplary job of serving people well. Her facilities provide an invaluable service for a lot of people. He said the ordinance was passed with deep thought looking at ways to protect against excessive impacts on neighborhoods. The ordinance provides that to allow more than six people the facility has to be located on an arterial or collector road. He said nobody would consider Glen Avenue an arterial or collector road. Other facilities were denied additional residents because of the provision in the ordinance.

Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2014-132 denying a conditional use permit, with location variance, for a licensed residential care facility serving eight residents at 5708 Glen Avenue. All voted “yes.” Motion carried.

E. Items relating to the 2015 operating budget and levies

Barone gave the staff report.

Wiersum moved, Bergstedt seconded a motion to adopt:
1) Resolution No. 2014-133 adopting a budget for the year 2015, a revised budget for 2014, and setting a tax levy for the year 2014, collectible in 2015
2) Resolution No. 2014-134 setting a tax levy for the Bassett Creek Watershed Management Tax District for the year 2014, collectible in 2015

All voted “yes.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment
Acomb moved, Wagner seconded a motion to adjourn the meeting at 10:10 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #6A
Meeting of January 5, 2015

**Brief Description**  Retirement recognition of Wendy Turgeon

**Recommendation**  Recognize employee

It is the practice of the city council to recognize the contributions of retiring city of Minnetonka employees.

**Wendy Turgeon, 17 years of service**

Wendy Turgeon started with the city on August 12, 1998. Since that time she has served the public as a registration secretary in the Recreation Services Department.

Over the span of 17 years of service, Wendy’s responsibilities included front line customer services, including but not limited to, registering program participants, processing the department’s account receivables, assisting with the in-house preparation of department brochures, collecting data from program evaluations, and purchasing supplies for park board meetings and department special events.

In 2010, Wendy was part of a group that received a Teamwork Award nomination from the EIA for her part in the process to implement the first online recreation brochure. Wendy will be missed for all her contributions, but will be most remembered for being a great team player and for her fun, contagious and positive attitude in the work place. She will forever be referred to as “Wendy in Recreation”.

Wendy, thank you for your 17 years of outstanding service and dedication to the city and the residents we serve.

Submitted through:
  Geralyn Barone, City Manager

Originated by:
  Dave Johnson, Recreation Director
  Lorry Mendez-Burns, Recreation Administrative Division Manager
Brief Description: Resolution designating an Acting Mayor and Alternate Acting Mayor for 2015

Recommended Action: Make designation and adopt resolution

Background:

The City Charter requires that the city council choose from its members a person to serve as Acting Mayor in the Mayor’s absence or disability. In the past, the city council has also chosen an Alternate Acting Mayor to serve in the event the Mayor and Acting Mayor are unavailable.

Here is a list of the designations for the past five years:

- 2014 – Wagner acting, Allendorf alternate
- 2013 – Wiersum acting, Wagner alternate
- 2012 – Hiller acting, Wiersum alternate
- 2011 – Allendorf acting, Hiller alternate
- 2010 – Wagner acting, Allendorf alternate

Recommendation:

Attached is a resolution that may be used to designate the Acting Mayor and Alternate Acting Mayor. After the city council has made these designations, the appropriate blank areas will be completed.

Based on the foregoing, the city council is requested to adopt the following motion (filling in the appropriate designations.)

That the resolution designating Council Member _______ Acting Mayor and Council Member __________ as Alternate Acting Mayor for the year 2015 is hereby adopted.

Submitted through: Geralyn Barone, City Manager
Perry Vetter, Assistant City Manager

Originated by: David Maeda, City Clerk
Resolution No. 2015-001

Resolution designating the acting mayor and alternate acting mayor

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

Section 1.  Background.

1.01. Section 2.06 of the Minnetonka City Charter authorizes the City Council to designate an Acting Mayor to serve in the absence of the Mayor.

1.02. Because there may be times when the Mayor and designated Acting Mayor are both out of the city, the designation of another councilmember is advised.

Section 2.  Council Action.

2.01. For the calendar year 2015, Council Member ____is designated as the Acting Mayor for the City of Minnetonka, to serve in the absence of the Mayor.

2.02. For the calendar year 2015, Council Member _____ is designated as the Alternate Acting Mayor for the City of Minnetonka, to serve in the absence of the Mayor and Acting Mayor.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 5, 2015.

________________________________________
Terry Schneider, Mayor

Attest:

________________________________________
David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on January 5, 2015.

______________________________
David E. Maeda, City Clerk
City Council Agenda Item #10B
Meeting of January 5, 2015

Brief Description: Resolution and agreements with the Minnetonka School District for the CSAH 101 project, TH 62 to Hutchins Drive

Recommended Action: Adopt resolution and approve agreements

1) Construction Cooperative Agreement
2) License Agreement

Introduction

On November 10, 2014, Council approved a Construction Cooperative Agreement with Hennepin County for the reconstruction of CSAH 101 from Trunk Highway 62 to Hutchins Drive. It was noted at that time that the city had drafted a separate agreement with the school district to further detail the District’s reimbursement to the city for related project costs. This separate agreement was approved by the school board on December 4, 2014.

Construction Cooperative Agreement

As part of the County Road 101 project, certain improvements have been identified to improve safety and student drop off circulation at the Clear Springs Elementary School. These improvements include reconstructing the main school access at Hanus Road, improving the student drop off area, and relocating the bus corral and turnaround to the rear of the school with access from Covington Road. Costs associated with these improvements will be split between Hennepin County, city (State Aid), and the Minnetonka School District.

The cooperative agreement with Hennepin County stipulates school district costs will be paid by the city. The city’s agreement with the school district specifies reimbursement to the city for the district related project costs. To summarize, the city’s and the District’s reimbursement process as required by the agreements are as follows:

- After bid award, Hennepin County will invoice the city for 95% of the city’s and the Minnetonka School District’s estimated share of the contract construction costs and engineering costs. (standard condition with the county)
- Upon receipt of the county invoice, the city will then invoice the Minnetonka School District for 95% of the District’s estimated share of the contract construction costs and engineering costs.
- The remaining costs (5%) in both situations will be invoiced after the project is completed and final quantities have been determined.
License Agreement

The Clear Springs Elementary School bus corral and turnaround is being relocated from CSAH 101 to Covington Road to increase safety. Permanent right-of-way has been acquired in the city’s name to allow for this access between Covington Road and the school property. A license agreement has been created to stipulate that the District’s use of this property is for bus access only. While the school will be responsible for maintaining the access, the city will retain ownership and control the use of the property.

Estimated Project Costs and Funding

The total estimated project cost (updated), including construction, engineering, administration, right of way, and contingency is $15,715,160. The Minnetonka School District’s share is estimated at $387,010. The budget amounts and funding sources for the project are shown below. City funds are included within the 2015 Capital Improvements Program (CIP).

<table>
<thead>
<tr>
<th>Estimated Project Cost</th>
<th>Budget Amount</th>
<th>Proposed Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Project Cost</td>
<td>$15,715,160</td>
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<tr>
<td>Hennepin County + MnDOT turn-back funds</td>
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<td>$11,936,670</td>
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<td>Minnetonka School District</td>
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<td>387,010</td>
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<td>City of Minnetonka Storm Water Fund</td>
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<td>City of Minnetonka Street Imp. Fund</td>
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<td>1,564,970</td>
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<td>Met. Council Sewer</td>
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<td>128,880</td>
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<tr>
<td>Total Construction</td>
<td></td>
<td>$15,715,160</td>
</tr>
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</table>

**Estimated Burial Costs**

<table>
<thead>
<tr>
<th>Estimated Burial Costs</th>
<th>Budget Amount</th>
<th>Proposed Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Minnetonka Elec. Franchise Fund</td>
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<td>$1,385,000</td>
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<tr>
<td>Hennepin County*</td>
<td></td>
<td>660,000</td>
</tr>
<tr>
<td>Total Burial</td>
<td></td>
<td>$2,045,000</td>
</tr>
</tbody>
</table>

*County will contribute up to $795,500, estimated share is $660,000.

At the November 10, 2014 meeting, the CIP was amended to reflect the additional funds needed for the burial and local street improvements. In all cases, the fund balances can support the additional costs.
Schedule and Next Steps

Staff anticipates the project schedule to generally be as follows:

- Start construction: Spring 2015
- Substantial completion – road open: Fall 2016
- Final items and Landscaping: Summer 2017

Recommendation

Adopt the attached resolution and agreements with the Minnetonka School District for the CSAH 101 Project from TH 62 to Hutchins Drive, County Project No. 9917.

Submitted through:
Geralyn Barone, Minnetonka City Manager
Lee Gustafson P.E., Director of Engineering

Originated by:
Jeremy Koenen, P.E., Project Engineer
Resolution No. 2015

Resolution approving Construction Cooperative Agreement and License Agreement with Independent School District No. 276 as it pertains to County State Aid Highway No. 101 street improvements between TH 62 and Hutchins Drive, County Project No. 9917, City Project No. 12208

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

Section 1. Background.

1.01. A Construction Cooperative Agreement for the District Improvements has been prepared by the City of Minnetonka and was presented to and approved by Independent School District No. 276.

1.02. A License Agreement for access to District property from Covington Road has been prepared by the City of Minnetonka and was presented to and approved by Independent School District No. 276.

Section 2. Council Action.

2.01. The Mayor and City Manager are hereby authorized to execute Construction Cooperative Agreement between the City of Minnetonka and Independent School District No. 276.

2.02. The Mayor and City Manager are hereby authorized to execute License Agreement between the City of Minnetonka and Independent School District No. 276.

Adopted by the city council of the City of Minnetonka, Minnesota, on January 5, 2015.

________________________________________
Terry Schneider, Mayor

Attest:

________________________________________
David E. Maeda, City Clerk

Action on This Resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the city council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on January 5, 2015.

________________________________________
David E. Maeda, City Clerk
CONSTRUCTION COOPERATIVE AGREEMENT

THIS AGREEMENT, made and entered into as of the 4th day of December, 2014 by and between the City of Minnetonka, a Minnesota municipal corporation (“City”), and Independent School District No. 276, a body politic and corporate under the laws of the State of Minnesota (“District”).

Recitals

A. The City and County of Hennepin (“County”) have been negotiating to bring about the improvement of a portion of County State Aid Highway No. (CSAH) 101 between CSAH 62 (Town Line Road) and Hutchins Drive, and on CSAH 3 at its intersection with CSAH 101 (the “Project”). The Project contemplates and includes grading, bituminous surfacing, retaining walls, box culvert, storm sewer, traffic signals and other related improvements.

B. The City and County have negotiated a cooperative agreement that addresses the respective responsibilities of the City and County related to design, construction and right of way acquisition for the Project, as well as ownership and maintenance of the Project Improvements. That agreement is designated as Agreement No. PW 33-15-14 (the “Cooperative Agreement”). The District acknowledges that it has received a copy of the Cooperative Agreement.

C. The Project involves the following impacts to the Clear Springs Elementary property, located at 5609 County Road 101, 5621 County Road 101 and 5701 County Road 101 (the “District Property”): widening of County Road 101 with the construction of a path and retaining walls, and reconstruction of the school entrance at the intersection of Hanus Road.

D. In conjunction with the Project, the City intends to undertake a separate project for the improvement of Covington Road, as well as drainage improvements to be made to a city-maintained pond located on the property adjacent to the District Property (the “Covington Project”). The Covington Project is to be constructed in the areas on the attached Figure 1 that are labeled with numbers 8 and 9.

E. The District has determined that it would be in the public interest to coordinate the construction of parking and circulation improvements on the District Property with the County’s construction of the Project improvements. Those improvements include: the construction of a student drop off vehicle turnaround and a playground area, relocation of the bus entry from County Road 101 to Covington Road; and construction of a bus corral and turnaround (the “District Improvements”). The District Improvements are to be constructed in the areas on the attached Figure 1 that are labeled with numbers 2, 3, 4, 5, 6, and 7. The area labeled as number 1 is part of the Project, regardless of whether the District Improvements are constructed.

F. Because some of the District Improvements will result in traffic improvements on County Road 101, the County and City have agreed to include the District Improvements as part of the Project, provided that the District enters into this Agreement.
G. In order to construct the Project, including the District Improvements, the County and City need to acquire right of way and easements as further described in this Agreement (the “Project Easements”).

H. The estimated cost of the District Improvements is $1,623,000 and the District’s share is estimated at $387,010.78. The Cooperative Agreement contemplates that the City will be responsible for paying the County for the District’s and City’s shares of the District Improvements, and that, by this Agreement between the City and District, the District will reimburse the City for the District’s share of those costs.

I. In conjunction with the Project, the City proposes to install landscaping within the Project limits via a separate municipal project (the “Landscaping Project”), which will benefit the District Property. The City intends to perform the Landscaping Project at no cost to the District.

J. This agreement sets forth the understanding of the parties regarding the Project, the District Improvements, and the Landscaping Project and is made pursuant to Minnesota Statutes 2014, Section 471.59.

**Agreement**

1. **Recitals Incorporated.** The above recitals are incorporated into and made a part of this Agreement. The parties acknowledge that this Agreement is intended to implement, in part, the terms of the Cooperative Agreement; this Agreement must be interpreted in a manner that does not conflict with or prevent the implementation of the Cooperative Agreement.

2. **Project Acquisition.**

   a. **Easements on District Property.** The District agrees to convey to the County the permanent and temporary easements and rights of way over the District Property that are necessary for the construction of the Project, including the District Project, at no cost to the County. The locations of the easements to be granted are depicted in red, yellow, pink, dark blue and light blue on the attached Figure 2. The County is responsible for preparing the easement instruments at the County’s cost.

   b. **Easements on Adjacent Property.** As provided in the Cooperative Agreement, the County will acquire the easements over the areas depicted in orange and dark pink on the attached Figure 2. The County will assign those easements to the City upon City reimbursing the County for the costs of acquiring those easements. The District and City agree to enter into a license agreement in the form of the attached Exhibit B, allowing the District to use the easement for bus access and requiring the District to maintain, repair and replace the bus drive to be constructed within the licensed area.
3. **Construction Costs.** The Cooperative Agreement provides that costs for improvements constructed on the District Property will be allocated as shown on the attached Figure 1 and as further provided in the Cooperative Agreement.

   a. **Project costs.** The improvements to be made in the areas designated as 1 and 4 in the attached Figure 1 will be allocated between the County and City, according to the Cooperative Agreement. The District will not pay for any portion of those improvements.

   b. **District cost.** The District agrees to pay for 100% of the cost of constructing the improvements to be made in the areas designated as 5, 6 and 7 in the attached Figure 1. As provided in the Cooperative Agreement, the County will incur the cost initially, and the City will reimburse the County for the District’s share of the costs. The District agrees that it will reimburse the City for the District’s share of costs in the manner provided in paragraph 6 of this Agreement.

   c. **Shared project/District cost.** The District agrees to pay for 50% of the cost of constructing the improvements to be made in the areas designated as 2 and 3 in the attached Figure 1, with the remaining 50% to be paid by the County and City according to the terms of the Cooperative Agreement. As provided in the Cooperative Agreement, the County will incur the costs initially, and the City will reimburse the County for the City’s and District’s shares of the costs. The District agrees that it will reimburse the City for the District’s share of costs in the manner provided in paragraph 6 of this Agreement.

   d. **Cost Estimates.** The estimated costs of the Project, and the District’s share of those Costs, is set forth in Exhibit A to this Agreement. The parties acknowledge that the estimated amount as shown in Exhibit A is an estimate of the costs for the contracted construction work on the Project, including the District Improvements, and that the unit prices set forth in the contract with the successful bidder and the final quantities as measured by the County Highway Engineer's designated representatives will govern in computing the total final contract construction cost for the Project and District Improvements.

4. **Design, Engineering and Contract Administration Costs.** The District also agrees to reimburse the City for the District’s proportionate share of the design, construction engineering and contract administration costs for the Project, equal to 18 percent of the final contract construction costs for the District Improvements. The District’s estimated share of those costs is shown in Exhibit A. The parties acknowledge the amounts shown in Exhibit A are estimates and that the District’s actual share of design, construction engineering and contract administration costs will be computed using the final contract construction costs for the District Improvements.

5. **Payment Procedures.** The District understands that, after the County has awarded the contract for the Project, the County will invoice the City for ninety five (95) percent of the City’s
and the District’s estimated shares of the contract construction costs and engineering costs for the Project, including the District Improvements. Upon receipt of the County invoice, the City will invoice the District for ninety-five (95) percent of the estimated contract construction costs and engineering costs for the District Improvements. The District must pay the City the full amount due stated on the invoice within thirty (30) days of the invoice date, by check payable to the City.

The City and District agree to follow the same procedure with respect to any invoice that the City may receive from the County regarding a supplemental agreement or change order that results in an increase in the contract amount for the District Improvements.

The parties understand that, after final payment to the Project contractor by the County, the County will provide the City with an itemized invoice detailing the total costs and the method of determining the City’s and District’s share of costs. Upon receipt of the County invoice, the City will invoice the District for the District’s share. The District agrees to pay the City the full amount due stated on the invoice within thirty (30) days of the invoice date, by check payable to the City. If the amount previously paid by the District exceeds the District’s final share of costs, the District understands that the County will refund the difference to the City. The City agrees that, within thirty (30) days of receipt of the County’s accounting, the City will refund to the District the difference between the amount previously paid by the District and the District’s final share of Project costs.

6. **Late Payments: Interest; Disputes.** All payments due to a party must be postmarked by the date due or a late penalty of one (1) percent per month, or fraction thereof, on the unpaid balance will be charged to the non-paying party. Each party must pay the amount due as stated on the statement, notwithstanding any dispute of such amount. Should a disputed amount be resolved in favor of the disputing party, the party who received payment must reimburse the disputed amount plus daily interest thereon calculated from the date the disputed amount was received by that party. Daily interest will be calculated at the rate of one (1) percent per month on the disputed amount.

7. **Landscaping Project.** The City agrees to install the Landscaping Project, as contemplated by the Cooperative Agreement, at no cost to the District.

8. **Construction Timing.** Construction of the District Improvements may not occur during the academic year of the District. All construction activities related to the District Improvements must occur within the following time frame: June 9, 2015 to August 14, 2015.

9. **Records.** All records kept by the City with respect to the Project are subject to examination by the representatives of the District.

10. **Indemnity.** Each party (the “Indemnifying Party”) agrees to defend, indemnify and hold harmless (i) the other party, its officials, officers, agents, volunteers and employees (the “Indemnified Persons”), from (ii) any liabilities, claims, causes of action, judgments, damages, losses, costs or expenses, including, reasonable attorneys’ fees (“Claims”) that (iii) result directly
or indirectly from any act or omission of the Indemnifying Party, its contractors, employees, and/or anyone for whose acts and/or omissions the Indemnifying Party may be liable, if (iv) the Claim is related to the ownership, maintenance, existence, restoration, repair or replacement of the improvements constructed as part of said Project and owned by the Indemnifying Party. The liability of each party is governed by the provisions of Minnesota Statutes, Chapter 466 or other applicable law. The parties acknowledge that the County is not a party to this Agreement and that the City is not responsible for the acts or omissions of the County, its contractors, employees, or agents.

Under no circumstances, however, may any Indemnifying Party be required to pay on behalf of itself and any Indemnified Persons, any amounts in excess of the limits of liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for City and District may not be added together to determine the maximum amount of liability for any party. The intent of this subdivision is to impose on each party a limited duty to defend and indemnify the other parties for claims arising out of the Indemnifying Party’s performance of this contract, subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts between the parties and to permit liability claims against the parties from a single occurrence to be defended by a single attorney.

Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other party and the results thereof. The City’s and the District’s liability is governed by the provisions of Minnesota Statutes, Chapter 466.

The City and the District each warrant that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program.

11. **No Employment Relationship.** Any and all employees of the City and all other persons engaged by the City in the performance of any work or services required or provided for herein to be performed by the City will not be considered employees of the District, and any and all claims that may or might arise under the Minnesota Economic Security Law or the Workers’ Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein will in no way be the obligation or responsibility of the District.

Any and all employees of the District and all other persons engaged by the District in the performance of any work or services required or provided for herein to be performed by the District will not be considered employees of the City, and any and all claims that may or might arise under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein will in no way be the obligation or responsibility of the City.
12. **Designated Representatives.** In order to coordinate the services of the District with the activities of the City so as to accomplish the purposes of this Agreement, the Executive Director of Finance & Operations or designated representative shall manage this Agreement on behalf of the District and serve as liaison between the District and the City.

In order to coordinate the services of the City with the activities of the District and so as to accomplish the purposes of this Agreement, the City Engineer or designated representative shall manage this Agreement on behalf of the City and serve as liaison between the City and the District.

13. **Entire Agreement; Amendments to be in Writing.** It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

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

14. **Non-discrimination.** The provisions of Minnesota Statutes 181.59 shall be considered a part of this Agreement as though fully set forth herein.

**IN TESTIMONY WHEREOF,** The parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

*(this space left intentionally blank)*
INDEPENDENT SCHOOL DISTRICT
NO. 276

By: _____________________________
   Its SCHOOL BOARD CHAIR

By: _____________________________
   Its DEPUTY CLERK
Signature Page for City

CITY OF MINNETONKA

(Seal)

By: ________________________________
   Mayor

And: ________________________________
   City Manager
COST PARTICIPATION

Project
School
Shared (50% Project / 50% School)
City

Table Reference Number

CONCEPT ONLY
SUBJECT TO CHANGE

Figure 1
Cost Participation

CSAH 101 Improvements - County Project No. 9917
From CSAH 62 to Hutchins Drive - Hennepin County, Minnesota
COUNTY EASEMENTS
DONATED BY MINNETONKA SCHOOL DISTRICT

- Construction Easement - Temporary
  (91,070 sq ft)
- Right of Way - Permanent
  (18,750 sq ft)
- Pond Easement - Permanent
  (5,348 sq ft)
- Drainage Easement - Permanent
  (1,780 sq ft)
- Wall Easement - Permanent
  (878 sq ft)

COUNTY ACQUIRED EASEMENTS
- Right of Way - Permanent
  (40,635 sq ft - City Owned)
- Pond Easement - Permanent
  (14,867 sq ft - City Owned)

CONCEPT ONLY
SUBJECT TO CHANGE

CSAH 101 Improvements - County Project No. 9917
From CSAH 62 to Hutchins Drive - Hennepin County, Minnesota

Figure 2
Right of Way & Easements
CONSTRUCTION TIMELINE
FOR SCHOOL AREA

- APRIL 2015 TO AUGUST 14, 2015
- JUNE 9, 2015 TO AUGUST 14, 2015 (ACCESS TO SCHOOL MAINTAINED)
- JUNE 9, 2015 TO AUGUST 14, 2015
- LATE FALL 2015 TO SUMMER 2016

CONCEPT ONLY
SUBJECT TO CHANGE

Figure 3
CONSTRUCTION STAGING
(SCHOOL AREA)
EXHIBIT A

Division of Cost Summary
### Division of Cost Summary

**Hennepin County Project No. 9917**

State Aid Project Nos. 027-701-019, 027-603-056, 142-020-046 and 142-159-002

CSAII 101

#### Notes

1. The City shall be responsible for School District project costs
2. The City will not be charged design engineering for those items designed by the City; columns identified as CP 12208
3. Overhead power line burial by Xcel Energy via separate city contract
4. City led landscape project upon completion of construction (maximum County contribution 1 percent of construction total)
5. Fifty percent of estimated costs for signal system at CSAII 101 and Hanus Road

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<tr>
<th>Notes</th>
<th>Total</th>
<th>County</th>
<th>Met Council (6)</th>
<th>Minnetonka</th>
<th>School District (1)</th>
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<td>$3,262,604.28</td>
<td>$387,010.78</td>
</tr>
</tbody>
</table>

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**Exhibit "A"**
LICENCE AGREEMENT

This License Agreement ("License Agreement") is made and entered into this 4th day of December, 2014 by and between the City of Minnetonka, a municipal corporation under the laws of the State of Minnesota ("City") and Independent School District No. 276, a political subdivision of the State of Minnesota ("District")

Recitals

A. Licensed Premises. The City is the owner of that certain property located near the intersection of Covington Road and County Road 101 in the City of Minnetonka, Hennepin County, State of Minnesota, legally described on the attached Exhibit A (the "Premises"). The Premises is improved with a driveway for bus access, a sidewalk for pedestrian access, and parking spaces for bus and school vehicle parking.

