Agenda
Minnetonka City Council
Regular Meeting, Monday, January 26, 2015
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Ellingson-Allendorf-Acomb-Wiersum-Bergstedt-Wagner-Schneider
4. Approval of Agenda
5. Approval of Minutes: December 15, 2014 regular meeting
6. Special Matters:
   A. Citizens lifesaving award for Daniel Shaw
   B. Citizens lifesaving awards for Adriene Luxford, Meagan Matrejek and Nathan Krogstad
   C. Recognition of Paul Lehman
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters not on the Agenda
9. Bids and Purchases:
   A. Bids for diseased and miscellaneous tree maintenance and removal
      Recommendation: Award contract to YTS Companies LLC (4 Votes)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. 2015 general liability insurance and workers’ compensation renewals
11. Consent Agenda - Items Requiring Five Votes: None

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12. **Introduction of Ordinances:**
   
   A. Ordinances amending various sections of city code pertaining to natural resources:
      1) Tree Ordinance
      2) Wetland Ordinance
      3) Grading Ordinance
      4) Illicit Discharge Ordinance

      Recommendation: Introduce the ordinances and refer them to the planning commission (4 Votes)

   B. Ordinance amendment regarding snow removal restrictions

      Recommendation: Introduce the ordinance (4 Votes)

13. **Public Hearings:**

   A. Items concerning Legacy Oaks
      1) Resolution vacating an obsolete drainage and utility easement at 15501 Legacy Oaks Trail
      2) Resolution approving the final plat of LEGACY OAKS 2nd ADDITION

      Recommendation: Hold the public hearing and adopt the resolutions approving the requests (5 Votes)

14. **Other Business:**

   A. Items concerning One Two One Development located at 14217 Stewart Lane

      Recommendation: Adopt the resolutions approving the final site and building plans and the amendment to the contract (4 Votes)

15. **Appointments and Reappointments:**

   A. Appointments and reappointments to Minnetonka boards and commissions

      Recommendation: Approve the recommended appointments and reappointments (4 Votes)

16. **Adjournment**
Minutes
Minnetonka City Council
Regular Meeting, Monday, December 15, 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 Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum, and Terry Schneider were present.

4. Approval of Agenda

Wiersum moved, Acomb seconded a motion to accept the agenda with addenda to items 14A, 14B, and 14C. All voted “yes.” Motion carried.

5. Approval of Minutes: October 27, 2014 regular meeting

Wagner moved, Bergstedt seconded a motion to approve the October 27, 2014 regular meeting minutes. All voted “yes.” Motion carried.

6. Special Matters:

A. Retirement recognition of Barry Riesch

Schneider read the recognition and presented a plaque to Riesch.

Riesch thanked the city for the opportunity and said it was a great place to work. He felt fortunate to have had his job.

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:
A. **Contract for replacement of police in-car video and audio recording system**

Wiersum asked about the anticipated life of the system. He said it seemed the city didn’t get what was expected with the previous system. Police Chief Jeff Sebenaler said the life expectancy with any technology was ever changing as the technology continues to evolve. Some of the current technology of the current system was outdated. The new system would allow for body cameras in the future if the city chooses to go that direction. He said staff would be more realistic going forward about the life expectancy of the system and get it in the CIP process for replacement with a five year range.

Wiersum moved, Bergstedt seconded a motion to rejecting the Digital Ally bid as not responsive to the specifications and awarding the contract to WatchGuard in the amount of $116,440. All voted “yes.” Motion carried.

10. **Consent Agenda - Items Requiring a Majority Vote:**

A. **Resolution to adjust 2015 non-union employee salaries and benefits**

Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2014-135 authorizing the 2015 non-union employee salary and benefit adjustments. All voted “yes.” Motion carried.

B. **Ordinance regulating tobacco product sales**

Allendorf moved, Acomb seconded a motion to adopt Ordinance No. 2014-27. All voted “yes.” Motion carried.

11. **Consent Agenda - Items requiring Five Votes:** None

A. **Applications for renewed liquor licenses for 2015**

Allendorf moved, Bergstedt seconded a motion to approve all of the renewals listed in this report for the 2015 calendar year with the recommended conditions for the Gold Nugget and The Wine Shop. Licenses will not be issued until proof of liquor liability insurance for 2015 is received. All voted “yes.” Motion carried.