B. School Property. The District is the owner of property immediately adjacent to the Premises, located at 5701 County Road 101 in the City of Minnetonka, Hennepin County, State of Minnesota, legally described on the attached Exhibit B (the "District Property").

C. Intent. The City and the District intend to set forth their agreement and understanding with respect to the use of the Premises by the District for bus access and parking pursuant to this License Agreement.

Agreement

In consideration of the terms of this License Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT OF LICENSE. The City hereby grants to the District a license allowing for use
of the Premises, subject to the terms and conditions of this License Agreement.

2. TERM; SURRENDER OF PREMISES. The term of this License commences on August 15, 2015 and continues in effect until terminated by any of the following: mutual agreement of the parties; at such time that the District Property is no longer used as an elementary or secondary school; or as provided in paragraph 13 of this License Agreement. Upon termination of this License Agreement, District agrees to remove any improvements on the Premises, restore the disturbed areas with grass, and deliver the Premises to the City.

3. USE OF PREMISES. During the term of this License, the Licensed Premises may be used only for the purpose of vehicular and pedestrian access to the District Property and for parking of buses and other school vehicles.

4. NO LICENSE FEE. The District is not required to pay a license fee. The District’s obligations for maintenance and repair are deemed to be adequate compensation for the license.

5. TAXES AND SPECIAL ASSESSMENTS. The Premises is exempt from real estate taxes. If at any time in the future, the Premises becomes taxable, the District will be responsible for all real estate taxes due and payable on the Property. The District is responsible for any special assessments that may be levied against the Premises during the term of this License Agreement.

6. MAINTENANCE AND REPAIR. The District agrees to maintain the Premises and the landscaping and improvements located on the Premises, at the District’s sole cost, all times that this License is in effect. The District also agrees to repair and replace the improvements on the Premises at its sole cost. The City has no obligation of any nature to maintain, preserve or repair the Premises during the term of this License.

7. ALTERATIONS TO IMPROVEMENTS. The District may not make any alterations to the improvements on the Premises or construct any additional improvements on the Premises without obtaining the prior written approval of the City. The District must provide the City with written notice of the planned alteration and improvement and specify the work to be performed in reasonable detail. Within a reasonable time after receipt of the notice, the City must make a determination, in its sole discretion, whether or not to permit the work. The District must provide the City upon request with any further information reasonably necessary for the City to make its determination, and the District must not commence work or accept materials prior to receiving written notice from the City of the City Engineer’s determination.

8. ALTERATIONS TO LANDSCAPING. The District may install trees, shrubs and landscaping vegetation on the Premises at its cost and without the prior approval of the City, provided that the District gives the City written notice of the landscaping installation to be performed, at least 30 days prior to its installation. Except for removal of dead, diseased, or hazardous trees, the District may not remove any trees from the Premises.

9. DAMAGE. If a significant portion of the Premises is damaged by any casualty whether
insured or uninsured, the City has no obligation to repair or reconstruct the Premises. The District shall have the option to rebuild or repair or to terminate this License by exercise of notice to the City.

10. INDEMNIFICATION. The District, for itself and its successors and assigns, hereby agrees that it will indemnify and hold the City harmless from any and all damages, claims, costs and expenses, including the City’s reasonable attorney’s fees, arising out of or relating to the District’s use of the Premises.

11. NO ASSIGNMENT BY THE DISTRICT. The District may not assign this License and/or sublicense the Premises, or any part of the Premises.

12. TERMINATION. The City may terminate this License Agreement if the District fails to comply with any provision of this License Agreement, in the manner provided in this paragraph. The City must give written notice to the District of the nature of noncompliance, the curative action required, and the deadline for completing the curative action. The period to complete the curative action must be a reasonable period of time, assuming due diligence and efficient action, but may not be less than thirty (30) days. If the District fails to cure the noncompliance within the time specified by the City, the City may terminate this License Agreement by providing a subsequent written notice to the District, and termination is effective upon the date the notice is given.

13. COVENANT OF QUIET ENJOYMENT. The District, subject to the terms and provisions of this License, is entitled to lawful, peaceful, quiet and exclusive use and possession of the Premises during the term of this License Agreement.

14. LIENS. The District agrees not to suffer or allow any liens to be placed against the Premises as a result of the District's activities during the term of this License Agreement.

15. NO PROPERTY INTEREST. This instrument is not a lease, creates no landlord-tenant relationship, and nothing in this License Agreement will be deemed to create any property interest in the Premises.

16. GOVERNING LAW. The laws of the State of Minnesota will govern the validity and interpretation of this Agreement.

17. NOTICES. Any notice which is required under this License shall be deemed "given" upon either of the following: hand delivery; or three (3) days after posting in the U. S. Mail, first class postage and addressed as follows:

If to Licensor:  
City Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345
18. AMENDMENT. This Agreement may only be amended by a written instrument executed by all parties then bound by this Agreement.

In witness whereof, the parties have executed this License Agreement effective on the day and year first written above.

[Left Intentionally Blank]
INDEPENDENT SCHOOL DISTRICT
NO. 276

By: ____________________________
   Its SCHOOL BOARD CHAIR

By: ____________________________
   Its DEPUTY CLERK
CITY OF MINNETONKA

By: ________________________________
   Mayor

And: ______________________________
   City Manager
### CSAH 101 Improvements from CSAH 62 to Hutchins Drive

#### Project Cost Estimate Summary (Based on 100% Design)

**Last Revision: 12/22/14**

<table>
<thead>
<tr>
<th>IMPROVEMENT</th>
<th>TURNBACK FUNDS</th>
<th>HENNEPIN COUNTY</th>
<th>SCHOOL DISTRICT</th>
<th>MINNETONKA (CSAH 101) STATE AID</th>
<th>MINNETONKA (OLD EXC) STATE AID</th>
<th>MINNETONKA (CSAH 101 STORM) STATE AID</th>
<th>MINNETONKA (CITY STREETS AND PUBLIC UTILITIES) LOCAL</th>
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**Total Cost**                    | $ 11,273,654   | $ 168,269       | $ 329,768       | $ 292,033                        | $ 523,286                        | $ 1,935,157                             | $ 123,967                                   | $ 15,052,236 | $ 15,052,236 |

**NOTES:**

1. Turnback funds were assumed to cover 67% of the cost of the CSAH 101 storm sewer system. The remaining 33% is covered by the City.

2. The continuous sidewalk along CSAH 101 was assumed to be split at 25% County funds and 75% City funds.

3. CSAH 101 legs of traffic signals were assumed to be covered by Turnback Funds along with temporary signal systems.

4. Related local street projects include: Old Excelsior Boulevard, reconstructing Covington Road including trail, reconstructing Covington Terrace and Lane, reconstructing the Tracy Lynn Terrace cul-de-sac, and approximately 40% of the cost to upgrade Tracy Lynn Terrace, Jennifer Lane, and Spring Lane along the storm sewer alignment (60% of the cost was assumed to be CSAH 101 project related.)

**General Note:** Right-of-way costs are not included, but the majority of the right-of-way costs are anticipated to be covered by Turnback Funds.
City Council Agenda Item #10C  
Meeting of January 5, 2015

**Brief Description**  
Proposed orders for tobacco license violations for Boulevard Sinclair and Walgreens

**Recommendation**  
Issue the orders

**Background**

Currently, the city has 32 establishments with a tobacco license. The city council has adopted a system of presumptive penalties to be applied when certain tobacco violations occur. Under the presumptive penalties schedule, tobacco licensees are subject to a fine, or a fine plus a license suspension, 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.

Licensees are initially subject to a fine of at least $250, the second violation is at least a $500 fine, and the third and any subsequent offenses within a two-year period have penalties of a $600 fine and a minimum seven-day suspension. The violation described below is a first offense for each licensee.

Stipulation forms were sent to Boulevard Sinclair and Walgreens regarding the sale of tobacco to a minor. The sales occurred during a police department compliance check conducted on August 26, 2014. The licensees have agreed to the penalties listed below:

<table>
<thead>
<tr>
<th>Licensee</th>
<th>Establishment</th>
<th>Offense (Date)</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>DLG, Inc.</td>
<td>Boulevard Sinclair</td>
<td>1st (08/26/14)</td>
<td>$250</td>
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<tr>
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<td>9800 Minnetonka Blvd.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Walgreen Co.</td>
<td>Walgreens #13853</td>
<td>1st (08/26/14)</td>
<td>$250</td>
</tr>
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<td></td>
<td>4950 Co Rd 101</td>
<td></td>
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</table>

The violations do not require a suspension of the tobacco license.

**Recommendation**

Per council policy on tobacco violations, presumptive penalties are required. Staff recommends the city council approve issuing the enclosed Finding of Fact, Conclusion, and Orders for the establishments listed above (pages A1-A4).

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

Originated by:
   - Kathy Leervig, Community Development Coordinator
In the Matter of:

DLG, Inc.
dba Boulevard Sinclair

Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the City of Minnetonka, and David Goldman, Owner of Boulevard Sinclair, the City Council makes the following:

FINDINGS OF FACT

1. The licensee captioned above has been licensed for the sale of tobacco products from the city of Minnetonka for the year 2015, and conducts its licensed activity at 9800 Minnetonka Blvd., within the city.

2. Pursuant to Minn. Stat. §609.685 and Minnetonka City Code §625.040, a licensee must not sell tobacco products to a person under 18 years old.

3. On August 26, 2014, Eric Kjellberg, a person employed by the above-captioned licensee, sold a tobacco product to a person who was under 18 years old.

CONCLUSION

1. The tobacco licensee captioned above violated Minn. Stat. 609.685 and Minnetonka City Code 625.040 by selling a tobacco product to a juvenile on August 26, 2014.
ORDER

IT IS HEREBY ORDERED, pursuant to Minnetonka City Code §625.055, that the licensee captioned above is subject to the following sanctions:

(1) a $250.00 civil penalty

The penalty must be paid within 30 days of the date of this order.

Failure to comply with this order will subject the licensee to further sanctions.

By order of the City Council of the City of Minnetonka, Minnesota, January 5, 2015.

________________________________
Terry Schneider, Mayor

ATTEST:

____________________________________
David E. Maeda, City Clerk

ACTION ON THIS ORDER:

Motion for issuance:
Seconded by:
Voted in favor of:
Voted against:
Absent: Allendorf
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 January 5, 2015.

David E. Maeda, City Clerk
Pursuant to a Stipulation executed by Julie Wischnack, Community Development Director for the City of Minnetonka, and Walgreens, the City Council makes the following:

FINDINGS OF FACT

1. The licensee captioned above has been licensed for the sale of tobacco products from the city of Minnetonka for the year 2015, and conducts its licensed activity at 4950 Co Rd 101, within the city.

2. Pursuant to Minn. Stat. §609.685 and Minnetonka City Code §625.040, a licensee must not sell tobacco products to a person under 18 years old.

3. On August 26, 2014, Daniel Bauman, a person employed by the above-captioned licensee, sold a tobacco product to a person who was under 18 years old.

CONCLUSION

1. The tobacco licensee captioned above violated Minn. Stat. 609.685 and Minnetonka City Code 625.040 by selling a tobacco product to a juvenile on August 26, 2014.
ORDER

IT IS HEREBY ORDERED, pursuant to Minnetonka City Code §625.055, that the licensee captioned above is subject to the following sanctions:

(1) a $250.00 civil penalty

The penalty must be paid within 30 days of the date of this order.

Failure to comply with this order will subject the licensee to further sanctions.

By order of the City Council of the City of Minnetonka, Minnesota, January 5, 2015.

____________________________
Terry Schneider, Mayor

ATTEST:

____________________________
David E. Maeda, City Clerk

ACTION ON THIS ORDER:

Motion for issuance:
Seconded by:
Voted in favor of:
Voted against:
Absent: Allendorf
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 January 5, 2015.

____________________________
David E. Maeda, City Clerk
City Council Agenda Item #12A
Meeting of January 5, 2015

Brief Description  Major amendment to the master development plan for Villas at Groveland, located at 17113 Minnetonka Boulevard

Recommendation  Introduce the ordinance and refer it to the planning commission

Proposal

The property owner, Woodland Office Partnership, is requesting an amendment to the previous plans for the Groveland Pond development at 17113 Minnetonka Boulevard. The city council approved the Groveland Pond project, including a comprehensive plan amendment to medium density residential, rezoning to planned unit development, and preliminary plat, on March 24, 2014. The previous project included 17 detached townhomes served by a new public street from Minnetonka Boulevard. The previous applicant is no longer involved in the project. (See pages A11-24.)

The property owner is working with Gonyea Homes on a revised plan for the development. The revised project, Villas at Groveland, would also consist of detached townhomes, and would still be within the medium density residential land use designation. The revised project would also maintain the same street layout. The proposed amendment would reduce the number of townhouse units from 17 to 14. The reduction in units allows for larger lots and buildable areas within each of the lots to accommodate a house prototype developed by Gonyea Homes. (See pages A1-A10.)

The proposal requires:

1) Major amendment to the master development plan
2) Preliminary Plat
3) Final Plat

Neighborhood Meeting

The applicant will be holding a neighborhood meeting on January 7, 2015 to present the revised plans, answer questions, and receive feedback from the neighborhood.

Issue Identification

The purpose of introducing an ordinance is to give the city council the opportunity to review a new application before sending it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The tentative planning commission date is January 22, 2015.
Based on preliminary review of the proposal, staff has identified the following issue for further analysis and discussion:

1) Compliance with previous conditions of approval for the Groveland Pond project, including stormwater management, utilities, landscaping, floodplain alteration

**Staff Recommendation**

Introduce the ordinance on pages A25-A27 and refer it to the planning commission.

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

Originated by:
- Jeff Thomson, Associate Planner
LOCATION MAP

Project: Villas at Groveland
Applicant: Woodland Office Partnership
Address: 17113 Minnetonka Blvd.
(93020.14b)

This map is for illustrative purposes only.
December 18, 2014

Re: 17113 Minnetonka Blvd.

Dear Mayor Schneider and Council Members:

We have owned the referenced property since 1988. Until this Fall the property contained an office building that had been a remodeled church. The office building has been removed.

Recently the city approved a final plat for a 17 unit free-standing townhome development. The developer of that project failed to close and we have decided to develop it ourselves.

We are requesting that the property be platted into a 14 lot free-standing townhome project, leaving the perimeter of the lots and the location of the road exactly as approved under the existing plan. We have an agreement with Gonyea Homes to build all townhomes, with construction commencing Spring of 2015.

Very truly yours,

Woodland Office Partnership

By:  

James D. MacKinnon

A partner
Previous Groveland Pond Project
Example House Elevations

DESIGN NOTES:
1) All houses have full basements.
2) The houses on lots 1 and 3 are 27'-3" wide, all other houses shown are 27'-0" wide.
3) The siding colors and the material on the houses vary from house to house. The style of the houses will vary.
4) Some garages are stepped back 4'-0" to create visual interest and variety. The garage door style changes from house to house.
5) All houses have a 3rd parking stall in front of the house.
6) All houses must be 3'-0" off the side property line as required by building code. Therefore side yard setbacks are 3'-2" and 7'-4". The front setback is 13'-2".
3-BEDROOM FLOOR PLAN:
A variety of 3-bedroom floor plans are available. The floor plan below shows one example with a Prairie style exterior.

Second floor: 1,200 gross sq ft finished
First floor: 1,100 gross sq ft finished
Basement: unfinished
Total: 2,200 finished gross square ft above grade.

The 3-bedroom home is designed to be more affordable and will range from 2,000 – 2,400 gross sq ft finished above grade.

Example Floor Plans
4-BEDROOM FLOOR PLAN:
A variety of 4-bedroom floor plans are available. The floor plan below shows one example with a Craftsman style exterior.

Second floor: 1,400 gross sq ft finished
First floor: 1,100 gross sq ft finished
Basement: unfinished
Total: 2,500 finished gross sq ft above grade.

Additional features: upgrades to finishings in all bathrooms and kitchens, 9' and 10' ceilings, vaulted ceilings in the master bedroom, optional screen porch on the back of the house.
Heine gave the staff report.

Schneider opened the public hearing at 7:24 p.m. No one spoke.

Schneider closed the public hearing at 7:24 p.m.

Wiersum moved, Wagner seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.

14. Other Business:

A. Ordinances pertaining to taprooms:
   1) Ordinance amending liquor code to allow licenses for off-sale brewpubs, off-sale small brewers, and on-sale taprooms
   2) Ordinance amending the zoning code regarding microbreweries and taprooms as a conditional use

Wischnack gave the staff report.

Schneider clarified that the ordinance did not just apply to Lucid Brewing but other businesses wanting to do a taproom. Wischnack said that was correct.

Wagner noted earlier he asked staff why this ordinance was excluded from the PUD ordinances. He said staff had told him because PUDs were part of the underlying zoning. Wischnack said the council was unlikely to approve a taproom in a residential PUD so the underlying connection would ensure the taproom was in the right zoning district.

Bergstedt moved, Wagner seconded a motion to:
   1) Adopt Ordinance No. 2014-06 amending liquor code to allow licenses for off-sale brewpubs, off-sale small brewers, and on-sale taprooms
   2) Adopt Ordinance No. 2014-07 amending the zoning code regarding microbreweries and taprooms as a conditional use

All voted “yes.” Motion carried.

B. Items concerning Groveland Pond, located at 17113 Minnetonka Boulevard

Thomas gave the staff report.
Wagner noted in previous proposals there were areas of pavers that could also accommodate parking. He asked if that still existed in this proposal. Thomas confirmed they did still exist.

Allendorf asked if the proposal was for parking only on the east side before arriving at the bulb. Thomas said the proposal was for a 26 foot wide public street that would allow for parking on both sides.

Wiersum said the two properties on the sides of the bulb were the most challenging. He asked if the bulb was as small as it could get or was there flexibility to modify it. Gustafson said the cul-de-sac was as small as it could be to still accommodate public safety.

Wagner noted neighbor comments about walkability. He said he was surprised there wasn't a condition for a sidewalk where the trail easement was or next to the street that would allow someone to walk to Rainbow Drive. Wischnack said the city was taking the easement so there would be space to do a trail. The issue was to the west where a transformer box was located. Wagner said he was looking at where the entrance was to the corner. The trail could be built as the development happened. Wischnack said staff was OK adding that condition.

Schneider said there was a nice sidewalk across the street so people would likely cross the street to get to that trail. It was better to have people cross at a public street rather than the middle of a block. Now there would be two public streets. Wagner said he was thinking it would work to align it with the school. Gustafson said people generally cross at the closest path. He said the sight lines were fairly good at both locations.

Wiersum said he thought it would be great to have a trail up to the crosswalk. However there would not be a crosswalk at the new street or one at Rainbow Drive because those areas did not qualify as appropriate locations according to the county. He was concerned with the optics and public safety. He agreed that even with a nice circuitous path to a crosswalk, human nature was a person would not walk half a block to cross the street.

Bill Claflin, 3410 Rainbow Drive, said if the Sanctuary was any example it would take years to fill this 17 unit development. He asked the city to guarantee site maintenance free of construction debris, equipment, and all the other clutter that would take place over the long term development. He also asked the city to require the developer to have a bond to pay for the maintenance. He said neighbors needed some protection from the development. He also wanted to see vegetative screen along Rainbow Drive. He said the city had already removed a beautiful pine tree at the
intersection even though it didn’t impair anything. He wanted a line drawn prohibiting any more removal of trees. The development was for too many people in too small of an area. This winter there was no room for two cars to park on Rainbow Drive next to the development property and still allow plows to go by.

Schneider asked staff to provide information about management agreements that takes place with any development. Wischnack said the process that was used for the medical facility on Highway 7 would be a good one to use for this project. What happened with the medical facility was staff went out before construction started to look at the staking and to see what was going to be removed. Construction hours and property maintenance were discussed. A security is required from the developer that is used to resolve issues. She said staff would meet with the neighborhood prior to construction beginning.

Schneider said typically the city does not require screening between single family houses. Thomas confirmed that was correct. She said it was the intention of the developer to preserve trees if possible along the westerly edge. Some retaining walls would be needed.

Holly Godfrey, 3509 Lilac Lane, thanked the city for looking at the walkability issue. She said it was a difficult issue with the utility box location. The problem would only get worse with more people. She said it was an opportunity for the village center to be a model for other village centers in terms of walkability and connectivity.

Schneider said even though it was a short distance from the trail to the Rainbow Drive intersection, the fact the majority of people will be walking in that direction led him to believe people would walk half a block to crossover because of the school. He said for a little extra cost it would be a good requirement to have the trail sidewalk. He asked if a special permit would be required because of the county road. Gustafson said he thought the developer would need a single permit from the county. An access permit was required because there was a proposed change. Schneider said he was open to adding that as a condition for approval. Acomb asked who would be responsible for maintenance of that small piece. Schneider indicated it would be the responsibility of the homeowners association.

Wiersum said the small trail segment would be an amenity but he still wanted to see the trail to the west. This would provide the opportunity to walk to the nearby businesses. Schneider said there would be people who not only want to walk to the businesses but take walks in the neighborhood. The trail would allow them to get to Rainbow Drive.
Wiersum said providing access to the crosswalk was important for safety reasons.

Curt Fretham, 14525 Highway 7, said he felt the trail to the west that was being discussed was needed. He would like to see the trail extend further and asked for the city for assistance.

Schneider said although it was unknown how long it would take for the development to be completed, he had more people ask him where they could buy a small town home in the city than he had heard for many years. The type of product being proposed with its modest price would likely sell quickly.

Wiersum said by and large as he looked at the project and the possible alternatives, he thought the development was a good one. The product would be in demand. He said some of the neighbors were frustrated with the project because they thought it was denser that what currently exists in the neighborhood. This was not a situation where R1 lots were being looked at versus an alternative. This project was actually downzoning from a more intense use to a less intense use. He said this was dramatically better than the senior living facility that did not come forward. Even though it was not perfect it was a good project. He said he did have some concerns with lots six and seven and the proximity of the house pads to the lot line. He would like to find a way to get 10 feet farther away from the lot line on lots six and seven.

Thomas said staff looked at the issue and came up with three options but thought none of the options were great. The first option would require a reduction in home size on lot six and seven. This would result in a first floor area of a 22 x 23 foot garage and a 19 x 27 foot living space. This would be pretty tight given the relatively small size of the home to begin with. The second option was to get the 10 feet from the front and back with a five foot reduction in the footprint and a five foot reduction in the required setback. This would get into the issue of a parked car hanging off the property into the right of way. The final option was to shift the cul-de-sac bulb to the east. This would run into lots 10 and 11 where there was a wetland setback that was to the rear of the building footprints. She said staff looked at what the actual required rear yard setback on a standard lot in the city. The minimum lot depth was 125 feet for an R1 home with a minimum rear yard setback of 40 feet or 20 percent of the lot depth whichever was less. This meant there could be a home with a 25 foot rear setback that would meet minimum standards. Wischnack said to address Wiersum's concern a lot would have to be removed to shift things and have enough room.
Wiersum said there were four lots that were challenging in the neighborhood. He asked if those lots were redone as zero lot line homes, would there be enough distance from the lot line in the back while recovering some buildable area to allow for a greater setback to the west. Wischnack said having a zero lot line setback for either pair of lots would not gain a lot in terms of getting a larger setback. She didn't think anything was possible without removing a lot from the proposal.

Wagner said one option was to fill part of the wetland. This was not typically done. Wischnack said that had not been considered.

Schneider said the backyards of lots six and seven had a generous perception of a backyard because there was not a home between the lots and the street. He said he didn't share Wiersum's concern.

Wiersum agreed there was not a reasonable solution for his concern. Acomb asked if some screening might help address some of the concern. Wiersum said some screening paid for by the developer might be beneficial. Schneider said typically the city did not require buffering between single family homes. If the homeowner felt it would help, it was his/her responsibility to plant the vegetation.

Allendorf moved. Wagner seconded a motion to:
1) Adopted Resolution No. 2014-028 approving amendment to the land use designation in the comprehensive plan from office and low density residential to medium density residential
2) Adopted Ordinance No. 2014-08 Rezoning from B-1/Office to PUD/Planned Unit Development
3) Adopted Resolution No. 2014-029 approving preliminary plat to subdivide four parcels into 17 lots for construction of detached townhomes that includes the in-development trail
4) Adopted Resolution No. 2014-030 approving floodplain alteration permit

All voted "yes." Motion carried.

C. 2014 Assessment Report

City Assessor Rebecca Malmquist gave the report.

Allendorf noted contrary to the perception that Minnetonka only has expensive houses the information indicated that over half of the houses that were sold were in the $200,000 to $350,000 range. This was the range the council had discussed when looking at bringing young families to the city. Schneider said the caveat was that a lot of those homes were
ORDINANCE NO. 2014-08

ORDINANCE REZONING THE PROPERTIES AT 17113 MINNETONKA BOULEVARD FROM OFFICE TO PLANNED UNIT DEVELOPMENT, ADOPTING THE MASTER DEVELOPMENT PLANS, AND APPROVING FINAL SITE AND BUILDING PLAN REVIEW

The City of Minnetonka Ordains:

Section 1.

1.01 The four properties that comprise the site located at 17113 Minnetonka Boulevard are hereby rezoned from B-1/Office to Planned Unit Development (PUD).

1.02 The properties are legally described on Exhibit A.

Section 2.

2.01 This ordinance is based on the following findings:

a. The proposal is consistent with the 2030 Comprehensive Guide Plan.

b. The proposal would not negatively impact the public health, safety or general welfare.

c. The proposal meets the PUD ordinance standards.

d. The proposal meets the required standards and ordinances for a site and building plan approval.

Section 3.
3.01 Approval is subject to the following conditions:

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

- Removal and demolition plan dated February 28, 2014
- Preliminary plat dated February 28, 2014
- Grading, drainage, and erosion control plan dated February 28, 2014
- Utility plan dated February 28, 2014
- Tree preservation plan dated February 28, 2014
- Landscape plan dated February 28, 2014
- Floor plans dated December 13, 2013
- Front building elevations dated December 13, 2013
- Architectural site plan dated December 13, 2013

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

b. The development must be constructed and maintained only in compliance with City Council Resolution No. 2014-029, which approves the preliminary plat of Groveland Pond.

Section 4.

4.01 This ordinance is effective only upon filing of the final plat for GROVELAND POND at Hennepin County.

Adopted by the city council of the City of Minnetonka, Minnesota, on March 24, 2014.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk
ACTION ON THIS ORDINANCE:

Date of introduction: January 6, 2014  
Date of adoption: March 24, 2014  
Motion for adoption: Allendorf  
Seconded by: Wagner  
Voted in favor of: Wagner, Allendorf, Acomb, Wiersum, Bergstedt, Schneider  
Voted against:  
Abstained:  
Absent: Ellingson  
Ordinance adopted.

Date of publication: April 1, 2014

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on March 24, 2014.

__________________________  
David E. Maeda, City Clerk
LEGAL DESCRIPTION OF PREMISES SURVEYED:

PARCEL 1
That part of the Northeast Quarter of the Southwest Quarter of Section 17, Township 117 North, Range 22 West of the 5th Principal Meridian described as follows: Beginning at the Northwest corner of the Northeast Quarter of the Southwest Quarter of said Section; thence running East along the North line of said 40 acre tract 16 rods; thence at right angles South 10 rods; thence at right angles West 16 rods; thence at right angles North to the place of beginning.

PARCEL 2
Lots 1 and 2, Block 24, and Reserve Block "C" together with that part of vacated Groveland Terrace dedicated in "Staring's Tonka Wood-Croft, Hennepin County, Minnesota" lying between the Westerly extension across it of the North line of Reserve Block "C" and a line described as follows: Beginning at the curve point on the Southwesterly line of Reserve Block "C"; thence Southwesterly at a right angle to said Southwesterly line to the center line of vacated Groveland Terrace; thence Northwesterly along said center line to a line extending from the Southeasterly corner of Lot 2, Block 24 to the center of the circle of the curve on the Easterly line of Lot 2, Block 24; thence Southwesterly to the Southeasterly corner of Lot 2, Block 24, and there terminating, all in Staring's Tonka Wood-Croft, Hennepin County, Minnesota.
Ordinance No. 2015-

An ordinance amending the master development plan for Villas at Groveland, a 14-unit detached townhouse development at 17113 Minnetonka Boulevard

The City Of Minnetonka Ordains:

Section 1.

1.01 On March 24, 2014, the city council adopted Ordinance No. 2014-08 rezoning the properties at 17113 Minnetonka Boulevard from office to planned unit development, adopting the master development plans, and approving final site and building plan review.

1.02 The properties are located at 17113 Minnetonka Boulevard, and are legally described on Exhibit A.

1.03 The property owner is requesting an amendment to the master development plans.

Section 2. The revised plans are hereby adopted as the master development plans.

Section 3. Approval is subject to the following conditions:

Section 4. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on , 2015.
Terry Schneider, 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 , 2015.

____________________________________
David E. Maeda, City Clerk
Exhibit A

Torrens portion:

Lots 1 and 2, Block 24, and Reserve Block "C" together with that part of vacated Groveland Terrace, dedicated in "Staring's Tonka Wood-Croft, Hennepin County, Minn." lying between the Westerly extensions across it of the North line of Reserve Block "C" and a line described as follows: Beginning at the curve point on the Southwesterly line of Reserve Block "C" thence Southwesterly at a right angle to said Southwesterly line to the center line of vacated Groveland Terrace; thence Northwesterly along said center line to a line extending from the Southeasterly corner of Lot 2, Block 24 to the center of the circle of the curve on the Easterly line of Lot 2, Block 24; thence Southwesterly to the Southeasterly corner of Lot 2, Block 24, and there terminating, all in "Staring's Tonka Wood-Croft, Hennepin County, Minn."

Abstract portion:

That part of the Northeast Quarter of the Southwest Quarter of Section 17, Township 117 North, Range 22 West of the 5th Principal Meridian described as follows: Beginning at the Northwest corner of the Northeast Quarter of the Southwest Quarter of said Section; thence running East along the North line of said Northeast Quarter of the Southwest Quarter a distance of 264.00 feet; thence at right angles South 165.00 feet; thence at right angles West 264.00 feet; thence at right angles North 165.00 feet to the point of beginning,
City Council Agenda Item #13A  
Meeting of January 5, 2015

**Brief Description:** Application for the transfer of the cable franchise system

**Recommended Action:** Continue the public hearing and adopt the resolution approving the transfer

**Background**

The city of Minnetonka is a member of the Southwest Suburban Cable Commission ("Commission") along with the cities of Eden Prairie, Hopkins, Edina and Richfield. Each member city has authorized a cable television franchise to Comcast Corporation ("Comcast") within their city. Comcast has proposed the transfer of the city's cable franchise system to Greatland Connections Inc. ("Greatland"), also known as Midwest Cable, and the Commission has retained the services of Moss & Barnett as legal counsel for review of this proposal. Moss and Barnett has submitted a detailed report that is attached.

The application for the transfer of the franchise requires written consent of the city after examination of the legal, technical and financial qualifications of Greatland during a public hearing. Based on the abovementioned aspects and limited strictly to the financial information analyzed in conducting this review, the Commission's legal counsel does not believe that the transfer can reasonably be denied based on the information at hand.

The franchise agreement between Comcast and the city was most recently extended in 2012 for a period of ten years. Under provisions of the agreement Comcast is authorized to construct, operate, maintain and reconstruct the cable television system within city limits and within its rights of way. Greatland will be responsible for all existing franchise agreement provisions if the proposed transfer is approved.

As part of a nationwide business initiative Comcast has proposed acquisition of Time Warner Cable Inc. and as a result, the total number of subscribers would exceed 30 million. In an effort to reduce that number and make the transaction more acceptable to federal regulators, Comcast has voluntarily agreed to divest itself of subscribers. Part of this divestiture includes 2.5 million subscribers that will be controlled by a new publicly traded entity, Greatland. This means that Comcast will be leaving Minnesota and will no longer own the cable system serving the Twin Cities, including the city of Minnetonka.

Comcast will provide transition services to Greatland that will include facilities, assets, software platforms, marketing and sales and customer service. For an initial three year period Greatland will contract with Charter Communications (under a transactions agreement with Comcast) to provide certain marketing and operational services such as
programming services, networking operations, billing and administrative services. A detailed account of the transition can be found in the report.

Comcast account subscribers will eventually be transitioned to Greatland for all content, email, equipment and billing according to the proposed transfer. This transaction will not require any change in phone numbers, and existing Comcast customers will be able to keep their current numbers permanently with Greatland. However, it will require the eventual phase-out of email addresses ending in “@comcast.net” for those individuals with internet service subscriptions, a service the city has no regulatory authority over.

City operations related to the franchise agreement will continue according to terms currently set in place until approximately August 1, 2022, with the same transition steps from Comcast services to Greatland that residential and commercial account subscribers will experience.

Summary

As part of this review the city’s counsel indicates that Greatland will be highly leveraged and will have significant third party costs; therefore, its ability to generate cash is important due to its highly leveraged operations. The cable business is inherently capital intensive, requiring funding for construction and maintenance of its communication systems. Based solely on the information reviewed during this application it is assumed that Greatland will receive sufficient funding to complete the transaction. As detailed in the attached resolutions, if the transaction fails to close in accordance with the outline set forth, then any approval is rendered moot.

The council opened the public hearing on December 15, 2014 and since that time there have been no modifications to the transfer application. Brian Grogan, counsel for the Commission, will be in attendance on January 5 to give a brief presentation and answer any questions related to the proposed transfer.

Recommendation

Staff recommends that the council continue the public hearing from December 15, 2014 and adopt the resolution approving the transfer of the cable franchise and change of control of the grantee and Exhibit A - Corporate Parent Guaranty.

Submitted through:
  Geralyn Barone, City Manager
  Perry Vetter, Assistant City Manager

Originated by:
  Patty Latham, Information Technology Manager
REPORT

Regarding the Proposed Transfer of Control of the Cable Franchise and Cable System from Comcast to Midwest Cable (GreatLand Connections Inc.)

November 26, 2014

Submitted by:

Brian T. Grogan, Esq.
Yuri B. Berndt, Esq.

150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(P) 612-877-5000
(F) 612-877-5999
www.lawmoss.com
INTRODUCTION

This report has been provided by Moss & Barnett, a Professional Association, for the purpose of evaluating a request from Comcast of Arkansas/Florida/Louisiana/Minnesota/ Mississippi/ Tennessee, Inc. ("Grantee"), the current holder of the Cable Franchise ("Franchise") in the member cities of the Southwest Suburban Cable Commission ("Commission"), to approve a proposed transfer of control ("Transfer") of the Franchise to Midwest Cable, Inc. (hereinafter "Midwest Cable" or "Midwest"). The Grantee currently owns, operates and maintains a cable television system ("System") in each of the Commission's member cities pursuant to the terms of the Franchise. The Commission’s member cities are Edina, Eden Prairie, Hopkins, Minnetonka and Richfield (hereinafter collectively referred to as the “City”).

On February 12, 2014, Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") entered into an Agreement and Plan of Merger whereby Comcast would acquire the cable systems and franchises held by TWC among other assets. On April 25, 2014, Comcast and Charter Communications, Inc. ("Charter") entered into the Comcast/Charter Transactions Agreement (the "Agreement"), pursuant to which the Grantee, through a restructuring under Comcast's ownership, will become Comcast of Minnesota, LLC ("New Grantee") and immediately thereafter will become a wholly-owned subsidiary of Midwest Cable (the "Transaction").

Note: See pages 3, 4 and 5 of this Report for diagrams of the Transaction.¹

What is happening to the Twin Cities Comcast cable systems?

Comcast’s proposed acquisition of TWC will (if approved) result in the total combined number of cable subscribers to be controlled by Comcast to exceed 30 million nationwide. In an effort to reduce that number and make the Transaction more acceptable to federal regulators, Comcast voluntarily agreed to divest itself of 3.9 million cable subscribers nationwide. Part of this proposed divestiture was accomplished with the system swaps between Comcast and Charter that results in Charter acquiring an additional 1.4 million cable subscribers. The remaining 2.5 cable subscribers to be divested by Comcast will be controlled by a new publicly traded entity, Midwest Cable. In Minnesota, Comcast's only cable subscribers exist in the Twin Cities market (and small portions of western Wisconsin). As a result, the Twin Cities market was selected, along with other markets in Michigan, Illinois, Indiana and some southern states, to be included in the divestiture transaction.

What this means is that Comcast will be leaving Minnesota and will no longer own the cable systems serving the Twin Cities or the City. Rather, the System will be owned by Midwest Cable. Because Midwest Cable is newly created, it will require third party assistance to address many operating issues such as programming agreements, customer service, billing, technical support and related issues. Charter will be assisting Midwest Cable with many of these issues via a “services agreement” that will be more fully explained in this Report.

¹ All diagrams are derived from Midwest Cable Form S-1 filed with the Securities and Exchange Commission on October 31, 2014.
**What will be the name of the new cable operator serving the City?**

In initial communications with the City, Comcast referred to the proposed new cable operator entity as SpinCo. Shortly thereafter the name was changed to Midwest Cable. Midwest Cable remains the name as of the date of this Report, but following close of the Transaction, the name will change to GreatLand Connections Inc. (“GreatLand”). For purposes of this report all references will be to Midwest Cable.

The Transaction initially provides for Comcast’s creation of Midwest Cable and Comcast’s contribution of systems (and related business assets and holdings) serving approximately 2.5 million existing Comcast subscribers to Midwest Cable. Midwest Cable is currently a wholly owned subsidiary of Comcast. Following the contribution, Comcast will spin-off the Midwest Cable stock to its public shareholders and Midwest Cable will become an independent, publicly traded corporation and its name will change to GreatLand. Approximately two-thirds (2/3) of the equity and voting shares of Midwest Cable will be held by Comcast shareholders and one-third of the equity and voting shares will be owned by Charter. See page 5 of this Report for a diagram of the transaction.

**Timing for Action by City**

On or about June 17, 2014 the City received from Grantee, FCC Form 394 - Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise (“Application”). Federal, state and local law, including the terms of the Franchise, provide the City with authority to consider the Application. The time period for such a review is typically one hundred twenty (120) days from the date of receipt of the Application, in this case on or before October 15, 2014. On or about August 22, 2014 Comcast and Midwest Cable agreed to extend the Application review period for sixty (60) days until December 15, 2014 to allow the City time to review additional information concerning the qualifications of Midwest Cable which was provided to the City on September 30, 2014.

On or about September 30, 2014 Comcast and Midwest Cable agreed to a further extension of the Application review period for thirty (30) days until January 15, 2015 to allow the City to review certain service agreements related to the Transaction as well as certain SEC financial filings to be made available for review on October 31, 2014. The current City deadline for action on the Application is January 15, 2015.

**What can the City consider?**

Pursuant to the City’s Franchise, this proposed Transfer is prohibited without the written consent of the City. Federal, state and local law provides the City with a right to examine the legal, technical and financial qualifications of the proposed New Grantee and Midwest Cable.

Following review of the Application additional questions were sent on the City’s behalf to Comcast seeking supplemental information regarding the qualifications of New Grantee and Midwest Cable. The Transaction is complicated to describe because certain operational responsibilities will be contracted for by Midwest Cable. Both Comcast and Charter will provide certain transition services and ongoing services to Midwest Cable which will be more fully described herein.
Structure Following the Comcast/TWC Merger
but Before the Transactions

Comcast Shareholders

Comcast

TWC

Charter Stockholders

Charter

New Charter
Structure Following the Spin-Off and the Charter Reorganization but Before the Midwest Cable Merger

Comcast Shareholders (as of the record date for the spin-off)

Comcast (including cash distributed from OpCo and our notes issued to Comcast)

TWC

Midwest Cable

OpCo (owns the Midwest Cable systems, assets and liabilities relating to the Midwest Cable systems and credit facilities)

Charter Stockholders (as of immediately prior to the transactions)

New Charter

Charter Merger Sub

Charter
Structure Following the Transactions

Comcast Shareholders
(as of the record date for the spin-off)

Charter Stockholders
(as of immediately prior to the transactions)

Comcast
(including cash distributed from OpCo and our notes issued to Comcast)

TWC

Midwest Cable

OpCo
(owns the Midwest Cable systems, assets and liabilities relating to the Midwest Cable systems and credit facilities)

New Charter

Approximately 67%

Approximately 33%

Approximately %

Approximately %

Charter
APPLICABLE LAW

In addition to the Franchise requirements which are not specially set forth herein, the following provisions of Federal law and State law govern the actions of the City in acting on the request for approval of the Transaction.

Federal Law


Sales of Cable Systems. A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

The Cable Act also provides at Section 613(d) (47 U.S.C. § 533(d)) as follows:

(d) Regulation of ownership by States or franchising authorities. Any State or franchising authority may not prohibit the ownership or control of a cable system by any person because of such person’s ownership or control of any other media of mass communications or other media interests. Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person’s ownership or control of any other cable system in such jurisdiction, or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.

Further, the Federal Communications Commission (“FCC”) has promulgated regulations governing the sale of cable systems. Section 76.502 of the FCC’s regulations (47 C.F.R. § 76.502) provides:

Time Limits Applicable to Franchise Authority Consideration of Transfer Applications.

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the
cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

State Law

Minnesota Statutes Section 238.083 provides:

Sale or Transfer of Franchise.

Subd. 1. Fundamental corporate change defined. For purposes of this section, "fundamental corporate change" means the sale or transfer of a majority of a corporation's assets; merger, including a parent and its subsidiary corporation; consolidation; or creation of a subsidiary corporation.

Subd. 2. Written approval of franchising authority. A sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change, requires the written approval of the franchising authority. The parties to the sale or transfer of a franchise shall make a written request to the franchising authority for its approval of the sale or transfer.

Subd. 3. Repealed, 2004 c 261 art 7 s 29

Subd. 4. Approval or denial of transfer request. The franchising authority shall approve or deny in writing the sale or transfer request. The approval must not be unreasonably withheld.

Subd. 5. Repealed, 2004 c 261 art 7 s 29

Subd. 6. Transfer of stock; controlling interest defined. Sale or transfer of stock in a corporation so as to create a new controlling interest in a cable communication system is subject to the requirements of this section.

The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
TECHNICAL REVIEW

The technical qualification standard relates to the technical expertise and experience of New Grantee and Midwest Cable to own, operate and maintain the System in the City following the closing of the Transaction. In this case, since Midwest Cable will become the ultimate parent of New Grantee, our focus is on the technical qualifications of Midwest Cable. In such a review, the standard of review is that the City’s consent shall not be “unreasonably withheld.” Because Charter will be providing considerable support to Midwest Cable, we have also outlined below certain qualifications of Charter and have attempted to clarify which entity will provide services in the City.

Background Qualifications of Midwest Cable

Midwest Cable is a newly created entity. Midwest Cable has no operating history that the City can review nor does it have any existing franchises under its control. Midwest Cable will initially have nine board members. Midwest Cable’s Executive Management Team will include the following cable and communications industry executives: 1) Michael Willner, President and CEO; 2) Leonard Baxter, Vice President, Chief Administrator Officer; 3) Matt Siegel, Executive Vice President and Chief Financial Officer; and 4) Keith Hall, Executive Vice President, Corporate Affairs. Mr. Willner, a forty year cable veteran, is the former President and CEO of Insight Communications. Many members of the Midwest Cable executive team are former Insight Communications executives that worked under Mr. Willner. Midwest Cable will employ regional managers and for certain cable systems, local area managers, who will responsible for overseeing the local cable system operations of Midwest Cable.

Responses to Supplemental Information

Comcast and Midwest Cable provided an identical letter dated September 30, 2014 to all Twin City area jurisdictions (through legal counsels for each of the jurisdictions) rather providing a response to each of the specific questions raised by the Commission and City. Below is a summary of the information provided in the Comcast / Midwest Cable correspondence dated September 30, 2014.

1. Will Midwest Cable have local Twin City employees?

   All local system field operational (technical) personnel will be Midwest Cable employees. All government affairs personnel interacting with local franchising authorities will also be Midwest Cable employees. Other operational services will be provided by Charter personnel as described below.

2. What transition services will Comcast provide?

   During the first year following the close of the Transaction, Comcast will provide the following “transition services” to Midwest Cable. Some of these services will transition to Midwest Cable more quickly than others.

   a. Facilities and Asset-Based: Network operating center (“NOC”) for fiber and outage monitoring; national-route fiber leases; Internet Protocol TV (“IPTV”) infrastructure and support; call centers and specialized customer care activities (e.g., home security monitoring).
b. **Software Platforms**: Billing systems; customer websites and service portals; provisioning and telephony platforms; customer premise equipment support systems; voicemail and email platforms; network support tools; data warehouse; human resources and accounting systems.

c. **Marketing and Sales**: Transition from Comcast/Xfinity branding to the Midwest Cable and Charter co-branded “Spectrum” product offering – including all of the associated market and employee-facing markings, as well as national sales channels for residential, commercial and advertising sales.

d. **Customer-Facing Transition Services**: Call center support; billing systems support; provisioning of video; voice and data services; voice operations/call completion; X1 platform support; customer identity management; and email/voicemail continuity support.

3. **What services will Charter provide in the Twin Cities?**

For an initial three (3) year term (with optional one year extensions) Midwest Cable will contract with Charter to provide certain marketing and operational services. Midwest Cable will pay Charter a fee of 4.25 percent of Midwest Cable’s total revenues (voice, video and data revenues) in return for these services.

Charter background - Charter currently operates cable systems throughout Minnesota in such cities as Duluth, St. Cloud, Marshall, Apple Valley, Lakeville, Rochester, Mankato, Winona and many others. Charter provides service to more than 6.1 million customers in 29 states in which it currently operates. Charter is a *Fortune 500* company and employs approximately 23,000 people.

a. **Procurement and Programming Management Services**. Charter will provide programming management services to Midwest Cable including negotiating and entering into video programming agreements.

Charter will provide procurement management services to Midwest Cable. Examples of such goods and services are: product hardware, software licensing and employee cellular service.

b. **Network Operations**. Charter will provide Midwest Cable: (i) telecommunications services that previously depended on Comcast in a shared service model including: network connectivity for all services including voice, video and data, Video On Demand, CPE software and provisioning management, network security and interface with law enforcement, authentication of services and network monitoring and outage detection.

c. **Engineering & IT**. Charter will provide Midwest Cable the Corporate Engineering services previously provided by Comcast including: architectural design standards, product technical roadmaps and standards and technical roadmaps and standards.

Charter will provide Midwest Cable IT services including: (i) software for back office functions including managing customer transactions and provisioning of services; (ii) management information services for accounting, billing, activity
analysis, labor management, budgeting and financial analysis; and (iii) management of data centers.

d. **Voice Operations.** Charter will provide origination services to Midwest Cable including processing phone subscriber orders for phone installations at the subscriber’s home or business. These services include: order fulfillment and provisioning and local number management and portability.

e. **Field Operations.** Charter will support Midwest Cable under by providing field operations services including: dispatch, plant database software systems, predictive network failure software and maintenance prioritization, technician activity and productivity reporting, warehouse standards and CPE handling standards, tools, requirements and standards for technician communications, plant design and construction standards and fleet management.

f. **Customer Service.** Charter will support Midwest Cable by providing customer care services directly or through its vendors. These services include call center services for call answering, monitoring and dispositioning related to inbound sales, billing, repair, and retention for all products and services sold by Midwest Cable, including video, voice and data, online chat for sales, service and billing, online customer care portals for self-help and service and customer identity management.

g. **Billing & Collections.** Charter will provide billing and collections services. These services include: customer billing and billing system management, collection of customer receivables and cash management and customer disconnect support.

h. **Product.** Charter will provide Midwest Cable with: (i) customer facing product development definitions/standards/software and planning for all business and consumer products; (ii) change planning and project management services; and (iii) website hosting, video content management and web mail hosting. Any customer facing products bearing a Charter brand name shall be co-branded with Midwest Cable’s brand name in such a manner that it is clear to the consumer of such products that Midwest Cable is the party providing services to the consumer.

i. **Marketing & Sales.** Charter will support Midwest Cable by providing: (i) marketing services and database support to enable mass, direct and online marketing activities; (ii) analysis of sales channel(s) performance; and (iii) development and all customer and non-customer facing messaging.