B. **Applications for renewed precious metal and secondhand dealer licenses for 2015**

Allendorf moved, Bergstedt seconded a motion to approve the precious metal and secondhand dealer licenses for the above establishments, for
the license year January 1, 2015, through December 31, 2015. All voted “yes.” Motion carried.

C. Resolution accepting gifts, donations and sponsorships given to the city during 2014

Allendorf moved, Bergstedt seconded a motion to adopt Resolution No. 2014-136. All voted “yes.” Motion carried.

12. Introduction of Ordinances: None

13. Public Hearings:

A. Application for the transfer of the cable franchise system

Assistant City Manager Perry Vetter gave the staff report.

Wiersum said the email addresses for Comcast subscribers include the Comcast.net suffix. The staff report indicated over a period of time the email addresses would have to change. He said there would be a significant cost to this. People would have to change business cards and stationary. He asked the timeframe for the transition and if there might be potential relief for business owners and those who had to make the changes. Vetter said staff would try to get an answer to that question. Currently the language specifies an ample transition period would be negotiated between Comcast and Greatland. At this point there was no commitment to what an ample period of time would be. Wiersum said it would be helpful if the new email suffix could be identified as early as possible to help with the transition.

Schneider said he went through an email transition a number of years ago and the provider allowed both email addresses to be used for quite a few years by having the old address forward to the new one.

Wagner said the consultant’s report indicated he did not believe there was any way the cities could reasonably deny the transfer from a financial standpoint even though the biggest concern was this was going to be a very highly leveraged organization. Wagner said he would like to learn more of the details about the sequencing.

Allendorf said at the last commission meeting he attended it was indicated there would be a period of time for the email transition although what that period of time would be was not defined. He said the transfer seemed to be the type of item that comes before the council where questions can be raised but little could be changed. Because the FCC was the one
negotiating the transfer it was the one that had the authority. He praised
I/T Manager Patty Latham’s work on the commission.

Schneider opened the public hearing at 6:54 p.m. No one spoke.

Schneider said as the process moves forward it would be beneficial for
staff to ask for a close working relationship with the key people with
Greatland that would be in Minnesota. To have a contact the city could call
to get an answer to an issue was critical.

Wiersum moved, Allendorf seconded a motion to continue to January 5,
2015. All voted “yes.” Motion carried.

B. Resolutions regarding utility related items:
   1) Municipal water and sanitary sewer rates
   2) Municipal water and sanitary sewer connection fees
   3) Recycling fee
   4) Storm water utility fees

Finance Director Merrill King gave the staff report.

Schneider said he was making the assumption that if the balance of
recycling revenue and expense became favorable again the fees would be
adjusted after this had established itself as a trend. King said the
expenses were not quite meeting the revenues due in part to her
anticipating an increase in the market at some point. Since that is not
known at this point the most conservative approach was used. The fund
balance was still being slightly used.

Wagner said the study sessions about the water and sewer systems was
very helpful and informative. Although there was a big increase for the first
year it was the right approach going forward.

Schneider opened the public hearing at 7:07 p.m. No one spoke. He
closed the public hearing at 7:07 p.m.

Wiersum said the information provided by staff was very helpful. There
were a lot of water main breaks in the city the past year. He received calls
from residents who had their streets torn up numerous times because of
the issues. In order to have a great city there needed to be the
infrastructure in order to have good roads and roads that stayed in good
shape.

Wiersum moved, Wagner seconded a motion to adopt the following
resolutions:
1) Resolution No. 2014-137 providing for a change in municipal water rates and sanitary sewer charges
2) Resolution No. 2014-138 providing for a change in municipal water and sanitary sewer connection fees
3) Resolution No. 2014-139 increasing the city's monthly recycling fee
4) Resolution No. 2014-140 increasing storm water utility fees

All voted “yes.” Motion carried.

C. On-sale Intoxicating Wine and On-Sale 3.2% Malt Beverage licenses for Cocoa Loco, 11056 Cedar Lake Road

Barone gave the staff report.

Schneider re-opened the public at 7:09 p.m. No one spoke. He closed the public hearing at 7:09 p.m.