Charter will support Midwest Cable by providing: (i) program design and management tools that maximize economic sales to nonsubscribers by door-to-door sales representatives; (ii) sales channel reporting; and (iii) program design for maximizing growth in MDU environment.

j. **Administrative and Back office Services.** As requested by Midwest Cable, Midwest Cable may leverage administrative services from Charter, including leveraging the associated platforms and practices, in areas including but not limited to accounts payable, general ledger, database systems, and payroll administration.
4. **Will Xfinity cable services remain available?**

Cable services will eventually be transitioned from Xfinity branding to Charter’s “Spectrum” brand. Midwest Cable customer invoices will identify products and services as being “Spectrum by Midwest Cable.” The products and services may also be co-branded as “Midwest Cable and Charter,” in certain markets.

5. **Customer E-Mail Transition.**

Post-closing, customers will continue to use their Comcast email account until they migrate to a Midwest Cable email account. Comcast customers will not indefinitely retain their existing “@comcast.net” email address after migrating to the Midwest Cable service, as Comcast owns that domain. However, emails sent to the customer’s former “@comcast.net” email address will be automatically forwarded to the customer’s new Midwest Cable email address for an “ample period of time” that is mutually agreeable to both companies. It is not clear if the email domain will be owned by Charter or Midwest Cable.

6. **Phone Number Continuity.**

The Transaction will not require any change in customer phone numbers. Existing Comcast telephone customers will be able to keep their current phone numbers permanently.

7. **Customer Equipment.**

Customers will be able to continue to use their current premises equipment after the Transaction closes. Midwest Cable will rely initially on Comcast for transition services to support the X1 platform. Midwest Cable ultimately will deploy the Spectrum product suite developed by Charter, which will include a cloud-based user interface similar to the one X1 provides. The Spectrum guide is designed to improve significantly television search and discovery functionality. Of critical importance here, the Spectrum product is designed to accommodate current subscriber equipment (including deployed X1 boxes). Accordingly, Customers who already have X1 equipment should be able to continue using that equipment even after Midwest Cable transitions to the Spectrum offering. After the transition, Midwest Cable video customers will also have authenticated access to programming at no extra charge via the Spectrum TV App – which is compatible with the Apple iPad, iPhone, and iPod Touch running iOS6 or higher; all Amazon KindleFire devices (except for the first generation KindleFire); and all tablets and phones running Android 4.0 and above.

8. **Customer Billing.**

Customers will begin to see bills (at the same time of the month) from Midwest Cable and not Comcast. Approximately 15% of the customers pay online, directly from their bank (whether via recurring payments or one-time). These customers are the only customers that will be required to do anything to adjust their billing arrangements as they

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2 Recall that Midwest Cable’s name will change to GreatLand Connections Inc. Presumably, the branding will be tied to the name GreatLand not Midwest Cable.
will be required to update their on-line banking information to direct payments to Midwest Cable rather than to Comcast. This would not occur for several months after close, and Midwest Cable will notify customers of the change – targeting customers who pay in this fashion with messaging.

9. **Continuation of an Internet Access Support Program for Low Income Households.**

Midwest Cable will continue to offer Internet Essentials and, over time, may make changes to properly serve this important constituency.
FINANCIAL REVIEW

I. Scope of Review

Comcast Corporation, a Pennsylvania corporation (“Comcast”), is the ultimate parent company of the current holder of the Franchise granted by the City. Under the Franchise, Comcast, through its subsidiaries, operates the System that provides cable services and other communication services in the City. Comcast has requested the City’s approval of the proposed Transfer of the System to Midwest Cable, Inc. (which ultimately will be known as GreatLand Connections Inc.), a Delaware corporation (“Midwest”), an entity initially wholly owned by Comcast and subsequently spun off to Comcast’s existing shareholders. At the request of the City, Moss & Barnett, PA has reviewed selected financial information that was provided by Comcast and Midwest or publicly available to assess the financial qualifications of Midwest, as a publicly traded entity, following completion of the proposed transfer of the System.

The financial information that was provided or available through other public sources and to which our review has been limited, consists solely of the following financial information (hereinafter referred to collectively as the “Financial Statements”):

1. FCC Form 394 “Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise” dated June 17, 2014, provided by Comcast Corporation (the “Application”), along with such other exhibits as provided therewith;

2. Form 8-K for Comcast Corporation filed with the Securities and Exchange Commission on April 28, 2014 that includes the Comcast/Charter Transaction Agreement between Comcast Corporation and Charter Communications, Inc. dated April 25, 2014 (the “Transaction Agreement”);

3. Form 10-K for Comcast Corporation filed with the Securities and Exchange Commission on February 12, 2014, for the fiscal year ended December 31, 2013;

4. Form 10-Q for Comcast Corporation filed with the Securities and Exchange Commission on October 23, 2014 for the fiscal quarter and nine-month period ended September 30, 2014;

5. Form 8-K for Comcast Corporation filed with the Securities and Exchange Commission on October 29, 2014 that includes pro forma financial statements for the Comcast Cable Systems to be Contributed to Midwest Cable, Inc.;

6. Form S-1 for Midwest Cable, Inc. filed with the Securities and Exchange Commission on October 31, 2014;

7. The audited financial statements of Comcast Corporation and subsidiaries as of December 31, 2013 and 2012, including Consolidated Balance Sheets as of December 31, 2013 and 2012, Consolidated Statements of Income, Comprehensive Income, Cash Flows and Change in Equity for the years ended December 31, 2013,

8. The draft Charter Services Agreement by and between Midwest Cable, Inc. and Charter Communications Operating, LLC.

9. The draft Transition Services Agreement by and between Midwest Cable, Inc. and Comcast Corporation; and

10. Such other information as we requested and that was provided by Comcast relating to the transfer.

Our procedure is limited to providing a summary of our analysis of the Financial Statements in order to facilitate the City’s assessment of the financial capabilities of Midwest to acquire and operate the System in the City.

II. Overview of Transaction

As a result of the other transactions as discussed in Section III in this report and pursuant to the Transaction Agreement, Comcast has agreed to divest itself from certain assets, which includes the System, pursuant to a spin-off transaction. The transaction initially provides for Comcast’s creation of a new corporate subsidiary (Midwest) and its contribution of systems (and related business assets and holdings) serving approximately 2.5 million existing Comcast subscribers to Midwest. These systems are located in the Midwestern and Southeastern United States. Midwest is currently a wholly owned subsidiary of Comcast.

Following the contribution, Comcast will spin-off the Midwest stock to its public shareholders and Midwest will become a publicly traded corporation. Prior to the spin-off of Midwest, Midwest will incur debt in an amount equal to five times the stand-alone Midwest assets’ earnings before interest, taxes, depreciation and amortization (EBITDA) and distribute the debt proceeds to or exchange those debts with Comcast. Midwest estimates the amount of this initial debt to be approximately $7.8 billion. This transaction is subject to many conditions including federal regulatory approval, performance covenants, financing, favorable tax opinions and other requirements of the parties. In addition, Comcast and Midwest will enter into a Transition Services Agreement pursuant to which Comcast will continue to provide certain services to Midwest for a period of 12 to 18 months pursuant to the applicable statements of work.

After the completion of the above transactions, CCH 1, LLC (“New Charter”), a wholly owned subsidiary of Charter Communications, Inc. will acquire an approximately thirty-three

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4 Id. at p. 1.
5 Id.
6 Form 8-K for Comcast Corporation filed with the Securities and Exchange Commission on April 28, 2014 at pp. 1-3 and Form S-1 at p. 1.
7 Form S-1 at p. 1.
8 Id. at p. 2.
9 Id. at p. 1.
10 Id.
11 Id. at p. 2.
12 Draft Transition Services Agreement by and between Midwest Cable Inc. and Comcast Corporation.
percent (33%) interest in Midwest.\textsuperscript{13} The acquisition is structured as a merger of New Charter into Midwest.\textsuperscript{14} As consideration for this merger, New Charter will issue new stock to the Midwest shareholders which will represent about ten percent (10%) of Charter’s issued and outstanding stock after the merger transaction.\textsuperscript{15} In conjunction with this transaction, Charter will enter into a Charter Services Agreement with Midwest in which Charter will provide Midwest with certain services, including, but not limited to corporate services, network operations, engineering and IT, voice operations, field operations support services, customer services, billing and collections, product services, marketing services, sales, business intelligence and intellectual property licensing.\textsuperscript{16} Charter will receive compensation for out-of-pocket costs related to these services plus a services fee equal to 4.25% of Midwest’s gross revenues.\textsuperscript{17} The Charter Services Agreement has an initial three (3) year term with automatic one (1) year renewals.\textsuperscript{18}

As a result of the transactions described above, Midwest will become a publicly traded company owned approximately two-thirds by Comcast’s existing shareholders and one-third by Charter’s existing shareholders.\textsuperscript{19} The current Comcast shareholders will receive shares of Charter’s publicly traded stock and Midwest’s publicly traded stock as part of the transactions.

The transactions are expected to close in early 2015.\textsuperscript{20}

\textbf{III} \hspace{1em} \textbf{Overview of Related Transactions}

The spin-off transaction is part of a larger group of transactions that involve Charter Communications, Inc., a Delaware corporation (“Charter”), and Time Warner Cable Inc., a Delaware corporation (“TWC”). The other transactions include:\textsuperscript{21}

1. TWC’s merger into Tango Acquisition Sub, Inc., a wholly owned subsidiary of Comcast;

2. Charter’s purchase from Comcast of systems currently served by TWC that represent approximately 1.5 million video subscribers;

3. Charter’s exchange that includes its transfer to Comcast of certain cable systems that represent approximately 1.6 million video subscribers in exchange for TWC systems that represent approximately 1.5 million video subscribers; and Charter’s internal reorganization that results in the creation of New Charter.

\textsuperscript{13} Form 10-Q for Comcast Corporation filed with the Securities and Exchange Commission on October 23, 2014 for the fiscal quarter and nine-month period ended September 30, 2014 (“Form 10-Q”) at p. 30.
\textsuperscript{14} Id.
\textsuperscript{15} Id.
\textsuperscript{16} Draft Charter Services Agreement by and between Midwest Cable, Inc. and Charter Communications Operating, LLC and Form S-1 at p. 70.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Form S-1 at p. 2.
\textsuperscript{20} Form 10-Q at p. 29.
\textsuperscript{21} Comcast/Charter Transaction Agreement between Comcast Corporation and Charter Communications, Inc. dated April 25, 2014.
IV. Overview of Midwest

Midwest is a newly formed corporation that will provide full service communications and cable services, along with other video programming, Internet services, and voice services to residential and commercial customers in certain markets in the United States.22 Midwest was formed in May of 2014 as a limited liability company and converted to a corporation in September of 2014.23 After the contribution and spin-off, Midwest will be the fifth largest cable operator in the United States.24 After the transaction, Midwest’s cable system will pass approximately 6.3 million potential customers and serve approximately 2.5 million residential and commercial cable customers.25 Approximately sixty-five percent (65%) of Midwest’s customers will be located in the Detroit, Michigan; St. Paul/Minneapolis, Minnesota; and Indianapolis, Indiana markets.26 As of the current time, an estimate of the number of direct employees employed by Midwest is unstated and most Midwest services will be provided by Comcast or Charter through the separate service agreements.27 Midwest’s management has an extensive background in the cable industry.28

Cable providers and telecommunication companies operate in a competitive environment and the financial performance of cable television operators, like Midwest and other cable operators, are subject to many factors, including, but not limited to, the general business conditions, programming costs, incumbent operators, digital broadcast satellite service, technology advancements, burdensome service contracts, and customer preferences, as well as competition from multiple sources, which provide and distribute programming, information, news, entertainment and other telecommunication services.29 Midwest has no operating history as a stand-alone company and is dependent upon Comcast and Charter for all of its essential services and operations.30 In addition, Midwest, as a result of the transaction, will be a highly leveraged company, which may reduce its ability to withstand prolonged adverse business conditions and there is no assurance that Midwest will be able to obtain financing in the future to cover its cash flow needs.31 The cable business is inherently capital intensive, requiring capital for the construction and maintenance of its communications systems. We specifically requested information on Midwest’s capital expenditures budget, but Comcast declined to provide that information to us.32 Each of these factors could have a significant financial impact on Midwest and its ability to continue to operate the System.

V. Findings

We have analyzed the historical financial statements just for the assets to be contributed by Comcast to Midwest and publicly filed information, along with its Services Agreement with Charter and Transition Services Agreement with Comcast. Midwest declined to provide us with

22 Form S-1 at p. 50.
23 Id.
24 FCC Form 394 “Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise” dated June 17, 2014, provided by Comcast Corporation (the “Application”), – Cover letter dated June 17, 2014.
25 Form S-1 at p. 50.
26 Id. at pp. 50-51.
27 Id. at p. 63.
28 Application – Exhibit 7.
29 Form S-1 at pp. 8-17.
30 Id. at p. 13.
31 Id. at pp. 17-19.
32 Correspondence to author from Klayton F. Fennell, Vice President, Government Affairs, Comcast Corporation. dated July 28, 2014 at p. 15.
projected statements of cash flow and income and a balance sheet for its future operations and further stated that “Comcast has not and will not provide forward looking analyses related to Midwest Cable…” 33 Furthermore, other than the footnote disclosures in the historical financial statements which were minimal, we were not provided with the detailed information on how Comcast determined its revenue and expense allocations and its assumptions used to prepare the Midwest financial statements. Deloitte & Touche LLP, one of the biggest accounting firms in the United States, provided an Independent Auditors’ Report dated October 24, 2014 on the Comcast Cable Systems to be Contributed to Midwest Cable, Inc. and stated the Midwest financial statements fairly present, in all material respects, the financial condition of the Comcast assets to be contributed to Midwest. 34 The Auditors’ Report states “The accompanying combined financial statement reflect the assets, liabilities, revenue and expenses directly attributable to the Company [Midwest], as well as allocations deemed reasonable by Comcast Corporation management, and do not necessarily reflect the combined financial position, result of operations, and cash flows that would have resulted had the Company [Midwest] been operated as a stand-alone entity during the period presented.” 35

These historical audited financial statements do not include transaction costs and ongoing additional costs and synergies of the new Midwest operation, including the new debt and various new service fees for services provided by Charter and Comcast. Midwest’s management has provided financial statement, as adjusted for some of these other costs and expenses that were not recognized by Comcast historically. 36 These financial statements do not include all potential adjustment items as noted in Midwest’s public filings. 37

As such, we are reporting our Findings hereunder based upon Comcast’s historical information as adjusted, for the assets and systems contributed to Midwest. Overall, from a financial point-of-view, the information provided below shows that Midwest will be highly leveraged and have significant third party costs and obligations.

1. **Analysis of Financial Statements.** Federal law and FCC regulations provide franchising authorities, such as the City, with limited guidance concerning the evaluation of the financial qualifications of an applicant for a cable franchise. In evaluating the financial capabilities of a cable operator, we believe it is appropriate to consider the performance of an applicant based on the applicant’s historical performance plus its projected or budgeted financial information along with its financial capabilities (financing). With a new company, historical information is not available. However in this case, the pro forma financial statements with respect to the assets contributed by Comcast to Midwest have been prepared by Comcast based upon its management’s assumptions. We have not independently verified the Comcast management’s allocations and assumptions and are relying on the publicly disclosed information as provided by Midwest and Comcast. We believe a general review of the Midwest pro forma financial information may provide some insight into the general financial

33 Id.
34 Form 8-K for Comcast Corporation filed with the Securities and Exchange Commission on October 29, 2014 that includes pro forma financial statements for the Comcast Cable Systems to be Contributed to Midwest Cable, Inc. (“Form 8-K”) at p. F-1.
35 Id.
36 Form S-1 at pp. 31-36.
37 Id. at p. 36.
operations of Midwest with respect to the Application, but we note that there are many unanswered questions regarding Midwest’s operations going forward.\textsuperscript{38}

As noted above, Midwest’s operations include both cable television video services and non-cable television services. According to Midwest’s financial statements, Midwest’s residential video service comprised approximately forty-eight percent (48%) to fifty percent (50%) of its revenue in 2013 and 2014.\textsuperscript{39} The Midwest financial information discussed below includes all of the Midwest operations, including the non-cable television video services. We have analyzed Midwest’s pro forma financial statements, as adjusted as noted below, as of June 30, 2014 and historical financial statements as of December 31, 2013 and 2012 in providing the information in this Section. As described below, these financial statements do not reflect the current fair value of Midwest’s assets and liabilities, but rather the assets and liabilities are presented based on Comcast’s historical cost as determined by Comcast’s management.\textsuperscript{40}

2. Specific Financial Statement Data and Analysis.

a. Assets. The Comcast assets transferred to Midwest had (i) current assets of $168 million as adjusted, $173 million, and $152 million; (ii) working capital of a negative $211 million as adjusted, a negative $206 million, and a negative $196 million; and (iii) total assets of $9,043 million as adjusted, $8,999 million, and $8,992 million as of June 30, 2014 and December 31, 2013 and 2012, respectively.\textsuperscript{41} Working capital, which is the excess of current assets over current liabilities, is a short-term analytical tool used to assess the ability of a particular entity to meet its current financial obligations in the ordinary course of business. The trend shows a slight increase in the negative working capital from December 31, 2012 to June 30, 2014, and suggests that Midwest’s cash flow may be unable to meet its current obligations. Midwest’s current ratio (current assets divided by current liabilities) as of June 30, 2014, of 0.44/1 is well below a generally recognized standard of 1:1 for a sustainable business operation.\textsuperscript{42} Approximately seventy-five percent (75%) of Midwest’s assets are comprised of its intangible Franchise Rights and Goodwill.\textsuperscript{43} According to Comcast, the current fair market values of Midwest’s net assets is considerably in excess of the historical financial information.\textsuperscript{44}

b. Liabilities and Net Equity. Midwest’s pro forma financial statements show (i) current liabilities of $379 million as adjusted, $379 million and $348 million; and (ii) deferred taxes of $2,836 million, $2,842 million and $2,835 million as of June 30, 2014 and December 31, 2013 and 2012, respectively.\textsuperscript{45} Midwest’s long-term debt is estimated to be $7.8 billion which will have a significant impact.

\textsuperscript{38} Correspondence to author from Klayton F. Fennell, Vice President, Government Affairs, Comcast Corporation.
\textsuperscript{39} Form S-1 at p. 44.
\textsuperscript{40} Id. at p.31.
\textsuperscript{41} Form 8-K at p. F-2 of the December 31, 2013 Financial Statements and Form S-1 at p. 32.
\textsuperscript{42} Form S-1 at p. 32.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
The specific terms of the new indebtedness have not been disclosed and are unknown; however Midwest has used an interest rate of five percent (5\%) on its adjusted pro forma financial statements.\textsuperscript{47} This additional debt will require Midwest to generate additional cash flow, including through the operations and its service arrangement with Charter, to fund its debt service. Midwest's initial debt leverage will be no greater than 5.0x its 2014 EBITDA, which is consistent with some other cable operators (Charter at 5.0x, Cablevision at 5.3x, Suddenlink at 5.7x and Mediacom at 5.3x).\textsuperscript{48} In order to close these transactions, Midwest and the other parties will be required to obtain certain levels of financing, which if not received would terminate the above described transactions.

c. Income and Expense. Midwest’s pro forma income statements, as adjusted report (i) revenue of $2,299 million and $4,470 million; (ii) operating expenses of $1,839 million and $3,618 million; and (iii) operating income of $460 million and $852 million for the six-month period ending June 30, 2014 and the year ending December 31, 2013, respectively.\textsuperscript{49} Midwest is reporting net income in its pro forma financial statements as adjusted of $158 million and $272 million for the six-month period ending June 30, 2014 and the year ending December 31, 2013, respectively.\textsuperscript{50} The ability to generate cash is important for Midwest due to its highly leveraged operations. A one percent (1\%) increase in the interest rate of the $7.8 billion of debt will result in an additional $78 million of interest expense annually. As a result of the transactions and changes in its business and business structure, Midwest will incur significant non-recurring expenses which may negatively affect Midwest’s short-term income statement performance. In addition, as a result of the transaction, Midwest may be required to incur significant capital expenditures for the assimilation its new business and services along with additional programming costs to maintain its current programming in the future.\textsuperscript{51}

VI. Summary

Using the FCC Form 394 to establish an absolute minimum standard of financial qualifications that a proposed applicant must demonstrate in order to be qualified as the successor operator of the System, Comcast and Midwest have the burden of demonstrating to the City’s satisfaction that Midwest has “sufficient net liquid assets on hand or available from committed resources” to consummate the transaction and operate the System, together with its newly acquired operations, for three (3) months. This minimum standard is not easy to apply to a newly formed highly leveraged company with significant transaction and ongoing service costs. In general, we have also considered the standard practice of lenders that requires borrowers to maintain certain debt covenants on new and outstanding debt, including certain cash flow requirements, financial ratios and adequate security, in order to make and maintain a loan and that if a borrower does not meet these requirements, a loan may not be initially funded.

\textsuperscript{46} Form 10-Q at p. 5.
\textsuperscript{47} Form S-1 at p. 35.
\textsuperscript{48} Letter to Brian T. Grogan, Esq. of Moss & Barnett, PA from Comcast and Midwest Cable, dated September 30, 2014, at p. 15.
\textsuperscript{49} Form S-1 at pp. 33-34.
\textsuperscript{50} Id.
\textsuperscript{51} Id. at p. 3.
Based solely on Midwest's financial information that we reviewed, Midwest's public filings assume that Midwest will receive sufficient debt commitments and the required debt to consummate the Transaction Agreement. Based on the foregoing and limited strictly to the financial information analyzed in conducting this review, we do not believe that Comcast’s request for transfer of the ownership of the System to Midwest can reasonably be denied based solely on a lack of financial qualifications of Midwest, if the financing to consummate the transaction is obtained by Midwest, as Midwest would have the funds to acquire and operate the System for at least some initial period of time. The failure to obtain the financing would result in the termination of the Transaction Agreement and proposed transfer of ownership. Due to the many uncertainties and lack of information regarding the proposed financing and future operations, there is not enough information that has been made available to review to make any conclusions regarding the financial qualification of Midwest’s ability to own and operate the System after the acquisition and initial operating period.

In the event the City elects to proceed with approving the proposed transfer of control, the assessment of Midwest’s financial qualifications should not be construed in any way to constitute an opinion as to the financial capability or stability of Midwest to (i) operate under the Franchise, (ii) operate its other operations, or (iii) successfully consummate the transactions as contemplated in the Transaction Agreement. The sufficiency of the procedures used in making an assessment of Midwest’s financial qualifications and its capability to operate the System is solely the responsibility of the City. Consequently, we make no representation regarding the sufficiency of the procedures used either for the purpose for which this analysis of financial capabilities and qualifications was requested or for any other purpose.

Lastly, in order to ensure compliance with its obligations to operate the System and since we have based a significant part of our analysis on the financial statements, as adjusted, of Midwest, the parent entity, we recommend that the City maintain any performance bonds or corporate parent guaranty, if any, required under any City Franchise. If security funds are not required in the City Franchise, the City may wish to consider pursuing a corporate parent guaranty from Midwest in a form as set forth in Exhibit A or as otherwise mutually agreeable to Midwest and the City. A model resolution has also been attached for the City’s review and consideration.
Resolution No. 2015-xx

Resolution approving the transfer of the cable franchise
and change of control of the grantee

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

Section 1. Background.

1.01. Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc. (“Grantee”), currently holds a cable television franchise (“Franchise”) granted by the City of Minnetonka, Minnesota (“City”); and

1.02. Grantee owns, operates and maintains a cable television system in the City (“System”) pursuant to the terms of the Franchise; and

1.03. on February 12, 2014, Comcast Corporation (“Comcast”) and Time Warner Cable Inc. (“TWC”) entered into an Agreement and Plan of Merger; and

1.04. on April 25, 2014, Comcast and Charter Communications, Inc. (“Charter”) entered into the Comcast/Charter Transactions Agreement (the "Agreement"), pursuant to which the Grantee, through a restructuring under Comcast's ownership, will become Comcast of Minnesota, LLC ("New Grantee") and immediately thereafter will become a wholly-owned subsidiary of Midwest Cable, Inc. ("Midwest Cable") (the "Transaction"); and

1.05. on or about June 17, 2014 the City received from Grantee, FCC Form 394 - Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise ("Application"); and

1.06. Federal law and the terms of the Franchise require that the City take action to consider the Application within one hundred twenty (120) days of the date of receipt, or on or before October 15, 2014; and

1.07. on or about August 22, 2014 Comcast and Midwest Cable agreed to extend the Application review period for sixty (60) days until December 15, 2014 to allow the City time to review the additional information concerning the qualifications of Midwest Cable provided to the City on September 30, 2014; and

1.08. on or about September 30, 2014 Comcast and Midwest Cable agreed to a further extension of the Application review period for thirty (30) days until January 15, 2015 to allow the City to review certain service agreements related to the Transaction as well as certain SEC financial filings to be made available for review on October 31, 2014; and
1.09. Section 2.7 of the Franchise requires the City’s advance written consent prior to the Grantee’s transfer of the Franchise; and

1.10. as a result of the proposed Transaction Grantee has requested consent from the City to the proposed transfer of the Franchise; and

1.11. the City has reviewed the proposed Transaction, and based on information provided by Grantee and Midwest Cable and on the information received by the City from the Southwest Suburbs Cable Commission (“Commission”), the City has elected to approve the proposed Transaction subject to certain conditions as set forth herein.

Section 2. Council Action.

2.01 All of the above recitals are hereby incorporated by reference as if fully set forth herein. The Franchise is in full force and effect and Grantee is the lawful holder of the Franchise.

2.02 New Grantee will be the lawful holder of the Franchise after completion of the Transaction.

2.03 The City hereby consents and approves of the proposed Transaction subject to the below conditions.

   a. New Grantee agreeing to assume any and all liabilities, known and unknown, under the Franchise.

   b. Within twenty (20) days of the date of adoption of this Resolution, New Grantee shall execute and file with the City the Acceptance and Agreement attached hereto to verify New Grantee’s compliance with the terms and conditions of this Resolution; and

   c. Within thirty (30) days following close of the Transaction, Midwest Cable (also to be known as GreatLand Connections Inc.) shall execute and provide the City with the Corporate Parent Guaranty attached hereto and incorporated by reference.

   d. New Grantee shall provide both SD and HD (simulcast) capacity for the City’s government access PEG channel - identical to what the Grantee currently provides to the City of Edina, Minnesota under the Franchise.

   e. New Grantee shall maintain and provide (as Grantee currently provides), free of charge to the City, Commission and the Commission’s member cities, the existing PEG playback transmission connectivity and Comcast fiber and coax cable in the following manner:
i. All fiber coming to and from the existing Comcast Head end building - 10210 Crosstown Circle necessary for Commission PEG transmissions.

ii. New Grantee shall provide, maintain and replace any existing routers, switching equipment and related facilities at the headend that may be required to maintain the same PEG access functionality as Grantee currently provides and as otherwise required by the Franchise.

iii. The City, Commission and Commission’s member cities shall have the right to continue to use maintain the fiber & splice points at 10210 Crosstown Circle.

iv. In the event headend is relocated from 10210 Crosstown Circle, all costs and expenses required to maintain the PEG playback transmission connectivity and Comcast fiber and coax cable shall be provided by New Grantee free of charge to the City, Commission and the Commission’s member cities.

v. New Grantee shall provide, maintain and replace the existing termination equipment (Modulators) to facilitate the PEG programming transmission to each of the Commission’s member cities in following amounts - Edina (6), Richfield (1), Hopkins (1), and Minnetonka (1).

f. New Grantee will participate in quarterly meetings with members of the Commission or the Commission’s designees for the first two (2) years following the close of the Transaction to verify that subscriber issues and concerns are being addressed by New Grantee or any other entity that may have interaction with subscribers within the City. If issues are not being addressed, New Grantee agrees to meet with Commission and City staff, as directed, to explain steps being undertaken to address subscriber concerns and New Grantee will provide regular and timely updates to the Commission to provide verification of corrective actions being undertaken to address unresolved issues.

g. New Grantee will maintain an “escalated complaint program” to escalate unresolved cable television complaints from subscribers. One or more specifically identified employee(s) of New Grantee shall be available to Commission or City staff via email for reporting issues. These specifically identified employee(s) of New Grantee will have the ability to escalate service issues to a senior officer of New Grantee or New Grantee’s parent company when necessary. New Grantee will follow-up with Commission or City staff by email or by phone with a summary of the results of the complaint(s).
h. New Grantee’s compliance with the requirements of paragraphs c, d, e, f, and g of this Resolution shall be handled under the Franchise. New Grantee shall be subject to available enforcement procedures and remedies as if these obligations were set forth in the Franchise.

i. Comcast shall, within twenty (20) days of the date of adoption of this Resolution, fully reimburse City for all of City’s reasonable costs and expenses in connection with the City’s review of the proposed Transaction, including without limitation, all costs incurred by the City for experts and attorneys retained by City to assist in the review as well as notice and publication costs (“Reimbursement”).

i. The Reimbursement shall not be deemed to be “Franchise Fees” within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), nor shall the Reimbursement be deemed to be (i) “payments in kind” or any involuntary payments chargeable against the Franchise Fees to be paid to the City by New Grantee pursuant to the Franchise.

ii. The Reimbursement shall be considered a requirement or charge incidental to the awarding or enforcing of the Franchise.

2.04 In the event the proposed Transaction contemplated by the foregoing resolution is not completed, for any reason, the City’s consent shall not be effective. If any of the conditions set forth herein are not met, the City’s consent to the proposed Transaction shall be null and void and of no effect.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 5, 2015.

__________________________________________
Terry Schneider, Mayor

Attest:

__________________________________________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on January 5, 2015.

______________________________
David E. Maeda, City Clerk
EXHIBIT A

CORPORATE PARENT GUARANTY

THIS AGREEMENT is made this __________ day of __________, 201__ (this “Agreement”), by and among GreatLand Connections Inc. (f/k/a Midwest Cable, Inc.), a Delaware corporation (the “Guarantor”), the City of _________________, Minnesota (“Franchising Authority”), and _________________________________, a ____________________ (“Company”).

WITNESSETH

WHEREAS, on __________________, 20__ the Franchising Authority adopted Ordinance No. ______________ granting a Cable Television Franchise which is now held by ___________________________ (the “Franchise”), pursuant to which the Franchising Authority has granted the rights to own, operate, and maintain a cable television system (“System”); and

WHEREAS, pursuant to the Comcast/Charter Transaction Agreement dated April 25, 2014 by and between Charter Communication, Inc., a Delaware corporation, and Comcast Corporation, a Pennsylvania corporation, (“Agreement”), the Franchise will be transferred to the Company and the Guarantor will acquire control of the Company as an indirect subsidiary of Guarantor as a result of Comcast Corporation’s contribution and spin off of certain cable television systems pursuant to the Agreement (“Change in Control”); and

WHEREAS, Company and Comcast Corporation have requested the consent to the Change of Control in accordance with the requirements of Section ___ of the Franchise; and

WHEREAS, pursuant to Resolution No. ______________, dated ______________, 20______, the Franchising Authority conditioned its consent to the Change of Control on the issuance by Guarantor of a corporate parent guaranty guaranteeing certain obligations of Company under the Franchise.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in consideration of the approval of the Change of Control, Guarantor hereby unconditionally and irrevocably agrees to provide all the financial resources necessary for the observance, fulfillment and performance of the obligations of the Company under the Franchise and also to be legally liable for performance of said obligations in case of default by or revocation or termination for default of the Franchise.

This Agreement, unless terminated, substituted, or canceled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise.
Upon substitution of another Guarantor reasonably satisfactory to the Franchising Authority, this Agreement may be terminated, substituted, or canceled upon thirty (30) days prior written notice from Guarantor to the Franchising Authority and the Company. Such termination shall not affect liability incurred or accrued under this Agreement prior to the effective date of such termination or cancellation.

GREATLAND CONNECTIONS INC. (F/K/A MIDWEST CABLE, INC.)

By:__________________________________________

Its:__________________________________________

STATE OF __________________________
COUNTY OF __________________________

The foregoing instrument was subscribed and sworn to before me this ___ day of ___________ _____ 20___, by _____________________________, the _____________________________ _____ of _____________________________.

2574069v1

B-2
City Council Agenda Item #13B
Meeting of January 5, 2015

Brief Description
Resolution approving vacation of drainage and utility easements at 9900 Bren Road East

Recommendation
Hold the public hearing and adopt the resolution

Introduction
In 1982 drainage and utility easements were granted to the city over the portions of the 9900 Bren Road East property. In subsequent years, additions were made to the building on the site and changes were made to the size and shape of the site’s stormwater pond. No corresponding changes were made to the drainage and utility easements. As such, portions of the building currently encroach into the easement area and portions of the pond are outside of the easement area.

United Health Group is requesting vacation of the drainage and utility easements on the property and proposing new drainage and utility easements reflecting existing conditions. (See pages A1–A6.)

Staff Comments
As the existing easements do not accurately reflect existing conditions, the requested vacation and establishment of new easements is appropriate. The establishment of new drainage and utility easements over the existing pond do not require council action.

Staff Recommendation
Hold the public hearing and adopt the resolution on pages A7–A9 which vacates the drainage and utility easements.

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

Originated by:
Susan Thomas, AICP, Principal Planner
LOCATION MAP
United Health Group
Easement Vacation
9900 Bren Road East

This map is for illustrative purposes only.
November 18, 2014

Mr. Loren Gordon
City Planner
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345

RE: 9900 Bren Road Easement Vacation Request – Statement of Intended Use

Dear Mr. Gordon:

Please find enclosed United HealthCare Services, Inc.'s ("United") application to the City of Minnetonka to vacate portions of two drainage and utility easements at 9900 Bren Road, Minnetonka, Minnesota (the "Property"). The two easements are legally described in Exhibits C and D and recorded as Document No. 1466443(A) and Document No. 14896965, respectively. United respectfully requests the City vacate the portions of those easements encroached by the southwest corner of the building on the Property as described in Exhibit B and depicted in the survey attached as Exhibit E.

The two easements were granted to the City as part of the stormwater management plan for the Property approved in 1982. Subsequently, the City approved construction of a building expansion located in part over the easements, as depicted in Exhibit E. However, a request to vacate the portions of the easements encroached by the building expansion was not made at that time.

United purchased the Property on May 22, 2014 and now respectfully requests the City vacate the encroached portions of the easements. Vacating the portions of the easements encroached by the expansion will not affect stormwater management on the Property because the current stormwater management plan approved by the Nine Mile Creek Watershed District on July 19, 2013 reflects the Property’s current condition and does not rely on the easements.

Please contact me if you have any questions or need any additional information.

Sincerely,

UNITED HEALTHCARE SERVICES, INC.

[Signature]

Dave Peliner
Senior Director, Workplace Development
Enterprise Real Estate Services

DP
Enclosures
Document No. 1466443 To Be Vacated

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Henry D. Nelson
PLS

17255
12/08/14
Date

7200 Broolock Lane, Suite 300
Minneapolis, Minnesota 55435-5592
Telephone: (763)424-5505 Fax: (763)424-5822
Web Page: www.LoucksAssociates.com
Depiction of Platted Drainage & Utility Easement To Be Vacated

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Henry D. Nelson

12/08/14

License No.

Easement Vacation
9900 Bren Rd E
I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Henry D. Nelson, PLS
12/09/14

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Henry D. Nelson, PLS
12/09/14

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Henry D. Nelson, PLS
12/09/14

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Henry D. Nelson, PLS
12/09/14
Resolution No. 2015-
Resolution vacating existing drainage and utility easements
at 9900 Bren Road East

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

Section 1. BACKGROUND.

1.01 United Health Group has petitioned the Minnetonka City Council to vacate existing drainage and utility easements at 9900 Bren Road East.

1.02 The easements are legally described as follows, to wit:

Vacate that part of the drainage & utility easement as shown on the recorded plat of OPUS 2 FOURTH ADDITION which crosses Lots 1 and 2, Block 9 in said addition and is described as follows:

Commencing at the northwest corner of Lot 2, Block 9, said OPUS 2 FOURTH ADDITION; thence on an assumed bearing of North 74 degrees 49 minutes 30 seconds East, a distance of 60.00 feet to a point hereinafter referred to as “POINT A”; thence continuing North 74 degrees 49 minutes 30 seconds East, a distance of 23.00, to a point hereinafter referred to as “POINT B”; thence continuing North 74 degrees 49 minutes 30 seconds East, a distance of 5.00 feet to the point of beginning of the easement vacation to be described; thence South 45 degrees 10 minutes 30 seconds West, a distance of 94.00 feet; thence South 86 degrees 19 minutes 30 seconds West, a distance of 45.00 feet; thence North 55 degrees 28 minutes 56 seconds West, a distance of 19.00 feet; to the intersection with a line that bears South 10 degrees 50 minutes 42 seconds East from the above mentioned “POINT B”; thence North 10 degrees 50 minutes 42 seconds West, a distance of 33.04 feet to the intersection with a line 25.00 feet southerly of the northerly line of said Lot 2; thence westerly parallel with the said north line, to the intersection with a line bearing South 10 degrees 50 minutes 42 seconds East from the above
described "POINT A"; thence North 15 degrees 10 minutes 30 seconds West, to the intersection with a line 10.00 feet northerly of the northerly line of said Lot 2; thence easterly, parallel with said northerly line to the intersection with a line bearing North 45 degrees 10 minutes 30 seconds West from the point of beginning; thence South 45 degrees 10 minutes 30 seconds East to the point of beginning.

and

Vacate in its entirety, the existing perpetual drainage and utility easement and perpetual easement for concrete edger purposes originally established by Doc. No. 1466443, files of Registrar of Titles (County Recorder) in and for the County of Hennepin, State of Minnesota.

1.03 As required by law, a hearing notice on said petition was published in the City of Minnetonka's official newspaper.

1.04 On January 5, 2015, the City Council held a hearing on such petition, at which time all persons for and against the granting of said petition were heard.

Section 2. STANDARDS

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

Section 3. FINDINGS.

3.01 The Minnetonka City Council finds that the easements do not accurately reflect existing site conditions.

Section 4. CITY COUNCIL ACTION.

4.01 The City Council vacates easements as describe in section 1 of this resolution.

4.02 This vacation is valid only upon proper recording of replacement easements.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 5, 2015.

______________________________
Terry Schneider, Mayor
ATTEST:

_________________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by
the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held
on January 5, 2015.

_________________________________
David E. Maeda, City Clerk
City Council Agenda Item #14A
Meeting of January 5, 2015

Brief Description  Resolution approving a conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road

Recommendation  Adopt the resolution approving the request

Proposal

The applicants are proposing to operate a dog daycare and boarding facility in a portion of an existing industrial building at 14901 Minnetonka Industrial Road. The facility would be called “Unleashed.” As proposed, Unleashed would provide daycare and overnight boarding for up to 180 dogs.

Planning Commission Hearing

The planning commission considered the request on December 11, 2014. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1–A13. Staff supported the applicants’ proposal for three reasons:

- **Location.** Given the location of the subject property, an animal daycare and boarding facility would be an appropriate use. The property is surrounded by light industrial uses. It would not, therefore, impact either residential or commercial properties.

- **Standards.** Within the I-1 district, animal daycare and boarding facilities are not specifically regulated. However, such facilities are permitted as interim uses in residential districts. Staff reviewed the proposal under the commercial kennel standards outlined in the residential section of zoning ordinance. Staff finds that the applicants' proposal would meet the intent of these standards.

- **Reuse.** The proposed use represents a logical and feasible adaptive reuse of an existing building.

At that commission meeting, a public hearing was opened to take comment. The property managers of several surrounding buildings addressed the commission voicing their opposition to the proposal. The property managers suggested that a dog daycare and boarding facility would detract from the image of the industrial park, thereby reducing rents and the number and type of prospective tenants.

Following the public hearing, the commission discussed the proposal. Commissioners asked staff about noise regulations and allowed uses in the industrial park. Staff indicated
that, like all businesses and property owners, Unleashed would be subject to the city’s noise and nuisance ordinances. Staff noted that the industrial zoning district is intended for land uses that are more “intense” or “impactful” than uses permitted in other zoning districts.

**Planning Commission Recommendation**

On a 6-0 vote, the commission recommended that the city council approve the conditional use permit request. Meeting minutes may be found on pages A25–A30.

**Since Planning Commission Hearing**

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

**Staff Recommendation**

Adopt the resolution approving a conditional use permit for a dog daycare and boarding facility at 14901 Minnetonka Industrial Road. (See pages A14–A17.)

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

Originator: Susan Thomas, AICP, Principal Planner
MINNETONKA PLANNING COMMISSION
December 11, 2014

Brief Description
Conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road

Recommendation
Recommend the city council adopt the resolution approving the request

Project No.
98044.14a

Property
14901 Minnetonka Industrial Road

Applicant
Haley and Darren Alick
Chad Miller

Proposal
The applicants are proposing to operate a dog daycare and boarding facility in a portion of an existing industrial building at 14901 Minnetonka Industrial Road. The facility would be called “Unleashed.” As proposed, Unleashed would provide daycare and overnight boarding for up to 180 dogs. (See pages A1–A8.)

Proposal Requirements
The proposal requires:

- Conditional use permit:
  Animal daycare and boarding facilities are not a specifically regulated use with the industrial (I-1) zoning district. However, staff finds that the use is similar to other permitted uses in the I-1 district, specifically: storage, warehousing, and service uses. A conditional use permit is required for any use not specifically listed in city code, but which is similar to other uses permitted by code. (City Code §300.20 Subd.4(l)).

Approving Body
The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request. (City Code §300.06.4)

Site Features: Existing
The 2-acre subject property is located in the south side of Minnetonka Industrial Road near the “middle” of the Minnetonka Industrial Park. (See page A4.)
**Existing Building**
The existing, 25,000 square foot building was constructed in 1967. Formal entrances to the building are located on both the north and east facades. (See page A10.)

**Existing Parking Lot**
Parking for the building is located on the north, east, and west sides of the property. The lot contains 123 parking stalls. Vehicular access to the parking lot is via Minnetonka Industrial Road. (See page A10.)

**Site Features:**
To accommodate Unleashed, the applicants propose changes to the both the interior of the building and the parking lot. No changes to the exterior of the building are proposed.

**Proposed Building**
The building would be divided into two tenant spaces. Unleashed would occupy roughly 17,500 square feet of the building. This space would include a customer lobby, business offices, grooming stations, boarding kennels, and indoor play area. An unidentified office tenant would occupy the remaining 7,500 square feet. (See pages A8–A9.)

**Proposed Outdoor Area**
An outdoor play area would be located on the west and south sides of the building. Canine grass would be installed in the approximately 8,000 square-foot area which would be surrounded by privacy fencing. Construction of the outdoor area would reduce parking to 61 functional spaces. This number would meet the code-defined minimum parking for both Unleashed and the yet to be identified office tenant. (See pages A11–A12.)

**Staff Analysis**
Staff finds that the applicants’ proposal is reasonable for three reasons:

- **Location.** Given the location of the subject property, an animal daycare and boarding facility would be an appropriate use. The property is surrounded by light industrial uses. It would not, therefore, impact either residential or commercial properties.

- **Standards.** Within the I-1 district, animal daycare and boarding facilities are not specifically regulated. However, such facilities are permitted as interim uses in residential districts. Staff reviewed the proposal under the commercial kennel standards outlined in the residential section of zoning ordinance. Staff finds that the applicants’ proposal
would meet the intent of these standards. These specific standards are detailed in the “Supporting Information” section of this report.

- **Reuse.** The proposed use represents a logical and feasible adaptive reuse of an existing building.

**Staff Recommendation**

Recommend that the city council adopt the resolution approving a conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road. (See page A14–A17.)
## Supporting Information

### Surrounding Uses

<table>
<thead>
<tr>
<th>Direction</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northerly</td>
<td>industrial building; zoned I-1</td>
</tr>
<tr>
<td>Easterly</td>
<td>industrial building; zoned I-1</td>
</tr>
<tr>
<td>Southerly</td>
<td>industrial building; zoned I-1</td>
</tr>
<tr>
<td>Westerly</td>
<td>commercial building; zoned I-1</td>
</tr>
</tbody>
</table>

### Planning

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guide Plan designation: mixed use</td>
</tr>
<tr>
<td>Zoning: I-1</td>
</tr>
</tbody>
</table>

### Business

The applicants have provided the following information regarding Unleashed.

- **Staffing:** Staffing will be based on occupancy. The maximum number of employees on site would be 10. The building would not be staffed overnight.

- **Hours of Operation:** The building would generally be open for the variety of services provided from 6:30 a.m. to 7:00 p.m. Monday through Friday and from 7:00 a.m. to 11:00 a.m. and 3:00 p.m. to 7:00 p.m. Saturday and Sunday.

- **Outside:** As currently proposed, dogs could be outside during the hours of 7:00 a.m. to 7:00 p.m. Dogs would be supervised at all times, whether outdoors or indoors.

- **Waste Management:** Solid waste will be placed in appropriate containers and ultimately picked up by a waste treatment provider. The specific provider and pick-up times have not been determined as of yet.

- **Pet Friendly Grass:** Pet-friendly synthetic turf will be installed in the outdoor play area. The installation includes a layer of crushed limestone, which neutralizes odor associated with dog urine, and a layer of synthetic turf. As a condition of approval, the applicants must: (1) supply information acceptable to the city engineer indicating that the limestone layer will absorb the urine; or (2) remove asphalt and decompact the soil under the play area to allow for absorption; or (3) install an infiltration area and mechanism to channel urine to the area.

### Number of Dogs

In recent years, city staff has informally established a “dog to building size” ratio for the dog daycare and boarding facilities. The proposed Unleashed facility would fall within that ratio, as well as the ratio suggested by the American Society for the Prevention of Cruelty to Animals (ASPCA).
### CUP Standards

While the zoning ordinance does not contain specific standards associated with animal daycare or boarding facilities in the industrial district, commercial kennels are permitted as interim uses in residential districts, with specific standards associated with them. Staff reviewed the applicants’ proposal in light of these standards; this review is for informational purposes only.

1) A minimum lot size of two acres.

**Finding:** The intent of this requirement is to ensure perceived nuisances – noise, traffic, refuse – do not substantially impact a residential neighborhood. As the proposed facility would be located in an industrial district, this standard is not applicable.

2) Must be located next to a collector or arterial street, as identified in the comprehensive plan, or otherwise located so that access to the site will not conduct significant traffic on local residential streets.

**Finding:** The proposed facility would be accessed by Minnetonka Industrial Road via Williston Road. As the proposed facility would be located in an industrial district, this standard is not applicable.

3) Exterior storage, including refuse, must be screened from adjacent properties or public streets.

**Finding:** The outdoor play area and trash area would be screened by 6-foot privacy fencing.

4) Must not include a crematory.

**Finding:** No crematory is proposed.

5) Parking areas for patrons must be screened from adjacent properties.

**Finding:** The intent of this requirement is to ensure perceived nuisances – including parking – do not substantially impact a
residential neighborhood. As the proposed facility would be located in an industrial district, this standard is not applicable.

6) A minimum setback of 100 feet must be maintained between the kennels and all property lines.

**Finding:** The intent of this requirement is to ensure perceived nuisances – noise, traffic, refuse – do not substantially impact a residential neighborhood. As Unleashed would be located in an industrial district, and all kennels would be located inside, this standard is not applicable.

7) All dogs must be kept within an enclosed building at all times, except for supervised walks.

**Finding:** Dogs would be kept within the building or within the fenced area on the west and south sides of the site. The animals would be supervised both inside and outside.

8) Must not cause annoyance or disturbance to another person by frequent howling, yelping, barking, or other kinds of noise. This paragraph shall only apply when the noise has continued for a 10-minute period. This requirement shall apply to the cumulative barking from the kennel, including one or several dogs.

**Finding:** Regardless of zoning district, this condition seems applicable and has been included as a condition of approval.

9) Must provide at least one parking space per employee and one parking space for each ten kennel cages.

**Finding:** The proposal would meet this parking requirement, as detailed in the “Parking” section of this report.

10) Must maintain a valid city kennel license and must comply with all applicable city and state building, health, and maintenance standards.

**Finding:** Regardless of zoning district, this condition is applicable and has been included as a condition of approval.