Wagner moved, Bergstedt seconded a motion to grant the licenses, and renew the licenses for 2015. All voted “yes.” Motion carried.

D. Ordinance amending the city charter regarding vacation of streets and easements

City Attorney Corrine Heine gave the staff report.

Schneider opened the public hearing at 7:11 p.m. No one spoke.

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

14. Other Business:

A. Ridgedale area comprehensive plan minor text amendment

City Planner Loren Gordon gave the staff report.

Wagner asked if staff had gotten feedback from the Met Council about whether or not this was a minor text amendment. Gordon said Met Council staff had been contacted. The question was not so much if the amendment was major or minor but if the Met Council had to be engaged in a text amendment at all. Staff chose to inform the Met Council whether this was necessary or not.

Schneider said the Ridgedale area itself was currently not restricted by the amendment text. In other areas of the country and other parts of the Twin Cities what typically occurs is when the land value and activity reach a
point where structured parking is done, with peripheral development like housing or hotels supporting the ramps, this tends to be what evolves. He asked if any of the major mall tenants redeveloped and decided to add a two or three level ramp, if they would qualify for the ability to have mixed use which would include residential housing on the peripheral of the property. Gordon confirmed that was correct.

Patrick Magnuson, 13505 Larkin Drive, said the criteria Gordon listed for a minor amendment was actually the criteria for waiving the adjacent jurisdiction review and not the criteria for a minor classification. In May 2011 the Met Council produced the Plan Amendment Submittal Guide. This listed a set of criteria for minor amendment classification. He said that set of criteria should be reviewed and that the proposed amendment potentially violated up to three of the criterion. Another concern was the traffic analysis identified the properties as either stand-alone office or stand-alone residential. Ridge Square was currently 100 percent retail. The proposed Highland Bank redevelopment would be mixed use retail and residential. He wasn’t sure how a traffic analysis that assumed no retail could be applied. The traffic analysis never looked at the impact of turning the properties east of Plymouth Road into residential. He did not think the east properties should be included in the amendment.

Magnuson said the traffic analysis made the assumption there was not direct access to Plymouth Road between Ridgedale Drive and Cartway Lane. Recent feedback from the consulting firm indicated this would not affect the analysis or might improve the traffic situation. He questioned why the assumption was made in the first place. A statement was made at the planning commission hearing that the new ramp on to I394 would alleviate some of the traffic issues on Plymouth Road. The traffic analysis indicates the on ramp would not supply sufficient capacity to improve the Plymouth Road corridor. He questioned how the traffic analysis could be used as a supporting document to say the access and circulation issues were not a problem when there was residential.

Audra Johnson, 13419 Larkin Drive, said the comprehensive guide plan was the most significant document that spoke to residents about the direction the city wishes to develop itself. It provides notice to everybody on what to expect generally and then breaks things down more specifically. She thought the decision to modify the plan should be done prudently otherwise city councils now or in the future could make the changes no matter how arbitrary or capricious the changes might be for residents. She said a lack of resident involvement could be caused by making changes after an agreement was made. The comp plan was not ambiguous. Mixed use could be a variety of combinations just not residential. The traffic concerns had not been remedied but only addressed. As an attorney she did not believe the amendment qualified as
a minor text amendment. Amending the comp plan would result in the immediate creation of over 100 units as well as including another jurisdiction because Plymouth Road was a county road.

Melissa Johnston, 2901 Hazel Lane, supported the Highland Bank redevelopment proposal. As an employee of the bank she was thrilled to be part of the reinvestment in the area. The developer had been involved in some wonderful projects and she was excited for them to transform the area in a much needed way.

Barone asked Heine to address the concerns about the amendment being a minor amendment. Heine said in her opinion after reviewing the submittal document, the amendment was a minor amendment. Ultimately the decision would be made by the Met Council staff. After receiving the amendment if the Met Council staff do not believe it qualifies as a minor amendment, they will require that it goes through the major amendment process.

Wagner asked Heine to comment on the concern about another jurisdiction being involved. Heine said typically another jurisdiction was viewed as neighboring cities and not the county simply because the road was a county road.

Wagner thanked the residents for the information they provided. He said the comp plan was now six years old and a lot has changed in the Ridgedale area. During the visioning process the boxes that were shown may have indicated offices, but the conversation was about adding residential properties along the entire Ridgedale area. He agreed it was a minor amendment.