11) Shall be subject to site and building plan review, pursuant to section 200.27 of this ordinance.
Finding: The proposal would meet this requirement, as outlined in the “Site and Building Plan Standards” section of this report.

12) Shall be subject to a reasonable limitation on the total number of animals or the size of the facilities. This will be determined by the city based on the size of the property, the use of adjoining properties, and the existence of buffering and other appropriate factors.

Finding: Regardless of zoning district, this condition is applicable. As a condition of approval, Unleashed may provide daycare or boarding service for a maximum of 180 dogs at any one time.

SBP Standards

The proposed facility meets the site and building plan standards as outlined in City Code 300.27 Subd.5.

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

2) Consistency with this ordinance;

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

4) Creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

5) Creation of a functional and harmonious design for structures and site features, with special attention to the following:

   a. an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;

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

   c. materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
d. vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

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

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

Parking

As existing areas of parking would be replaced by the outdoor play area, the applicants’ proposal would reduce total parking on the site. However, the proposal would also significantly reduce parking demand.

<table>
<thead>
<tr>
<th></th>
<th>Parking Calculation</th>
<th>Parking Required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EXISTING</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office</td>
<td>1 stall per 250 sq. ft. x 17,500 sq. ft.</td>
<td>70 spaces</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>1 stall per 350 sq. ft. x 7,500 sq. ft.</td>
<td>21 stalls</td>
</tr>
<tr>
<td><strong>TOTAL REQUIRED</strong></td>
<td></td>
<td>91 stalls</td>
</tr>
<tr>
<td><strong>PROPOSED</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office</td>
<td>1 stall per 250 sq. ft. x 7,500 sq. ft.</td>
<td>30 spaces</td>
</tr>
<tr>
<td>10 Employees</td>
<td>1 stall per employee</td>
<td>10 spaces</td>
</tr>
<tr>
<td>180 dogs</td>
<td>1 stall per 10 dog</td>
<td>18 spaces</td>
</tr>
<tr>
<td><strong>TOTAL REQUIRED</strong></td>
<td></td>
<td><strong>58 space</strong></td>
</tr>
</tbody>
</table>

The proposed 61 functional parking stalls would meet code-required parking. (See pages A12.)

Outdoor Play Area

The proposed outdoor play area has an odd, “jogged” design. As the parking stalls to the south and east of the area are rendered non-functional by the design, staff would suggest that the applicants take out the “jogs” and enclose the entirety of the parking to the south. (See page A13.) This is not a condition of approval, merely a suggestion which the applicants can put into place, should they choose, at the time of building permit review and approval.
<table>
<thead>
<tr>
<th>Neighborhood Comments</th>
<th>The city sent notices to 66 area property owners and received no comments to date.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deadline for Decision</td>
<td>February 9, 2015</td>
</tr>
</tbody>
</table>
Location Map

Project: Unleased
Applicant: Hayley & Darren Alick/Chad Miller
Address: 14901 Minnetonka Industrial Rd
(98044.14a)
Project Narrative for the proposed full service dog daycare / boarding facility at 14901 Minnetonka Industrial Road

Legal Description
Lot 5, Block 1, Minnetonka Industrial Park, Hennepin County, Minnesota
PID (Property ID) 16-117-22-43-0015

Project Description
Unleashed will be one of Minnetonka’s Premier dog daycare and boarding facilities. Collectively, we bring over 30 years of collective experience, knowledge and training in the caring for dogs. We will provide value to our customer through full day or half day dog daycare, overnight boarding, grooming, hydro-therapy and training. We will also have the added convenience of a small retail corner with the basic necessities for dogs.

At Unleashed we will provide a supervised, fun-filled environment to interact with other dogs of similar size and temperament. We will strive to continuously evolve our business to make it one of the best in Minnesota. We will not be satisfied unless our customer, and their k9 companion, are 100% satisfied! We will cater to customers who work long hours and would prefer not to leave their dog home alone all day. Our doggy day care and boarding amenities will put customers’ minds at ease while they’re at work or on vacation. We will also group dogs according to play style, energy and size, ensuring their dog comes home tired and happy!

Our 100% climate controlled and high-definition video enabled facility will be conveniently located in the center of Minnetonka, just off interstate 494 adjacent to Williston Road and minutes from the Lake Minnetonka area. With our large 18,000 square feet, state of the art, facility that will boast over 6,000 square feet of indoor play area and 8,000 square feet outdoor play area. Complete with agility equipment and plenty of tennis balls, the fun will just be getting started. The dogs will have plenty of room to run around and exercise under the supervision of our experienced, well-trained, dog loving staff.

Owners’ Bios
Hayley Alick, owner of Unleashed, brings a vast amount of dog daycare experience and knowledge to the business. Hayley has been managing a high volume dog daycare/boarding facility for the past five years. She has been working with the Minnesota Boxer Rescue organization for six years and has recently started working with Across America Boxer Rescue. Hayley is a Certified Pet Dog Trainer (CPDT), certified in animal CPR and also certified in Dog Body Language. She works with aggressive dogs through both of these organizations. Hayley
is also currently teaching basic manners classes and puppy classes and volunteers with the Boston Terrier Association. She has earned the respect of her colleagues through hard work and dedication. Hayley cares for friends' pets often, and at any given time there have been five or more animals living in her home, which requires her to maintain a kennel license. From business colleagues to friends surveyed, Hayley has what it takes to make this venture extremely successful. She will count on her reputation to exceed expectations while continuously establishing an active client base.

Darren Alick, owner of Unleashed, brings a successful background in Operations, revenue generation as well as many years of dog experience to the business. Darren has been the director of operations and client satisfaction for the past seven years where he has clearly demonstrated his capabilities in year to year revenue growth, employee and client retention as well as satisfaction. In his spare time he is also a dedicated animal advocate, dog rescuer as well as "Dad" to six rescue dogs. Prior to March 2013 he spent seven years on the Board of Directors with Minnesota Boxer Rescue where he learned how to read and train dogs, especially ones with behavioral issues. He also helped grow a vast network of friends and fellow rescues both here in Minnesota and across the nation. In March of this year he co-founded and opened Across America Boxer Rescue, a rescue without borders. This really grew his passion to want to give more of his life "to the dogs" and this endeavor is a great new step in that direction.

Chad Miller, owner of Unleashed, brings a broad array of knowledge and a diverse amount of experience through his 15-year career journey. Chad also brings a great understanding of care and respect for animals as he was partially raised on the farms of some close family friends. Chad has most recently worked for a small manufacturers' rep firm, representing fifteen various electro-mechanical manufacturers for the past four years. Customer service/support and finding new, innovative ways to bring value to his new and existing customers are top priorities. Prior to, Chad worked for a top tier medical device company for three years as a manufacturing engineer and implemented lean manufacturing principles and standard work. Prior to, Chad worked for a top tier window/door manufacturer for seven and a half years, holding positions of engineering and finishing his career there managing a production crew of forty-six people. Chad has been volunteering for Minnesota Boxer Rescue for three years and adopted two boxers, Harlow and Diesel, through the rescue. He also recently started volunteering for Across America Boxer Rescue. Chad's handyman services have been called upon by other rescues as well to build things for disadvantaged dogs. Chad's passion for dogs is recognized by all of his family, friends and colleagues and he's more than ready to take on this new endeavor.
Site Features: Existing

The 2.01-acre subject property is located in the southwest corner of the Minnetonka Industrial Road / Deveau Place intersection. Access to the property and to neighboring sites is via Williston Road and Minnetonka Industrial Road.

The existing building was constructed in 1968/1978. The one-story, brick structure has a footprint of approximately 25,000 square feet.

Parking for the existing building is located on the north side, west side and south side of the property. The lot contains 125 parking spaces.

Site Features: Proposed

The inside of the building would be remodeled and would contain the following: (1) kennel area and quiet rooms, (2) four indoor dog play areas, (3) grooming room, (4) lobby with small retail corner, (5) water therapy area, (6) storage and/or sublet space (8,000 square feet total). The maximum number of dogs allowed on site is limited to 180.

There would be no exterior modifications to the building. An outdoor recreation area would be located on the west side and south side of the south building. The area, which would be approximately 8,000 square feet in size, would be surrounded by a 6 foot, privacy fence.

All parking spaces on the north side and west side of the north building would be maintained. The 49 stalls provided would exceed the city code parking standards.

<table>
<thead>
<tr>
<th></th>
<th>Calculation</th>
<th>Parking Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDUSTRIAL CUP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retail / Service</td>
<td>1 space / 250 sq. ft. x 1,335 sq. ft.</td>
<td>6 spaces</td>
</tr>
<tr>
<td>Storage</td>
<td>1 space / 1,000 sq. ft. x 23,665 sq. ft.</td>
<td>24 spaces</td>
</tr>
<tr>
<td>TOTAL:</td>
<td></td>
<td>30 spaces</td>
</tr>
<tr>
<td>RESIDENTIAL CUP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Employees</td>
<td>1 per employee</td>
<td>10 spaces</td>
</tr>
<tr>
<td>180 dogs</td>
<td>1 space / 10 kennels</td>
<td>18 spaces</td>
</tr>
<tr>
<td>TOTAL:</td>
<td></td>
<td>28 spaces</td>
</tr>
</tbody>
</table>
Additional Information

- **Staffing:** Staffing will be based on occupancy. The maximum number of employees on site would be 10 during busy times down to a minimum of 3 employees during slow times. The building will not be staffed overnight.

- **Hours of Operation:**
  - 6:30am to 7:00pm, Monday through Friday
  - 7:00am to 11:00am and 3:00pm to 7:00pm, Saturday through Sunday
  - Holidays will operate as weekend hours

- **Outside Area:** Depending on the weather conditions and occupancy level, dogs could be outside during the hours of 7:00am to 7:00pm. Dogs would be supervised at all times, whether in the outdoor or indoor areas. In order to limit barking outdoors, dog handlers will redirect the dog with a squirt of water or put that dog inside.

- **Waste Management:** Waste will be cleaned up immediately by the dog handlers. Solid waste will be placed in appropriate containers and ultimately picked up by a waste treatment provider once per week or sooner based on need. The waste collection containers would be screened by a 6-foot privacy fence adjacent to the outdoor dog play areas and convenient for waste management pickup. The specific provider and pick-up days/times have not yet been determined.

- **Parking Lot Filtration:** The fenced outdoor dog play area will have a base of limestone covered with pet-approved artificial grass. The limestone acts as a natural neutralizer along with the recommended 100% natural, environmentally safe cleaners that will be used on the top of the artificial grass to keep the drainage from becoming clogged and prevent the ammonia from turning into gas.

- **Sustainability:** Not only the parking lot filtration, but also the recycled materials in the dog kennels. Gator Kennels are 100% recyclable and built with at least 35% post-industrial recycled materials. The kennels are waterproof, mold resistant, silicone-free and Lead(Pb)-Free. They also will not rot or rust and are naturally anti-microbial.
**CUP Standards – Retail and Service Uses**
The proposed commercial kennel meets the general conditional use permit standards as outlined in City Code 300.21.

**CUP Standards – Commercial Kennel**
While the zoning ordinance does not contain specific standards associated with commercial kennels in the industrial district, such kennels are conditionally permitted in residential districts, with specific conditional use permit standards associated with them.

**Site and Building Plan Standards**
The proposed commercial kennel meets the general conditional use permit standards as outlined in City Code 300.27 Subd.5.
Proposed Layout for Unleashed

- **OFFICES, KENNELS, GROOMING, THERAPY**
- **OUTDOOR PLAY AREA**
- **INDOOR PLAY AREA**
- **SUBLEASED OFFICE**

Unleashed
14901 Minnetonka Industrial Road
98044.14a
Resolution No. 2015-
Resolution approving a conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road

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

Section 1. Background.

1.01 Haley and Darren Alick and Chad Miller are requesting a conditional use permit to operate a dog daycare and boarding facility, Unleashed.

1.02 The property is located at 14901 Minnetonka Industrial Road. It is legally described as: LOT 005, BLOCK 001, MINNETONKA INDUSTRIAL PARK.

1.03 On December 11, 2014, the Planning Commission held a hearing on the application. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The Commission recommended that the City Council approve the permit.

Section 2. General Standards.

2.01 City Code §300.21, Subdivision 2, lists the following general standards that must be met for granting of the permit:

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

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

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

4. The use is consistent with the city's storm water management plan;
5. The use is in compliance with the performance standards specified in Section 300.28 of this ordinance; and

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

Section 3. Specific Standards.

3.01 City Code §300.21 does not specifically regulate animal daycare or boarding facilities in the industrial (I-1) zoning district. However, such uses are similar to permitted storage uses and to conditionally permitted service uses.

3.02 City Code §300.21. Subd.4(l) states that uses similar to those specifically outlined conditional uses may be conditionally permitted.

Section 4. Findings.

4.01 Given the location of the subject property, the proposed use is appropriate for the site. The property is surrounded by light industrial uses. It would not, therefore, impact either commercial or residential properties.

4.02 The proposed use represents a logical and feasible adaptive reuse of an existing building.

Section 5. City Council Action.

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

1. Prior to issuance of a building permit:
   a. The resolution must be recorded with Hennepin County.
   b. The applicant must apply for and obtain a city kennel license.
   c. The applicant must submit a waste management plan detailing how often animal waste will be removed from the site.

2. Prior to opening the facility, the applicants must do one of the following:
   a. supply information acceptable to the city engineer indicating that the limestone layer will absorb the urine;
b. remove asphalt and decompact the soil under the play area to allow for absorption; or

c. install an infiltration area and mechanism to channel urine from the play area to the infiltration area.

3. The maximum number of animals on the site is limited to 180.

4. The facility must conform to all provisions of:
   a. City Code §850 – Noise Regulations
   
   b. City Code §300.28 Subd. 5 – Performance Standards Regulating Odor

   c. City Code §925 – Animal Control Regulations

5. This resolution does not approve any signs. Separate sign permits must be submit for staff review and approval.

6. The city council may reasonably add or revise conditions to address any future unforeseen problems. In particular, the city may add or revise conditions to address disturbance caused by frequent howling, yelping or barking.

7. Any change to the approved use that results in a significant change in the character or operation of the facility requires a revised conditional use permit.

8. Failure to obtain and maintain a valid city kennel license or comply with building, health and maintenance requirements outlined in city code will render this conditional use permit null and void.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 5, 2015.

______________________________
Terry Schneider, Mayor

Attest:

______________________________
David E. Maeda, City Clerk
Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on January 5, 2015.

__________________________________
David E. Maeda, City Clerk

Seal
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ITEM 8B – UNLEASHED, 14901 MINNETONKA INDUSTRIAL ROAD

The attached comment was received after the staff report was published.

ITEM 8C – RIDGEDALE AREA COMPREHENSIVE PLAN MINOR TEXT AMENDMENT

City staff has been asked to clarify the standards for a “minor” text amendment. The Metropolitan Council establishes a separate review process for minor plan amendments. The proposed text amendment, which clarifies the intent of the mixed use land use designation for five properties, meets all the standards for a minor plan amendment, as established by the Metropolitan Council:

- The amendment involves a site of 40 acres or less; and
- The amendment does not change the community’s growth forecasts for 2010-2030 or TAZ allocations; and
- The amendment site is either (1) more than one quarter mile from an adjacent jurisdiction; or (2) beyond the distance or area that the community’s adopted ordinances require notice to adjacent or affected property owners, whichever distance is less.

The attached comment was received after the staff report was published.
ITEM 8D – ONE TWO ONE DEVELOPMENT, 14217 AND 14301 STEWART LANE

The building setback variances listed on page 3 of the staff report should read as follows:

<table>
<thead>
<tr>
<th></th>
<th>Proposed Setbacks</th>
<th>Required</th>
<th>Variance</th>
<th>2006 Proposed Setbacks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front (Stewart Lane)</td>
<td>130 feet</td>
<td>35 feet</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Side (North)</td>
<td>39 feet 5 inches</td>
<td>50 feet 76.5 feet</td>
<td>10 feet 37 feet</td>
<td>33 feet</td>
</tr>
<tr>
<td>Side (West)</td>
<td>43 feet 2 inches</td>
<td>50 feet 76.5 feet</td>
<td>7 feet 33.5 feet</td>
<td>40 feet</td>
</tr>
<tr>
<td>Rear (Kinsel Park)</td>
<td>48 feet 3 inches</td>
<td>50 feet 76.5 feet</td>
<td>2 feet 28 feet</td>
<td>34 feet</td>
</tr>
</tbody>
</table>

Building height is 51 feet which requires a variance to the 35 feet standard.

As noted in the Resolution, additional staff review comments are identified for inclusion as conditions of approval. That memorandum is attached.

The city received additional comments after the packet was distributed, which are attached.
Dear Council and Planning Commission:

I am writing as representative of Minco Realty Partners, owners of two light industrial buildings at the end of the cul de sac on Minnetonka Industrial Road. We oppose the proposed conditional use permit for the “Unleashed” dog kennel and daycare facility at 14901 Minnetonka Industrial Road.

This business park is occupied and zoned for office and light industrial uses. The types of businesses in this park, and the types of businesses in our buildings, are professional businesses with a higher standard of expectations for their image. A noisy, barky neighbor will not just upset the existing tenants in our buildings, but it will prevent future lease renewals. Most importantly, it will turn this light industrial park into a lower class use of buildings, prompting lower rents and by extension attracting more warehouse and heavy industrial uses as a result.

Based on the high valuation and tax rate the City has placed on these buildings, we expect the City to agree that this business park is not a “catch-all” for businesses and neighbors nobody else wants. Based on these valuations and rates, the City clearly believes this park to be a home for office uses such as currently exist in the park. Our tenants and neighbors are labs and offices, making heart valves and stints, fixing computers, and shipping mass mailings. This proposed new neighbor is not just a bad fit for the park, but it will have a negative impact on future growth of this park.

While we laud the entrepreneurial spirit of this business, it is a use that is not compatible with this park, and would be better suited in a less professional district.

Regards,

Patrick Lensing

Patrick Lensing
Property Manager
Direct: 952-475-5121
Fax: 952-475-5114
www.SteinerDevelopment.com

Unleashed
14901 Minnetonka Industrial Road
98044.14a
Below is the e-mail I submitted online on the 5th. It didn’t appear in the planning commission packet. We did discuss these points on a call on 12/5 but wanted you to have the e-mail for your records.

I oppose the use of a kennel or doggy daycare facility for the 14901 Minnetonka Industrial Road building. I am writing on behalf of Williston Ridge LLC the ownership entity of The Williston Business Park (formerly owned by AM Minnesota). We own six building adjacent to the building proposed to house the kennel.

The current 355,000 SF park is used for office and light manufacturing. The two main tenants in the park are St Jude Medical, occupying 5 buildings or roughly 315,000 SF, and Cargill, occupying roughly 10,000 SF. Both of these tenants place a high on the professional environment the park offers and consistency of commercial use within the park.

The park, including the proposed building, is currently designated PUD zoning. The two areas of the zoning that would be in direct conflict with the proposed use of a kennel are:

Section 300.22.6.a – the standard outlined city code serving as the development guideline. With this park being a commercial area the B-2 (limited business district) codes should apply. The uses approved are administrative and professional offices. At no point in this zoning is a kennel of dog facility use mentioned as a permitted, conditional or interim use. The primary purpose of zoning is the segregate uses that are thought to be incompatible. A kennel is not a compatible use in a business district.

Section 300.22.2.e - development that is compatible with existing, surrounding development type and intensity that is no longer allowed in other existing zoning districts. The use of a kennel is an existing approved use is all residentially zoned districts which makes up the majority of the zoning in Minnetonka.

The three main concerns that we have with the proposed use are:

1 – NOISE - Dogs bark and howl and the noise level generated can be loud and disruptive. Additionally if the facility has an outdoor play area for the dogs the noise level will be louder and more disruptive. This most certainly will not be acceptable a desirable environment for an office or light manufacturing business.

2 – NUMBER OF DOGS – it is our understanding they anticipate housing up to 180 dogs. The facility that I am familiar with has 25 dogs and it is a very busy facility. As the number of dogs increases the noise, waste and traffic will also increase.

3 – TRAFFIC – it is our understanding that the facility will offer a doggy daycare feature. Many of patrons of this service will be dropping off and picking up in peak traffic hours in an already busy and highly traveled park. The additional traffic from cars dropping off and picking up dogs will introduce additional congestion.

As I stated previously the proposed use is not consistent with the long term tenancy in the PUD development. The incompatible use due to noise and traffic. As a result we feel the use of a kennel will drive the intended user (office and light manufacturing businesses) out of this park and into a development that has an image and environment more
conducive for their business and employee needs. The use of a kennel at 14901 Minnetonka Industrial Road is not a good fit for the park and will erode the tenancy and real estate value in the neighboring commercial buildings.

Thanks,

Kristin Myhre  
Director  
Eagle Ridge Partners LLC  
T +1 952.767.5555 | C +1 612.695.9887  
kristinm@erpartners.com
B. Conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road.

Chair Lehman 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.

In response to Chair Lehman’s question, Thomas explained that property owners may place covenants to restrict what a lease holder would be able to do at the site. The city enforces the zoning ordinance, but not covenants between a property owner and lease holder.

Kirk asked how many dog boarding businesses exist in the city. Thomas is aware of three. Auntie Ruth’s preexists the establishment of an ordinance regulating that type of business. One occupies an entire building in an industrial area on Highway 62 and Baker Road.

Kirk asked if the nuisance ordinance would apply to this application. Thomas answered affirmatively. The resolution would also outline the regulations related to noise, odors, and animal control.

Knight read that overnight boarding would be allowed for up to 180 dogs. He asked how many dogs would be allowed during the day. Thomas answered that the maximum number of dogs allowed at any time would be 180. The applicant may provide an estimate of the average ratio of daycare dogs to overnight dogs. Knight was concerned with the site having enough parking for daily drop off and pick up times and the noise.

Chad Miller, Darren Alick, and Haley Alick, applicants, introduced themselves and were available for questions. Ms. Alick has been dealing with dogs for over seven years. She worked at Auntie Ruth’s for five years. She is a certified dog trainer. She works with several rescues. Mr. Alick provided his dog-training background. Mr. Miller has adopted two dogs. Ms. Alick stated that there are ways to reduce the noise including body blocking and squirting the dogs with water to distract them and change their behavior. There would be plenty of indoor space. There would be quiet rooms that a “barker” could spend some time in for a time out.

Mr. Miller provided plans showing the indoor and outdoor play areas, quiet rooms, and waste management areas. The outdoor play area would be made up
of canine approved Astroturf with a drainage membrane below it and a base of limestone. Equalizer would be used to neutralize acidic areas and odor.

Mr. Alick stated that there would be 66 kennels. The maximum for overnight would be about 120 dogs if one owner has 2 dogs. On top of that, the high end expectation would be 40 to 50 dogs for daycare. There would usually be 20 to 30 dogs for daycare. He can drop off his dogs at 6:30 a.m. He beats the traffic in the morning and afternoon. It is now the norm to expand the hours before and after rush hour. The hours would be done to alleviate traffic issues. He provided an aerial view of the site that illustrates ample parking. The dog yards would be located to allow for ample parking. Allowing space between dogs is necessary.

Knight asked if dogs can learn not to bark. Mr. Alick answered affirmatively. The dog can be distracted and removed from the situation or calmed down. The facility would have quiet rooms and indoor play yards. A time out works the same as it does for kids. Eventually, the dog will learn not to bark.

Mr. Miller added that the outdoor play area would be divided. The fence would be a privacy fence to eliminate “fence fighting.” The dogs would not be able to see vehicles or pedestrians going by.

Knight asked how many dogs at a time would be outside. Mr. Alick said that each play area could accommodate 25 to 35 dogs.

Magney asked what type of privacy fence would be used. Mr. Alick answered a 6’ vinyl fence with an opening at the top for staff members to see between the enclosures.

The public hearing was opened.

Rob Stanek, owner of 3800 Williston Road and 14900 Industrial Boulevard, stated that:

- He objects to the conditional use permit.
- The industrial park is home to highly technical tenants. St. Jude Medical has engineers, office workers, and light manufacturing that enjoy the quiet of the space.
- The applicant does not have to locate the business in this location. The applicant wants to be in this location because of the prestige of the office park.
- Adding a dog daycare would change the integrity of the office park and change the types of users he would target.
• The use would not be similar to what is in the industrial park. The tenants pay a good amount in rent.
• The tenants would probably move and rents and property taxes would be reduced.
• Keep the industrial park attractive for high-quality jobs and deny the conditional use permit.

Kristin Meyer, representing two of Mr. Stanek’s buildings, stated that:

• She is not opposed to dog daycares.
• She is concerned with the noise. Dogs would be going in and out of the outdoor areas.
• There would be 18 time-out rooms for 180 dogs. That is only 10 percent of the dogs.
• St. Jude operates on a shift base. The first shift starts at 6:30 a.m.
• The parking is already dense. Additional motorists would aggravate a challenging situation.
• The rental rate for an office use is $9.50; technical use rate around $6.50; and the warehouse rate is $4.50.
• The central location in the industrial park would not be a benefit to the surrounding uses.
• It does have close proximity to residential uses.
• Her business receives complaints about parking lots being swept at night.
• The proposal would not be consistent with the I-2 zoning.

Joe Smith, resident of 16521 Elm Circle and representing 15300 Minnetonka Industrial Road and 15400 Minnetonka Industrial Road, stated that his property manager provided an e-mail that is included in the agenda packet. He stated that:

• He has been a leasing agent for 27 years. Having a dog daycare would adversely affect leasing. Dogs barking in the background of negotiating a deal would not fly.
• His son worked at Adogo for 2 years. He has heard stories of noise.
• Baker Technology Park is now sitting at 30 percent vacancy.
• He developed a business park in Chanhassen. A berm had to be constructed between the business park and dog facility.
• His company opposes the proposal.

Jeff Schultenover, 13424 Maywood Curve, stated that:
• Office spaces would be insulated and have soundproof windows and things to block out traffic noise and auto repair businesses. The noise level from those would be about the same as a dog.
• He heard some concerns to the extreme regarding 180 dogs barking. Kids probably make just as much noise when playing outside.
• He has a dog who barks. He travels a lot and would find the proposal a great benefit.
• He supports the proposal.

No additional testimony was submitted and the hearing was closed.

Chair Lehman asked if the site would have appropriate parking for the use. Thomas referred to the staff report calculation that determined the proposed use would be required to have 58 parking stalls. The site would have 61 fully functional parking stalls. If the site would house a manufacturing use, 91 parking stalls would be required. The proposal would cause less trips than an office or manufacturing use.

Chair Lehman reviewed the concerns. Thomas clarified that code does not compare a proposed use with existing uses in an I-1, Industrial Zoning District. A proposed use is compared to what is allowed by the code in an I-1, Industrial Zoning District, requirements. As a permitted use, the proposed building could be used for warehouse storage, manufacturing, processing, wholesale, research, or office space. Conditional uses permit in an I-1 District include heliports, retail, cemeteries, arenas, public building, vehicle-towing businesses, auto-body repair, telecommunication facilities, waste transfer facilities, microbreweries, and other uses similar to those permitted. The city has allowed by conditional use permit a variety of uses in industrial parks including schools, churches, daycare facilities, dance studios, and dog daycare facilities.

Chair Lehman confirmed with Thomas that the city’s nuisance ordinance would apply to the proposed use and any use in an industrial park. Wischnack added that city tax assessors look at surrounding properties when determining land value, but land use planners do not when applying ordinance requirements to a use within a zoning district. Zoning regulates the land use.

Odland had a hard time supporting the businesses at the proposed location. Her dogs bark loudly. St. Jude’s Medical Center technicians may be disturbed by the dogs barking.
Rettew saw the commission’s purview deciding whether the use fits in a light industrial district and it does. If the zoning district allows heliports, then loud noises are allowed. The use is acceptable in an industrial area.

Kirk had trouble supporting the application because of the comments heard from the neighbors. When he looked at the packet, it looked like a dog kennel in an industrial area would be no problem. He knows the area and did not think anything of it. He confirmed with staff that Adogo is located in an industrial area and the city has not received any noise complaints. Staff provided conditions of approval for a commercial kennel in a residential district because there are no standards for a commercial kennel in an industrial district. The setback condition is geared to prevent perceived nuisance issues. The commission may add additional conditions. The city would investigate a complaint and follow up with the property owner. The city council has the right to revoke a conditional use permit if conditions of approval are not met.

Kirk noted that commissioners are allowed to look at whether the use would fit in an industrial district. He supports the application with staff’s recommendation and the understanding that the owners know that if the situation does not meet conditional use permit or nuisance ordinance standards, then there would be repercussions. The city expects that the noise ordinance would be followed. The applicants know their business. Chair Lehman concurred.

In response to Odland’s question, Thomas provided the ordinance that “excessive barking” is defined as repeated noise over at least a five minute period with a one minute or less lapse of time between each animal noise during that five minute period. Chair Lehman suspected anyone with experience in the dog boarding business is well aware of that ordinance and knows if the business would have the ability to adhere to the ordinance. He believes the applicants understand their obligations.

Chair Lehman supports staff’s recommendation of approval on the basis that the conditional use permit ordinance criteria has been met.

Kirk noted that a condition does not allow barking to last longer than 10 minutes. Thomas suggested commissioners change that condition to reference the nuisance ordinance.

*Kirk moved, second by Magney, to recommend that the city council adopt the resolution approving a conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road (see pages A14–
A17) with the correction of condition number eight to match the city’s ordinance regarding dog barking.

Magney, Rettew, Kirk, Knight, and Lehman voted yes. O’Connell was absent. Odland voted no. Motion carried.

This item is tentatively scheduled to be reviewed by the city council January 5, 2015.

There was a ten-minute break.

C. Ridgedale area comprehensive plan minor text amendment.

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

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

Rettew asked for the history behind the existing comprehensive guide plan for the area. Wischnack noted that the area is congested. That is the reason the language was chosen. The current traffic study provides new, detailed information. The difference is that more is known now. There has been better capital improvement planning since the comprehensive guide plan was updated.

The public hearing was opened.

Patrick Magnusson, 13505 Larkin Drive, provided slides. He stated that:

- The comprehensive plan is the most authoritative framework guiding all other development regulation. He found it concerning that people seemed willing to change the plan in a hasty manner.
- He did not agree with the amendment being considered minor.
- There are known access and circulation issues in the area. The authors of the comprehensive plan felt these issues would be exacerbated by putting residential houses in the area.
- There would be adjacent jurisdiction impact.
- The area is used to getting on Interstate 394.
- Plymouth Road is a county road. Both of the properties abut Plymouth Road.
- There is a proposed development that would potentially benefit from the amendment that would have more than 100 housing units.
- The site is near Ridgedale Shopping Center.
Brief Description: Ordinance amending the city charter regarding vacation of streets and easements

Recommended Action: Adopt the ordinance

Background

The council held a public hearing on the proposed ordinance on December 15, 2014. No one spoke at the public hearing, and the council introduced the ordinance. The council is asked to adopt the ordinance this evening. The council may adopt amendments to the charter by ordinance only by unanimous vote of the full council.

The charter commission has recommended that Section 12.06, subdivision 1 of the city charter be amended in three respects:

- By adding “public easements” to the types of interests that may be vacated. The charter currently allows vacation of “streets, alleys, public ways and public grounds.” The addition of “public easements” is a clarification, not a substantive change, because the phrase “public ways” includes easements. However, the term “easements” is in greater common usage than “ways.”

- By removing the reference to petitions for vacation of public interests. The commonly used process today is to vacate streets by application, not by petition.

- By specifying that the council may approve a vacation by simple majority vote of the full council (4 votes).

Unanimous council approval is required to adopt the ordinance. The ordinance will not become effective until 90 days after its publication. If voters submit a petition with sufficient signatures within 60 days after publication, the ordinance will not become effective until approved by the voters at an election.

Recommendation

Staff recommends that the city council adopt the ordinance.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Corrine Heine, City Attorney
Ordinance No. 2015-
An Ordinance amending Minnetonka city charter
section 12.06, regarding vacation of streets

The City of Minnetonka Ordains:

Section 1. Preamble.

The Minnetonka charter commission voted on November 13, 2014, to recommend amendments to sections of the Minnetonka charter. Notice of a public hearing on the proposed amendments, including the text of the proposed amendments, was published in the city’s official newspaper on November 25, 2014. The public hearing was held on December 15, 2014 before the city council, at which time all people desiring to be heard were given an opportunity to address the council. After considering the advice of the charter commission and any comments from citizens, the city council has determined that the following amendment is relatively minor and may be appropriately adopted by ordinance rather than by an election.

Section 2. Section 12.06, subdivision 1 of the Minnetonka city charter is amended to read as follows:

12.06. Vacation of Streets; Use of Public Rights of Way

Subd. 1. The council may by resolution vacate all or part of streets, alleys, public easements, public ways and public grounds. A vacation may be approved only if the council determines that it is in the public interest. The council may initiate the vacation on its own motion. An owner of land abutting on the property to be vacated may also submit a petition for vacation. If a petition is submitted and is signed by a majority of the abutting landowners, the resolution must be adopted by at least two-thirds a majority of all council members eligible to vote; otherwise, the resolution must be approved by at least three-fourths of all council members eligible to vote. The names and number of relevant landowners will be determined from official tax records.

Section 3. This ordinance is effective 90 days after publication.

The stricken language is deleted; the underlined language is inserted.
Adopted by the city council of the City of Minnetonka, Minnesota, on *

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

**Action on this Ordinance:**

Date of introduction: December 15, 2014
Date of adoption: *

Date of publication:

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

David E. Maeda, City Clerk

The stricken language is deleted; the underlined language is inserted.
City Council Agenda Item #14C
Meeting of January 5, 2015

Brief Description: Third amendment to purchase agreement for 4312-4342B Shady Oak Rd and 4292 Oak Drive Lane

Recommended Action: Approve the amendment

Background

The city council approved the purchase of the properties at 4312-4342B Shady Oak Rd and 4292 Oak Drive Lane at its meeting on October 13, 2014. The purchase agreement was contingent upon, among other things, the city’s satisfaction with the results of the environmental condition of the properties. All other conditions, relating to existing leases and title issues, have been addressed.

The original deadline for the environmental contingency was December 2, 2014. By amendment to the purchase agreement, the contingency deadline has been extended to January 6, 2015, to allow the parties additional time to review the results of the environmental investigation.

Results of environmental investigation

The complete environmental reports are available for council review, if any council member so requests. In summary, the environmental investigation searched for five different forms of contamination and disclosed the following results:

- Soil contamination. Soil borings detected the existence of diesel range organics (DRO) and polychlorinated biphenyls (PCBs), both of which exceeded the soil leaching values established by the Minnesota Pollution Control Agency. The final impact of the contamination cannot be determined until specific redevelopment plans are known, but it is expected that some soils will require off-site disposal at a landfill. The future redevelopment of the commercial property should be conducted under an approved MPCA Response Action Plan.

- Groundwater contamination. Groundwater samples showed the presence of tetrachloroethene (PCE), a common drycleaner solvent, acetone, and DRO. All of the contaminant concentrations were below the health risk limits established by the MPCA, and it is possible that the contaminants were not released at the site but migrated from other property. Future redevelopment might require groundwater dewatering and special handling of groundwater, but the environmental consultant does not recommend additional monitoring or assessment at this time.
• Soil vapor. Soil vapor samples detected both PCE, trichloroethene (TCE) and 1,3-butadiene (a common laboratory contaminant), all below the MPCA standard for industrial property, but above the standard for residential property. If future redevelopment involves residential property, an approved MPCA Response Action Plan will be needed. The future building design will need to take into consideration the presence of soil gas contamination.

• PCB contamination. The basements at 4312 and 4316B Shady Oak Road had some oil stained areas that will require cleaning up the stained areas. A leaking cooling compressor needs to be repaired or replaced. Upon demolition, if it is determined that the concrete contains PCBs over 50 ppm, special handling and disposal will be required.

• Asbestos and hazardous materials. The commercial building contains asbestos and may contain other hazardous materials that will require special handling upon demolition or renovation. The precise scope cannot be determined without destructive testing.

Consultant recommendations

The consultant recommends that the city enroll in the MPCA Voluntary Investigation and Cleanup (VIC) Program and Petroleum Brownfields (PB Program), and apply for No Association Determination and Non-tank Closure Letter – both of which provide protection to the city against environmental liability claims. When redevelopment plans are known, the consultant recommends doing additional destructive testing and submitting a Response Action Plan to the MPCA for approval.

Costs
The consultant estimates the range of costs at $125,250 on the low side to $321,750 on the high side. Some costs will be eligible for grant assistance. Costs may also be passed on to a selected redeveloper, once additional testing is known and costs can be more accurately estimated based on the specific redevelopment plan for the site.

Proposed amendment
City staff has reviewed the results of the environmental investigation with the seller and has negotiated a proposed amendment. The seller has agreed to reduce the purchase price by $80,000 and to cooperate in applying for grants and obtaining the no-action determinations from the MPCA. In exchange, he has requested that the city protect him against any further responsibility for the cost of remediation of the site. The city staff has negotiated a hold harmless and indemnification clause to that end, and it contains an exception for liability based on any seller misconduct, intentional violation of law, misrepresentation or breach of seller warranties.
Recommendation

Approve the third amendment to purchase agreement.

Submitted through:
   - Geralyn Barone, City Manager
   - Julie Wischnack, Community Development Director
   - Lee Gustafson, City Engineer

Originated by:
   - Corrine Heine, City Attorney
THIRD AMENDMENT TO PURCHASE AGREEMENT

This Amendment is made as of January 6, 2015 to that certain Purchase Agreement dated September 19, 2014, by and between EGR PREMIER PROPERTIES, LLC, a Minnesota limited liability company (“EGR” or “Seller”) and CITY OF MINNETONKA, a Minnesota municipal corporation (“City” or “Buyer”), as amended.

Recitals

A. EGR and City entered into a Purchase Agreement on September 19, 2014 for the sale of real properties (the “Properties”) commonly known as 4292 Oak Drive Lane and 4312 Shady Oak Road in the City of Minnetonka, County of Hennepin and State of Minnesota (the “Purchase Agreement”).

B. The Purchase Agreement was subject to certain contingencies, including the City’s satisfaction with the results of investigations of the Properties, within a Due Diligence Period.

C. By First Amendment to Purchase Agreement dated November 26, 2014, the parties extended the Due Diligence period to December 16, 2014. By Second Amendment to Purchase Agreement dated December 16, 2014, the parties extended the Due Diligence period to January 6, 2015.

D. The parties wish to amend the Purchase Agreement to address the results of the City’s Due Diligence investigation.

Agreement

1. Paragraph 3 of the Purchase Agreement, as amended, is further amended to read as follows:

   3. Purchase Price. The total purchase price for the Properties is $2,020,000.00 (“Purchase Price”), which is allocated as follows: $1,820,000 for the Commercial Property and $200,000 for the Residential Property. The Buyer agrees to pay the Purchase Price as follows:

   Earnest Money: $10,000.00, receipt of which Seller acknowledges.

   Balance of $2,010,000.00, less adjustments, if any, as provided in this Agreement, payable at Closing by wire delivery of funds through the Federal Reserve System to an account designated in writing by Seller.

2. The parties acknowledge that the contingencies at paragraph 4 of the Purchase Agreement have been satisfied or waived, except as provided in Buyer’s statement of title objections, dated November 21, 2014.

3. The Purchase Agreement, as amended, is further amended by adding the following paragraphs 11.1 and 11.2:

   11.1. Environmental Release. Except to the extent of damages that are the result of or are attributable to Seller’s (i) default, breach, misrepresentation, or failure to perform
any of Seller’s warranties and representations in this Agreement or (ii) any willful misconduct or intentional failure to comply with federal or state laws relating to Environmental Contamination, Buyer agrees to release, waive, defend and hold harmless Seller, its officers and employees, from and against all Claims associated with Environmental Contamination of the Properties.

For purposes of this paragraph, “Claims” means all claims, losses, liabilities, judgments, orders, causes of action, fees (including attorney’s fees and court costs), costs and expenses (including expenses associated with investigation, testing, assessment and cleanup), regardless of the theory of liability, including, but not limited to, negligence, tort, breach of contract, breach of warranty, strict liability, regulatory liability or statutory liability.

For purposes of this paragraph, “Environmental Contamination” means any discharge, dispersal, release, escape or migration of any Contaminants into or upon the land, the atmosphere or any watercourse or body of water, including groundwater or sediments, including the presence of any Contaminants at, under, or migrating from the Properties in soil and/or groundwater.

For purposes of this paragraph, “Contaminant” means any solid, liquid, gaseous, or thermal pollutant, irritant, or contaminant, including but not limited to soot, acids, alkalis, vapors, fumes, or toxic chemicals, waste and waste material, and/or by-products or progeny thereof whether known or unknown. Pollutants include, but are not limited to, all of the following: hazardous wastes or constituents (as defined in Paragraph 1004 of RCRA); hazardous substances (as defined in CERCLA); oil or petroleum products; and any other substances or materials regulated by Environmental Laws. For clarification and not limitation, tetrachloroethylene, perchloroethylene, and/or tetrachloroethene (PCE or PERC); methyl tert-butyl benzene and methyl tert-butyl ether (MTBE); benzene; toluene; ethylbenzene; xylene; other volatile organic hydrocarbons (VOHs); polycyclic aromatic hydrocarbons (PAHs); any petroleum hydrocarbons; gasoline and additives to gasoline; and any of their daughter or degradation products (including but not limited to trichloroethylene (TCE), dichloroethylene (DCE), and vinyl chloride) are Contaminants.

11.2 Seller Cooperation. Seller agrees to reasonably cooperate in executing any documents that may be reasonably required by Buyer or Buyer’s environmental consultant in order to comply with applicable state and federal regulations for reporting, investigating and remediating contamination on the Properties, and in order to assist Buyer in applying for grants or programs to assist in funding the investigation and remediation of contamination on the Properties.

3. The Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

4. Except as expressly amended by this Amendment, the terms and conditions of the Purchase Agreement remain unchanged and in full force and effect.
SELLER:

EGR PREMIER PROPERTIES, LLC

By ____________________
    Edward R. Ring
    Its Chief Manager

BUYER:

CITY OF MINNETONKA

By ____________________
    Terry Schneider
    Its Mayor

By ____________________
    Geralyn Barone
    Its City Manager
Brief Description: Liquor licenses for Pairings Food & Wine Market, LLC

Recommended Action: No action

Background

On December 15, 2014, the city council voted to deny the application of Pairings Food & Wine Market, LLC to renew its liquor licenses for 2015. Pairings has requested that the city council reconsider its denial of the application. A copy of the letter from Pairings’ attorney, making that request, is attached (A-1 to A-8). The city attorney has prepared a memo to supplement and respond to several issues raised by the letter (A-9 to A-12).

Options for council action

1. Take no action.

   The decision of the city council on December 15, 2014 will stand.

2. Reconsider the action taken on December 15, 2014.

   Any member of the council who voted on the prevailing side may move to reconsider the prior action. If the motion fails, the December 15, 2015 decision will stand. If the motion passes, the effect is to bring the 2015 license renewals back to the council for decision, as if no action had been taken. A new motion is required to address the license application.

3. If the motion to reconsider passes, the options for the council include:
   a. Motion to approve the 2015 license renewals, with or without conditions.
   b. Motion to grant licenses of limited duration (with an end date to be specified by the council) for the purpose of allowing Pairings to provide additional information to the council, sufficient to satisfy the council that the transfer of ownership to Mr. Tompkins should be approved.

   If the council does this, the licenses must be conditioned upon a written agreement, executed by Pairings, in which: (1) the parties agree that the licenses will automatically terminate on the date specified by council; (2) Pairings agrees that it has no property right in the limited licenses and that if the licenses expires they shall be deemed a non-renewal of the licenses and not a revocation of the licenses; (3) the city agrees that if, prior to the
expiration of the limited licenses, if the city refuses to issue licenses for the remainder of 2015, Pairings has not waived any right to challenge the city’s decision for nonrenewal. The licenses would be issued on the condition that Holly Damiani have no involvement of any kind in the operation of the licensed establishment.

c. Motion to grant licenses of limited duration for the purpose of referring the renewal of the 2015 licenses to the Office of Administrative Hearings for a recommendation. The duration of the licenses would be until a date that is one month after the OAH issues its recommendation.

If the council does this, the licenses must be conditioned upon a written agreement, executed by Pairings, in which: (1) Pairings agrees that it has no property right in the limited licenses and that if the OAH recommends against renewal of the 2015 licenses, Pairings will voluntarily forfeit its licenses within 30 days of the OAH recommendation and waive any claim against the city for the nonrenewal of the licenses; (2) the city agrees that if the OAH recommends renewal of the licenses and the city nevertheless refuses issue licenses for the remainder of 2015, Pairings has not waived any right to challenge the city’s decision for nonrenewal. The licenses would be issued on the condition that Holly Damiani have no involvement of any kind in the operation of the licensed establishment.

City staff recommends against this action, because any decision of the OAH can only be advisory, and the decision ultimately rests with the council.

Recommendation

Based on the reasons outlined in the attached memorandum from the city attorney to the city council, the staff recommendation is Option 1, to take no action.

Submitted through:
  Geralyn Barone, City Manager
  Corrine Heine, City Attorney

Originated by:
  Corrine Heine, City Attorney
December 29, 2014

Ms. Corrine Heine  
City Attorney  
City of Minnetonka  
14600 Minnetonka Blvd.  
Minnetonka, Minnesota 55345

Re: Pairings Food & Wine Market, LLC

Dear Ms. Heine:

This correspondence is in response to the decision of the Minnetonka City Council (“Council”) in which they declined to renew the liquor license of Pairings Food & Wine Market, LLC (“Pairings”). Specifically, Pairings was provided neither the appropriate forum nor a meaningful opportunity to present their evidence that would support the renewal of Pairings’ liquor license. Furthermore, the Council’s decision to not renew Pairings’ liquor license was based on an investigative report that relies heavily upon speculation, misinterpretation and unsupported conclusions. Although we recognize that the decision to not renew Pairings’ liquor license has already been made and, as a result, may be difficult to reverse, we want to take the time to describe the procedural deficiencies and substantive misunderstandings that led to this point, as well as propose an alternative solution that will allow both the City of Minnetonka and Pairings to avoid the potential for costly and unnecessary litigation.

In order to effectively describe the procedural deficiencies that led to the Council’s denial of Pairings’ liquor license renewal, it is necessary to provide a factual timeline. As you are aware, Pairings owns and operates a restaurant in the city of Minnetonka called Pairings Food & Wine Market (“Restaurant”). As is evident from its name, the Restaurant specializes in the pairing of food with the appropriate wine. The Restaurant has operated in Minnetonka since 2009 and has received and utilized a liquor license since its inception. Up until the actions commenced against it in 2013, there have been no adversarial proceedings instituted against Pairings, nor have there been any limitations placed upon its liquor license. By all accounts the establishment has been a good corporate citizen, which has provided valuable jobs, and increased tax base, and an important amenity for the community.

Pairings was originally owned and operated by Holly Damiani (“Ms. Damiani”) and another party. In 2012, Ms. Damiani was charged with, and entered a guilty plea for, a single count of filing a false tax return. This charge arose as the result of her status as an officer of her ex-husband’s company. Specifically, this charge had absolutely nothing to
do with the Restaurant or her status as the holder of a liquor license. Regardless, as the result of her felony conviction, Ms. Damiani became ineligible to hold a liquor license.

The staff for the City of Minnetonka (the “City”) was immediately informed of Ms. Damiani’s conviction and incarceration. In conjunction to being informed of Ms. Damiani’s legal status, the City was also provided with Ms. Damiani’s plan to convey her interest in Pairings to her then-minority partner, Anissa Gurstel (“Ms. Gurstel”). This plan consisted of the formation of a new corporate entity, Black Dog Restaurant Group, LLC (“Black Dog”) which would own Pairings and would, in turn, be owned by Ms. Gurstel. Ms. Damiani would remain a creditor of Pairings as a result of her status as a personal guarantor on the company’s loans, would remain a guarantor of the Restaurant’s lease, and would also retain an option to re-purchase her interest in the event she could legally satisfy the rehabilitation requirements to again hold a liquor license.