Wiersum said he also believed it was a minor amendment. The comp plan was an extremely important document that now had some age on it. It was not law but was a guide. He thought it was important if residential use was being considered in this particular area to make a guide plan change was the intellectually honest thing to do. To ignore the wording in the guide plan was a problem. He did not see the amendment as a major change. He had never known the council to make an arbitrary or capricious decision.

Schneider said as the entire Ridgedale area evolves one of the challenges that was continually discussed during the vision process was how the vision would actually be put in place. What would it take to meet the right market forces while understanding that any particular application that came forward would have to have the detailed scrutiny of traffic, circulation, pedestrian access, etc. Did the application meet the general guidance and intent? All the details about what it would take from a
density and development standpoint had not yet been flushed out. This may be impossible to predict because of changing marketplace conditions. He thought it was important to keep the flexibility to evaluate different options from quality developers based on looking at the details once an actual application is received. He agreed the amendment was a minor change.

Allendorf said the city had a village study and the comprehensive guide plan. He thought the amendment was a minor change. When it was originally discussed the city attorney said the amendment was not necessary. He said in the future he thought it was important to keep the definition of “minor” as narrow as possible so that when a new proposal came forward the definition wasn’t just broadened.

Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2014-141 which approves a minor text amendment to the 2030 comprehensive plan. All voted “yes.” Motion carried.

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

Howard Paster, Paster Properties, said in the past 35 days there had been meetings that included city staff, neighbors, and consultants, in an effort to address some of the concerns that the neighbors and council had shared during the process. The changes made the project better, but the numbers still needed to work for the project to be financially feasible. He said the project before the council fit the city’s 2035 vision and the question before the council was whether it believed in the 2035 vision as the future of the city. The project was consistent with the vision.

Dennis Sutliff, ESG Architects, said the 2035 vision adopted by the council included transforming the Ridgedale area into a mixed use community. Part of this was some density goals and some absolute numbers in terms of apartment units and amount of office space. The density goal of 1.1 FAR were listed as a minimum and not a maximum. This project measured on a gross basis would just barely meet that FAR. Another goal in the 2035 vision plan was improving the roads. He said a lot of time has been spent working with staff to make sure this project can enable the public sector and the public infrastructure to proceed in a fashion consistent with the goals for 2035. Part of this would be the placement of sidewalks and the details of the landscape, medians, pedestrian fixtures, etc. that were all part of an urban pedestrian realm. This was very different from suburban or rural landscapes. The 2035 vision also provides for enhancing the natural features of the area and improving on the vehicle,
pedestrian and bicycle circulation. He said work has been done with staff on improving that situation with this proposal. There also were sustainability goals in the vision plan. There are attempts to meet some of those goals through some of the site and building plans of the project.

Sutliff gave a presentation of the revised plan.

Damon Farber, Damon Farber Associates, said his company had been involved with some of the Ridgedale visioning process. He said everyone would agree that while the vision was a good start, it was only a start. It was not prescriptive but rather it was concepts and direction. The goal was to make the property as pedestrian friendly and safe and secure as possible. The goal was also to address connectivity issues and create a sense of place. He showed photographs of current views from the property and said what wasn’t seen was the area being pedestrian friendly, safe, secure, with connectivity and a sense of place. He noted no light will spill off the site and the green space and urban quality was important to set the tone for the area. The project would be sustainable in terms of plant materials that are xeriscape, paving materials that are green, and setting the standards for what landscaping can be. He went through the site plan.

Annette Bertelsen, 13513 Larkin Drive, said she and a neighbor met with the developer. The neighbors’ preference was for a softer more graceful look for the village. She thanked the developers for softening the façade of the building. This would improve the neighborhood view of the building. She questioned why the proposal was only slightly different from the previous proposal. It was not because heels were dug in at the neighborhood meeting. The neighbors were willing and ready to collaborate. She asked the council to consider if the revised proposal addressed the reasons the council gave at the October 27 council meeting. Was the proposal too large for the site? Was the FAR still too high? Was the building height still too tall? Was it still out of character? Was it still inappropriate for rezoning?