The City was not only aware of this plan, but it gave Ms. Damiani and Ms. Gurstel its blessing to effectuate such a transfer. As a result, Ms. Damiani completely divested herself of any ownership interest in Pairings. After the divestiture occurred, and upon being fully informed of the method in which the business would be transferred, both the City and the Council signed off on the transfer. Specifically, despite her status as a guarantor and creditor, as well as her option to purchase, the City did not consider Ms. Damiani as the “real party in interest.” As a result, Pairings was granted a renewal of its liquor license for the year 2013.

In 2013, Ms. Gurstel chose to accept an offer to work with Total Wine and leave the Restaurant. As a result, she sold her interest to Mr. Bernerd (Bernie) Tompkins (“Mr. Tompkins”). Mr. Tompkins purchased his interest with personal finances and has, to date, infused approximately $125,000 of his own personal finances into the Restaurant. Similar to the original transfer from Ms. Damiani to Ms. Gurstel, the sale of Black Dog to Mr. Tompkins was completely open, honest, and transparent. The City was specifically informed that Ms. Damiani would again retain an option to repurchase upon her successful rehabilitation, and would remain a guarantor and creditor of Pairings. In fact, as articulated in affidavit testimony, Minnetonka City Attorney Corrine Heine (“Ms. Heine”) determined that Ms. Damiani’s status and the retention of her option to repurchase did not give Ms. Damiani any ownership interest in the Restaurant. The 2014 renewal was specifically modeled after the 2013 structure, all of which was fully disclosed and previously approved by the city without objection.

In 2013, Mr. Tompkins, as the prospective sole owner of Black Dog and, therefore, the sole owner of Pairings, submitted his application for a liquor license for the year 2014. The City recommended the approval of this application and, on December 16, 2013, the 2014 liquor licenses were issued. This approval occurred after an investigation determined that Mr. Tompkins was legally authorized to hold a liquor license.

After the liquor license renewal was approved, on approximately January 23, 2014, Ms. Kathy Leervig (“Ms. Leervig”), the Minnetonka community development coordinator,
contacted Mr. Phillip “Ed” Douglass ("Mr. Douglass") to inquire as to the proper address to send the food licenses. According to Ms. Leervig, when asked if the license should go to Bernerd Tompkins, Mr. Douglass responded with “Who? I don’t know who that is—you mean Holly Damiani?” The City finds this incredibly brief interaction with Mr. Douglass to be substantively dispositive to whether Ms. Damiani had an improper “interest” in Pairings.

However, when actually examined, it is evident that this brief conversation and the confusion of Mr. Douglass should not be determinative of Mr. Tompkins’ rights. Mr. Douglass had been hired during a time frame in which the Restaurant had changed ownership and was in the process of changing ownership again. Mr. Tompkins is an informal person that has never introduced himself, nor referred to himself, to his staff as “Bernerd.” Instead, Mr. Douglass knew Mr. Tompkins only as “Bernie.” It is not implausible that a relatively new employee would not know the formal name of an owner that had intended to acquire his ownership only three weeks prior to Mr. Douglass’s comment. In addition, given the licensing complexities, the actual corporate structure was and continues to be rather complicated, and not something a non-equity owner whose primary job is day to day operations would necessarily cover.

Upon learning of Mr. Douglass’s reasonable confusion, Ms. Leervig then apparently felt the need to independently investigate Ms. Damiani’s social media. During this independent “investigation,” Ms. Leervig found a picture of Ms. Damiani and Mr. Tompkins, concluding that they had a personal relationship. Had the City taken the time to actually ask Ms. Damiani or Mr. Tompkins about their relationship, they would have quickly been apprised of the situation, as neither Ms. Damiani nor Mr. Tompkins took any efforts to conceal their personal relationship. Ms. Leervig also found an old LinkedIn profile of Ms. Damiani that identified her as the owner of Pairings Food & Wine. Again, had the City asked Ms. Damiani about this profile, it would have become very clear to them that this was simply an oversight in which her profile had not been updated. The City again finds this failure to update a social media website as indicative that Ms. Damiani, not Mr. Tompkins, is the “real party in interest” for Pairings’ liquor license.3

The Minnetonka police department also conducted an additional investigation, which did not include interviewing either Mr. Tompkins or Ms. Damiani. Instead, this new investigation focused on Ms. Gurstel and Mr. Douglass. During that investigation, Ms. Gurstel stated that Ms. Damiani and Mr. Tompkins were involved in a personal...
relationship and also stated that she decided to sell her interest because she saw no opportunity for growth as the result of Ms. Damiani’s right to repurchase.4

Mr. Douglass told the Minnetonka police department that Ms. Damiani routinely accompanies Mr. Tompkins when he comes in to the Restaurant, a fact that, based upon their personal relationship is reasonable and is not indicative of any control over any aspect of the business. Mr. Douglass also independently makes the decisions concerning the wine and food menu. Furthermore, and most importantly, when asked about Ms. Damiani, Mr. Douglass specifically stated that he is unaware of any involvement that Ms. Damiani has with the Restaurant.

None of the information derived during these new “investigations” has any impact on whether Mr. Tompkins is legally authorized to hold a liquor license. Nor does the information actually demonstrate that Ms. Damiani is in any way, shape, or form the beneficial owner or real party at interest as contemplated under the ordinance. Instead, the investigation speculates and concludes, without factual support, that Ms. Damiani must be operating the business through Mr. Tompkins because they have a personal relationship and because Ms. Damiani was not diligent in updating her social media. This overlooks and/or ignores Mr. Tompkins’ direct involvement in the day to day and financial operations of the Restaurant and his personal infusion of approximately $125,000, all of which would have been fully described, had the City taken the time to actually interview Mr. Tompkins and/or Ms. Damiani.

As a result of these “investigations,” on March 24, 2014, the City and, specifically, Ms. Heine, recommended that the Council revoke Pairings’ liquor license. The City determined that “[t]he license application omitted material information by failing to identify the beneficial owner and real party in interest.” This is speculative at best, and blatantly misleading at worst. There is no mandatory disclosure requirement for an applicant to provide information concerning person(s) with whom they have a personal and/or romantic relationship. In fact, there is nowhere in the application materials where an applicant is required or even requested to disclose his or her personal relationships. To do so, would likely be illegal and lead to the violation of other types of unlawful discrimination laws. As a result, it would have been arbitrary and certainly unusual for Mr. Tompkins to make a note of his personal relationship with Ms. Damiani on the liquor license renewal for Pairings. Mr. Tompkins was at the time of his application, and still is, the sole owner and operator of Pairings, a purchase that he made with his own personal finances, and he, therefore, is the real party in interest with respect to the liquor license renewal application.

In making this recommendation, the City recognized that state law expressly requires a proposed revocation to go through the Minnesota Administrative Procedures Act (the

4 This is particularly interesting, considering Ms. Damiani’s right to repurchase is specifically contingent upon the City of Minnetonka’s determination that she is rehabilitated and re-eligible to legally hold a liquor license. As a result, for all practical purposes, Ms. Damiani’s right to repurchase had no impact on Ms. Gurstel’s ownership interest.

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“Act”). Under the Act, once initiated, Pairings was required to be given an opportunity for a hearing after reasonable notice. Minn. Stat. 14.58. The City clearly recognized this requirement and specifically stated in City Council Agenda Item #13- Meeting of March 24, 2014, that the matter should be referred to the Office of Administrative Hearings (“OAH”) “for findings and a recommendation to the council concerning revocation of the license. The licensee and city will both have the opportunity to present evidence to the hearing officer at that time.” (emphasis added).

On March 24, 2014, prior to the City Council meeting scheduled for that evening I, as counsel for Pairings and Mr. Tompkins, specifically requested “a copy of the staff report submitted to the City Council, any available investigative notes, or any other documents which would be of assistance in understanding the City’s decision to refer this matter to the [OAH].” Despite this request, the City withheld the underlying investigation documents and instead provided only the staff report and informed me that the “investigator’s notes and report to the council regarding his investigation are classified as confidential civil investigative data under Minn. Stat. 13.39” and “will not be made available to your client.” This information, which would have otherwise provided Pairings a reasonable opportunity to respond to the allegations made against it, which was previously deemed “confidential,” was later inexplicably provided on December 11, 2014, at approximately 4:00 p.m., one business day prior to the council meeting which denied Pairings’ liquor license renewal. How or why these documents previously designated as confidential and unavailable in March of 2014, suddenly became unclassified and available one business day before the hearing is still not clear.

Despite the recognition that Pairings be given the opportunity to be heard in front of an independent fact finder and despite the requirement under state law that Pairings be given an opportunity to be heard after reasonable notice, the hearing never took place. On April 21, 2014, the City informed me that a file had been set up with the OAH and the City would like to coordinate a date for a pre-hearing. After this coordination, Ms. Heine and I developed a list of acceptable dates, and a prehearing conference was scheduled for May 15, 2014, at 9:30.

On May 14, 2014, at 3:12 p.m., the day prior to the scheduled prehearing conference before the OAH, Ms. Heine emailed me to inform me that the conference needed to be “rescheduled,” indicating that the conference would still occur in the future as required.5

The City failed to reschedule the conference or any subsequent proceeding in front of the OAH. Instead, on August 1, 2014, I, on my own accord, sent correspondence to the City which included a settlement proposal. This proposal included a proposal for a voluntary audit in which the City could confirm and verify that Ms. Damiani had no involvement with the operations of Pairings, documentary evidence of Mr. Tompkins’ financial

5 As recognized at the City Council meeting on December 15, 2014, the City had failed to file a form with the OAH prior to the prehearing conference, presumably resulting in the delay.
investment in Pairings, and the relinquishment of Ms. Damiani’s option to repurchase her interest.\textsuperscript{6}

On August 15, 2014, the City acknowledged receipt of my correspondence but requested additional time to discuss the proposal with staff and indicated that the City would “get back to [me] next week.” The City did not get back to me during the week of August 18-22, 2014. Instead, on October 31, 2014, I was again forced to request a response from the City concerning the ongoing revocation process. Later that day, the City finally responded and informed me “it was not practical to attempt to complete the revocation proceeding before the OAH, prior to renewals being mailed out. Therefore, the city will address the matter at the time of renewal.”

All of these delays in the process suggest one logical conclusion—the City recognized that it did not have the evidence it needed to revoke Pairings’ license. As a result, rather than provide Pairings with the opportunity to present its case to an objective, independent 3\textsuperscript{rd}-party in the OAH and run the risk of an adverse determination against the City, it would simply drag its feet and wait for Pairings’ required annual license renewal. Since the renewal is set to a different standard and according to the City does not require a hearing, the City could effectively accomplish its purpose of revocation without actually revoking Pairings’ license, and providing Pairings with a meaningful opportunity to present its case to a neutral, independent fact finder.

On December 15, 2014, the Council, after receiving a recommendation from the City, voted to not renew Pairings’ liquor license. Despite requesting information concerning the investigation of Pairings’ liquor license back in March 2014, this information (over 350+ pages) was not provided until Thursday, December 11, 2014, at 4:00 p.m. As a result, Pairings did not have any opportunity to prepare any type of written response to the allegations made against it.

The City has effectively denied Pairings its due process rights in violation of the Act. The City’s treatment of a longstanding, tax-paying business is embarrassing, legally improper, and procedurally unfair. Despite promising Pairings that it would have its opportunity to present evidence and hear the evidence alleged against it, the City, has reneged on that promise and effectively stripped Pairings, and its owner, of its livelihood.

In addition to the procedural unfairness, the City’s recommendation and the Council’s affirmative vote to not renew Pairings’ liquor license is in direct contradiction to Minnesota state law.

As recognized above, Mr. Tompkins is the real party in interest. As the real party in interest, and an unmarried party, the focus of a liquor license is on Mr. Tompkins, the applicant, not his friends or significant others. The results of the investigation that occurred here affirmatively determined that Mr. Tompkins is legally authorized to hold a

\textsuperscript{6} It is believed that this proposal was never forwarded on to the City Council.
liquor license. As a result, the city council could not deny him the renewal of Pairings’ liquor license renewal if their decision was arbitrary and capricious. See Wajda v. City of Minneapolis, 246 N.W.2d 455, 457 (Minn. 1976) (“[A]s is the case with all exercises of discretion by administrative agencies, the licensing authorities must not act arbitrarily or capriciously . . .”).

The City’s recommended revocation and failure to renew, as well as the Council’s vote to not renew was arbitrary and capricious. The decisions were based solely on the behavior of Ms. Damiani, a party that, although involved in a personal relationship with Mr. Tompkins, is not the real party in interest on the liquor license application. Minnesota law recognizes that it is inherently arbitrary and capricious for a city council to deny a liquor license to an applicant that is otherwise fully qualified to hold such a license if that denial is based upon the misconduct of a prior licensee. Wajda, 246 N.W.2d at 457-58; see also In re Gopher 93, LLC, 2012 WL 1149343, *3 (Minn. Ct. App., April 9, 2012) (“A municipality’s denial of a liquor license application based on the improper conduct of a location’s previous licensees or business patrons is arbitrary and capricious.”) (emphasis added).

That is exactly what occurred here. Each investigation that occurred concerning Mr. Tompkins and his ability to hold a license has determined that he is of sound moral character and completely capable within the bounds of state law and the Minnetonka city ordinance to hold a liquor license. Despite this, the City and the Council have determined that Mr. Tompkins, as a direct result of his personal relationship with Ms. Damiani, a convicted felon, cannot hold a liquor license. The City and the Council are effectively denying Mr. Tompkins’ liquor license due to the prior behavior of Ms. Damiani. This is not only improper, it is illegal.

Of course, it is most beneficial for Pairings and Mr. Tompkins, personally, for this matter to be appropriately resolved without resorting to litigation. The City has identified its concerns and we believe these concerns can be properly addressed by adhering to the previously proposed settlement offer. Therefore, in an effort to maintain the prior effective and mutually beneficial relationship between the City of Minnetonka and Pairings, Pairings hereby again proposes the following settlement and specifically requests that this settlement be submitted to the Council:

1. The decision to not renew Pairings’ liquor license renewal is reversed;
2. The decision on whether Pairings’ liquor license renewal granted shall be continued until after the matter can be heard and determined by an independent 3rd-party with the OAH;
3. From January 1, 2015 until such time as a decision is made by the OAH or until such time as Pairings can be sold to a new buyer, Pairings shall be allowed to continue to hold a liquor license;
4. During that time, Mr. Tompkins will provide documentary evidence of his $100,000 investment in Pairings;
5. Pairings will submit to a random mandatory audit so that the City of Minnetonka can confirm and verify that Ms. Damiani does not have any involvement with the day-to-day operations of Pairings;
6. Pairings will agree to pay for the cost of any such audit, not to exceed $500; and
7. Ms. Damiani will agree to relinquish her current option to reacquire any interest in the Restaurant and/or Pairings.

There is another Council meeting scheduled on January 5, 2015. In light of the fact that Pairings was not presented with the opportunity to be heard, as required, in the OAH proceeding, nor was it given a meaningful opportunity to respond to the allegations against it in writing prior to the December 15, 2014 Council meeting, Pairings specifically requests that you provide this correspondence to the City Council prior to its January 5, 2015 meeting so that the Council may have an opportunity to reconsider its denial of Pairings’ liquor license renewal.

We hope that the City will consider the foregoing proposal in an effort to bring this costly process to a conclusion and move forward in an amicable fashion. If you have any questions, please feel free to contact the undersigned or my colleague Brandt Erwin, as I will be out of the country until Monday, January 5, 2015.

Regards,

MADIGAN, DAHL & HARLAN, P.A.

/s/ Richard M. Dahl

Richard M. Dahl
RMD:bfe
cc: Bernerd Tompkins
TO: Mayor and Council Members  
FROM: Corrine Heine, City Attorney  
DATE: January 2, 2015  
SUBJECT: Pairings Food & Wine Market, LLC

In a letter dated December 29, 2014, Pairings Food & Wine Market, LLC has requested that the city council reconsider its denial of the application to renew the Pairings liquor license. In order to provide the council with a more complete picture, the staff has prepared the following comments to supplement and respond to the letter:

- The statement at page 2, that the staff was immediately informed of Ms. Damiani’s conviction, is not correct. The community development director, Julie Wischnack, learned of Ms. Damiani’s conviction from a newspaper article. The city initiated discussion of the impact of the conviction on the liquor license.

- It is correct that the city was aware of the sale structure in 2012, from Ms. Damiani to Ms. Gurstel. City staff was unaware, however, that Ms. Damiani would have any involvement in the business other than the debt to her and her option. In fact, staff expressly advised Ms. Damiani that she could not have any involvement in the business.

- The letter omits key facts that support the city’s concern about the Pairings license:

  (1) The city clearly and expressly informed Ms. Damiani that she could not be involved in the business;  
  (2) Anissa Gurstel confirmed to the city’s investigator that Ms. Damiani had, in fact, been involved in the business following her release from prison, and that Ms. Damiani initiated that involvement;  
  (3) During a meeting that city staff had with Ms. Damiani, Mr. Tompkins and their attorney on March 24, 2014, Ms. Damiani admitted that she had invited Mr. Tompkins to purchase the business; and
(4) During that same meeting, a statement was made to the effect that Ms. Damiani had needed to be involved in order to assist during the transition of the business.

- Pairings is not entitled by state law to a hearing before the Office of Administrative Hearings. State law requires that the city follow the administrative procedures act only when it revokes or suspends a license, but, even then, it is not required to refer the matter to the OAH. The city did not revoke or suspend the 2014 license, and the requirement to follow the administrative procedures act does not apply to renewal.

- That statement on page 5 that, on his own accord, Mr. Dahl sent a settlement proposal to the city attorney on August 1, 2014 is not true. The city attorney asked Mr. Dahl to submit a settlement proposal during a prior telephone call. The August 1 letter begins with the following statement: “I am writing to follow-up [sic] on our last telephone conversation in which we discussed the possibility of a potential amicable resolution of this dispute, … I apologize for the delay in providing this proposal to you. I have been engaged in a rather complex commercial dispute with a number of impending deadlines which has completely consumed virtually all of my time during the last several weeks.”

After receipt of the letter, the city attorney consulted both the city staff and also with outside counsel, to request outside counsel to handle the case. That attorney informed the city attorney that the proceeding could not be completed before the end of the year.

- The assertion that Pairings did not have adequate time to respond to the city’s concerns is not accurate, for the following reasons:

  (1) The city attorney verbally informed Mr. Dahl on January 24, 2014 that the city was concerned that Ms. Damiani was involved in the business, contrary to the city’s express direction, and the city attorney provided the factual basis for those concerns;
  (2) City staff discussed those concerns again during a meeting with Mr. Dahl, Ms. Damiani and Mr. Tompkins on March 24, 2014, and staff specifically stated that Pairings needed to satisfy the city that Ms. Damiani would no longer be involved in the business;
  (3) The city attorney informed Mr. Dahl in an October 31, 2014 email that the settlement proposal did not adequately address “the city’s concerns about Ms. Damiani’s involvement with Pairings,” and the email also stated then that the council would allow Pairings the opportunity to address the council on its application for renewal, if one was submitted;
  (4) The city attorney provided Mr. Dahl with the March 24, 2014 police
investigative report on December 8, 2014 and reiterated that the council would accept presentations or statements by Mr. Dahl, his client or others on December 15, 2014, together with any documentary evidence that they wished to submit; and

5) The packet that was provided to Mr. Dahl on December 11 consisted primarily of Pairings’ liquor license applications and other materials that were already in its possession or control; the documents that Pairings had not previously seen were the affidavits, the staff report and the chronology, all of which primarily recounted information that was previously known to Pairings, based on the prior discussions and disclosure.

- The letter cites court cases that are not applicable to this case. This is not an instance where the city is denying a license to an arm's length purchaser based on actions by a previous owner. The city has legitimate concerns that an ineligible person, who was expressly ordered not to be involved in the business, first ignored the order and re-inserted herself in the business, then solicited a person over whom she has personal influence to purchase the business.

The current owner has no experience in running a liquor establishment, and he has not affirmatively represented that the prior owner will not be involved in the business or that he will not rely upon the prior owner for advice or consultation. The city staff has no reliable means to ensure that Ms. Damiani will not be involved in the business.

- The staff’s concerns about Ms. Damiani’s potential involvement are heightened by Mr. Tompkins’ apparent lack of experience with liquor establishments. An example of that came to light during the December 15 council meeting. The city code requires that new managers are to be hired contingent on city approval, and the city must be notified of the management change. City Code § 600.070(16). The city learned about the new manager only when Mr. Tompkins presented the organizational chart to the council on December 15, 2014.

Knowing that the license was in jeopardy, staff would have expected Mr. Tompkins to strictly adhere to the city’s liquor regulations, but he did not. The city’s requirement is not unique; most cities have similar requirements in their liquor ordinances. Mr. Tompkins and his new manager both either failed to educate themselves about the city’s requirement or, worse, knew about the requirement but did not comply. In either case, it only confirms the city’s reservations about the Pairings management.

- A major reason for staff’s reservations and lack of trust in the applicant comes down to the applicant’s failure to acknowledge that Ms. Damiani’s ongoing involvement in the business is a legitimate and appropriate governmental concern.
Pairings could have acknowledged that Ms. Damiani’s involvement was wrong and could have provided specific assurances that Ms. Damiani is not presently involved and will not be involved in any way in the future. Instead, Pairings has taken the offensive, questioning the city’s ordinance and the actions of city staff, and has attempted to place the burden on the city as to why Mr. Tompkins should not get a license.

Mr. Tompkins’ and Mr. Dahl’s presentations to the council were demonstrative of that approach. At no time did Mr. Tompkins admit that Ms. Damiani had broken the rules, and at no time did he promise that he would make certain that she would not be involved in the business. The attempts to characterize Mr. Douglass’ confusion over the owner of the business (page 3 of the letter) is yet another example of refusing to take responsibility. Mr. Douglass was hired in August 2013, more than eight months after Holly Damiani had sold her ownership interest in the business.

The point is not that Mr. Douglass was unaware that Mr. Tompkins was the new owner. The point is that Mr. Douglass believed that Ms. Damiani was the owner, and there is no reasonable explanation for why he would have come to that conclusion except that Ms. Damiani disregarded the express warning that she had been given.

Pairings has consistently refused to address the question first raised last January: how is Holly Damiani involved in the business and how will Pairings assure us that she will not be involved? It is this failure by Pairings’ management to take responsibility that has shattered the city staff’s confidence in Pairings’ ability to follow city regulations.
City Council Agenda Item #15A
Meeting of January 5, 2015

**Brief Description:** Appointment of representatives to various advisory boards, commissions and committees

**Recommended Action:** Approve the appointments

**Background**

Each year the council is required to approve the appointments of the representatives to various outside boards, commissions and committees. These appointments are indicated on the attached listing by a single asterisk next to the committee name. The appointments that are not made on an annual basis are indicated by a single spade next to the committee name.

Also on the roster is a listing of the various city advisory groups, outside agency boards, commissions and committees for which council members, city staff, and others serve as City of Minnetonka representatives. These representatives have been appointed by other agencies, and formal city council approval is not necessary. This list is updated and presented to the council on an annual basis.

**Recommendation**

Approve the following appointments:

- Terry Schneider as the Minnetonka City Council Legislative Contact to Metro Cities.
- Terry Schneider as the Minnetonka City Council representative to the Municipal Legislative Commission Board of Directors.
- Dick Allendorf as the Minnetonka City Council representative to the I-494 Joint Powers Organization.
- Dick Allendorf as the Minnetonka City Council representative to the Southwest Suburban Cable Commission and Robert Ellingson as the alternate.
- Corrine Heine as the Minnetonka City Council’s appointed representative to the Suburban Rate Authority and Perry Vetter as the alternate.
- Perry Vetter as the Minnetonka City Council’s appointed representative to the Bennett Family Park Board.
- Sara Woeste as the Minnetonka City Council’s appointed representative to the Minnetonka School District Community Education Advisory Council.
- Dave Johnson as the Minnetonka City Council’s appointed representative to the Music Association of Minnetonka.
- Terry Schneider as the Minnetonka City Council representative to the West Hennepin Affordable Housing Land Trust (Homes Within Reach).
- Elise Durbin as the Minnetonka City Council’s appointed representative to the Wayzata Schools Community Collaboration Council.
Meeting of January 5, 2015

Subject: Appointment of representatives to various advisory boards, commissions, etc.

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

Originated by:
   Karen Telega, Administrative Assistant
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Revised December 2014