Bertelsen said basically the mass of the building was unchanged. She said she spoke with Mark Hinshaw, LMN Architects about FARs. Hinshaw told her that FAR should never be thought of as a goal. Goals should be the number of units, commercial development, etc. Building height would never be a goal. The FAR might guide a development but it shouldn’t be the end game. Hinshaw also told her in developing a village sometimes a maximum FAR will be set along with a base FAR. She said she asked Hinshaw if the base FAR for the village was 1.1. He responded no. She then asked him if 1.1 was the maximum FAR. He said no because the community had not taken the next step of setting the ratios. She said the proposal still had a 1.7 FAR that greatly exceeded the loose guideline and
the ordinance. The result was a massive footprint. The footprint was more what neighbors and residents were concerned about. She said third party commercial developers she consulted with told her if the city was serious about building a village the setbacks should be closely looked at because that was what set the precedent that the other commercial developers will pay the most attention to. Architects told her about the string-line test of putting a string at both ends of the neighborhood to see where things line up. Architects are taught not to break the string-line. The combination of height, mass, and small setbacks created the feeling of a building on steroids. Using the goals for the area what was being attempted was putting a fourth of the units for the quadrant on to one tenth of the acreage. The 15,000 square feet of retail was never envisioned. She said some of the neighbors questioned if the property was eligible for rezoning under the planned I394 zoning. That ordinance contains a provision that restricts zoning out unless the property was designated for low density residential.

Allan Caplan, 12100 Hilloway Road, said when he saw the presentation of the project his immediate reaction was to ask where he could sign up. He and his wife’s current home is too large for them at this juncture in their lives. They were thinking of downsizing but were not thinking of downgrading. They wanted to remain in Minnetonka because of the city services they receive. He said Bader Development’s apartments in other parts of the metro area were all aesthetically pleasing, beautiful, and well designed. None of them appeared to be too high or too close to the street. He said the proposal would meet the needs he and his wife were looking for. It was in walking distance of restaurants, groceries and the mall.

Ron Harris, 11475 Telluride Trail, said he accidentally came upon the project accidentally while flipping through his cable channels and listening to the planning commission hearing. Because of his background in the construction industry he found the project to be fascinating. He thought the planning commission knew what they were talking about and noted they approved the proposal unanimously. He and his senior friends are all talking about downsizing. There was the opportunity to downsize in downtown Minneapolis but this wasn’t where he and his friends wanted to live. A five story building was a pretty small building. He thought it would be an asset to the area in terms of architectural design.

Bonnie Bottoms, 13442 Larkin Circle, said she agreed with Allendorf’s comments at the October meeting about the process being in the wrong order and if approved everything else would have to work around this project. She was excited to be a part of the community input sessions and some divergent thinking was needed. There were so many possible solutions. She thought the building was beautiful but it was in the wrong location. The number of people that would be negatively impacted far
outweighed the number of people who would benefit. She questioned the use of the term “village.” She said the project satisfied very little of either the village concept or the community values stated in the comp plan.

Susan Kaufman, 13931 Hill Ridge Drive, said she learned from previous comments that the developer thought sustainability meant plants that required little water. The trees that had been there since she was a kid would be removed. She said sustainability really meant a lot more. It meant things like LEED development and zero net energy. By the time the vision was complete the building would be obsolete. It felt like the tradeoff being made was value for values. There was an opportunity to do something that was really great.

Bob Hartman, 3460 Oakton Drive, agreed the building was a beautiful building. He agreed with the staff report and recommendation and urged the council to support the recommendation. He said the city could do all the planning and visioning and creative thinking only to sit because there was no project in front of the council. Now the council had a project in front of them.

Alan Winner, 3425 Oakton Drive, said the challenge for the council was identified in many of the comments made about this being the first project and it setting a precedent in the area.

Patty Aossey, 13501 Larkin Drive, said the developers believed they had strong support from the council. The council indicated at the October 27 meeting that it wanted to approve the proposal, but four council members agreed it was too massive for the property. She said over the past five months residents have provided compelling data on why the development was not right for the site. She asked the council to honor its commitment to the residents and reject the revised proposal that does not address the concerns the council expressed. She also asked the council to promote resident involvement much earlier in the process for future developments so that months are not spent debating the appropriateness of a proposed project.

Susie Simon, 3431 Oakton Drive, grew up in Minnetonka and has watched the city grow. She has seen the city come to a standstill for several years. Now she was excited about the Ridgedale area growing again and the proposed project. She said finally when she and her husband want to downsize there will be somewhere they can move to in the city.

Tara White Kulseth, 13430 Larkin Circle, grew up in rural Minnesota. Her husband grew up in a city. They moved to Minnetonka two weeks before her babies were born. Minnetonka had balance between the rural and the city. The building was being built in their backyard and was too big. As a
parent she was sad to the change to the community she and her husband chose to raise their family in. She was not against development but she wanted it to fit into the neighborhood. The area was not becoming safer and traffic already was a concern.

Bruce Gershman, 11605 Cedar Pass, said the city was progressive and had the goal of moving forward. To move forward one of the things that needs to be done is modernize and beautify areas that need it. He said it was obvious the Ridgedale area was tired and needed a change. Approving this project would be a huge step forward. The existing building needs to be replaced. He said the council needed to consider the benefits for all the residents in the city.

Ajay Gupta, 11593 Cedar Pass, said listening to people speak about the project it was clearly an emotional subject. The way he views it was currently there was a bank that looks very drab and dull. A lot of thought had gone into what is being proposed. He thought the changes in the design make the building look even better. The development was needed and would add vitality, jobs and a place for people to live.

Scott Tankenoff, 2621 Crescent Ridge Road, said as long as being a long time resident of the city he was the managing partner for Hillcrest Development, a third generation redevelopment company established in 1948. His company has been involved with projects in Minneapolis, St. Louis Park, and Edina. He said he hasn't been overly active with redevelopment in Minnetonka because he works with blighted properties with buildings that look like a bomb hit them. Minnetonka doesn't have such buildings with the possible exception of the Highland Bank. He questioned if anyone truly liked the current building. Turning down the proposal would send an unintended message to the stakeholders of the other underutilized and poorly used properties in the area and dissuade them from making the changes that are in the vision for the area. He said a lot of the issues raised were subjective. At the end of the day it came down to the city's vision and council's judgment.

Tracy Skar, 13450 Larkin Circle, said she was disappointed that the building had not changed much from the proposal the council did not approve. She felt the building was too large for the site.

Wiersum said one of his questions was if not this development, then what? Everyone recognized the parcel wasn’t very big and wished that there was more land for the building. But everyone also recognized the city had a vision for the area that included residential and mixed use. He asked if the council turned the proposal down, what realistically could be built on the site. He said the perfect often was the enemy of the good and the council was not given the choice of approving the proposal or
approving a three story building. The choice was either yes or no to this building.

Bertelsen said in talking with other developers she was told there were successful three story buildings being built in the Twin Cities on lots about the same size as this one.

Paster said Wiersum’s question had been discussed several times over the past six months. He and the others involved with the development liked the site because it was a great retail site. The current office building functions fine although it was essentially vacant except for the Highland Bank. If this proposal was denied, the thought probably would be, given the interest from retailers for the site, a single story retail building. He said they looked at the parcel before they knew what the vision for the area was, and thought the site was great and believed something more could be built than what currently exists. Looking forward 40-50 years a single story retail building didn’t seem very compelling and it seemed like something could be built that would be great for the future. He said the numbers had to work.

Acomb asked for more information about if there were stacking issues and if there was an opportunity to address those issues in the future because of the CUP. Gordon said the CUP assumes a use, in this case the drive thrus, was acceptable if it met the conditions. If something wasn’t working and the city needed to revisit it, the first thing would be for staff to look at if there was a solution within the existing parameters. If that doesn’t work the next step would be to bring the CUP back to the council. In the worst case scenario, the CUP could be revoked.

Wiersum noted that one of the recommended actions was an appeal of the maximum p.m. hour trips. He asked for more information. Gordon said the PID ordinance limits the number of p.m. peak hour trips per parcel within the I394 corridor. The ordinance gives the city the ability to change the trips if through a traffic study there is confidence the trips won’t burden the system or create traffic problems for the adjacent parcels. He said the traffic study indicated traffic issues would not be created by this development.

Wagner said he had served on the council for eleven years and the Ridgedale area had been discussed for seven plus years during that time. Council discussions and the neighborhood vision process had produced a list of some of the key attributes. The comp plan purposely chose to put density in two areas- Opus and Ridgedale. It was stated that the vibrancy and pizzazz of the Ridgedale area was a critical success factor for the city going forward. There were discussions during the neighborhood visioning sessions about not wanting to disrupt R1 neighborhoods as much as
possible. It was specifically stated during the Ridgedale discussions that the city was OK with a lot higher density for the area. The height of buildings was also discussed. He said the next step, that the neighborhood correctly stated, had not been identified by the city. That was the backdrop. He felt this project met 100 percent of the things the council said it wanted. If the city meant what was in the visioning statement and comp plan then if not this site or other sites around it, he questioned where else it could be done. He agreed with the neighborhood that it fundamentally was a density question. He said the neighborhood did a great job with its engagement and research and there would be a vibrant discussion during the first quarter of 2015. He did not want cookie cutter five story buildings next to the residences. Instead he wanted to see buildings with character. He agreed with the comments about doing a lot of visioning and then never having a developer come forward with a project to make the vision happen. This has been seen in other areas.

Wiersum said the developer had made some changes to the building. It was softened and a little smaller. At the concept plan review he promoted the idea of fewer units and there now were five fewer units for a 4.2 percent reduction. At the October meeting he voted against the project. He said the changes the developer made were improvements but were not sufficient to get him to change his vote. Instead he was changing his vote for different reasons. He thought the neighborhood had done a very good job of raising issues he did not understand as much as he needed to. The whole discussion about FAR was informative. He said during his entire time on the council he had never been as undecided about how he was going to vote when it came time for the October meeting vote. His vote was not 80/20 but 51/49. The building had not changed enough to get him to change his vote but the context had. From a strategic perspective the proposal provides the city what was being asked in the vision plan. It provides mixed use in an area of vital importance and provides an opportunity for redevelopment. He noted he recently bought a suit that needed to be tailored. He brought it to Southdale where he noticed that the west end of the mall was empty. Comparing that with what was going on with Ridgedale he said Minnetonka was fortunate. Vitality was critical. The proposed building was attractive but not perfect. He was concerned about what might get built or what might not get built if the proposal was not approved. He said the Ridgedale area while not being blighted was not beautiful and improvements were needed for it to be as vital as the city needs it to be. He thought the proposed building provided the opportunity to kick start the improvements. He agreed with Wagner that the process that would start in January was critical.

Acomb agreed there was a need to revitalize the Ridgedale area. Even with the arrival of Nordstroms it would take more than retail to make the whole area stay vibrant and the mixed use and housing was important.
She said the proposal would be a positive change for the area. During her time on the council she had worked on getting rid of the sea of parking lots in the area and to make it more walkable and bicycle friendly. The project was a start to that. She disagreed with the concerns about the setback because having structured and underground parking would offer a safer way to get into buildings and move around within the community as a whole. The improvements in landscaping were very good and the area was never intended to be a park. She said the city’s parks could be protected by developing areas that were already developed. The proposal offered the diversity of housing being looked for within the city as a whole. This was the area it should be done. By having a little bigger building on this property might mean having smaller buildings next to the neighborhoods.

Allendorf said the best thing that came out of the process was the alternative Cartway Lane improvements that would be presented to the council next spring. The actual improvements would then be before the council earlier than they ever would have otherwise if the neighborhood hadn’t come forward to talk about the traffic issues. He said the traffic problems were unrelated to this project. The problems had to do with the current configuration of the roads. He said for those who had mentioned downsizing that could happen if the building was three or four stories or six stories. A smaller residential building could be made to address that issue. Would that make sense for the developer? The developer owns the land and what made sense for them was the land price compared to the unit price. He said the changes to the proposal since the October meeting were minor. The number of units were never a concern to him. His concern was the density on the property. The density issue had not been addressed but the intensity had been addressed by what was done on the west side. The second floor and the top floors addressed the level of intensity for the neighborhood. The green space on the west side also addressed the intensity. He said his biggest mistake as a councilmember had been to vote for the Glenn. He hoped whatever happened with this project he wouldn’t later think to himself, as he had with the Glenn, that he was wrong because the project looked out of scale.

Bergstedt said this was not an easy project. He was proud of the residents, proud of the developer, but equally proud of his colleagues on the council. No matter where people stood the issues had been considered very seriously. A very strong argument could be made on both sides. It was an example of how well-meaning people could totally disagree on what’s best for the city. He said this was healthy. The proposal had been softened even though the density issues had not been addressed. If he only was myopically looking at this property it would be easy to deny the proposal. He was not part of the visioning process for the area but this project was pretty much what the council said they wanted to
see come into the area. Was he happy that this was the first project to come before the council? The answer was no. He would have rather not had to wrestle with the size and scope of the building. On the other hand the project forced everyone to take a look at what the real issues were. The council did not get to pick what came before it. He agreed with Paster that if the project was denied it was very possible a one story retail building would be built. This would not give the Ridgedale area some more vibrancy and energy. He voted against approval at the October meeting because he was looking only at the one property, didn’t have answers to a number of questions, and had not reviewed the Ridgedale vision. Looking at the road improvements that would happen much sooner, getting the engagement of the neighborhood with the smaller visioning process that would help determine the next steps, were beneficial.

Ellingson said the discussion about the project was one of the best since he was elected to the council. He was very impressed by the presentations from both sides. He had voted against many big buildings. He said in this case the broader perspective had to be looked at. Ridgedale was not a village but was a regional shopping mall. It was a suburban version of a downtown. Within the context of the Ridgedale area the building was not that big. He noted there were no subsidy or variances being requested. The setback was much larger than what happened in Glen Lake. It was a pretty straightforward proposal within the guidelines of the ordinances and the vision.

Schneider said once the vote was taken that would be when the work starts. There was a quality developer that could help provide guidance about what it took to make these types of challenging projects work right. The neighborhood was engaged and educated. Being able to have the facilitated process used for the village areas was important. The consensus building and evolutionary approach of what was the right thing to do was a great thing to do. He agreed this was not a village area but a regional center. He looked forward to having staff, the neighbors, and hopefully other quality developers work jointly to make Ridgedale a much more vibrant place.

Wagner moved, Wiersum seconded a motion to adopt the following:
1) Ordinance No. 2014-28 rezoning the properties and adopting a master development plan for the properties at 1700 and 1730 Plymouth Road
2) Resolution No. 2014-142 approving final site and building plans, with parking variance, and an appeal of maximum p.m. peak hour trips for a mixed use development at 1700 and 1730 Plymouth Road
3) Resolution No. 2014-143 approving conditional use permits for a coffee shop, restaurant, outdoor dining patios, and drive-up windows at 1700 and 1730 Plymouth Road

4) Resolution No. 2014-144 vacating drainage and utility easements at 1700 and 1730 Plymouth Road

All voted “yes.” Motion carried.

Schneider called a recess at 9:59 p.m.

He called the meeting back to order at 10:12 p.m.

C. Pairings Food and Wine Market, LLC On-Sale Wine and On-Sale 3.2% Malt Beverage liquor licenses

Wischnack and Heine gave the staff report.

Bernie Tompkins, owner of Pairings Food and Wine, said he understood how certain conclusions could be drawn from the city’s documentation but the information was a year old and was from before he owned the business. One issue that was raised was his residence in South Carolina and not being able to manage the business from out of state. He said he spent the majority but not all of his time in South Carolina. He grew up in South Dakota where he learned Midwestern values including work ethic, responsibility and independence. His mother passed away when he was nine years old. His father raised the six kids on his own. He said this gave him an extra dose of independence. He provided information about his education, military and work background. He has lived in South Carolina for 39 years. He has been a small business owner over the years. His brother lives in Adams, Minnesota. His oldest son came to the Twin Cities in the early 1990’s to go to the University of Minnesota. He has spent a lot of time supporting his son with his music activities. In 2009 his son purchased a house that has needed major repairs. He helped his son with the repairs and remodeling the house. Through his brother and son he said he had extensive roots in Minnesota.

Tompkins said he met Holly Damiani, the former owner of Pairings, through their sons who both studied music. They started dating in 2005-2006. The two visited a wine store in South Carolina where Damiani came up with the idea for Pairings. He said he had a small involvement with the business. His most memorable contribution was insisting the locks on the bathroom doors indicated whether or not they were occupied. This has been a source of humor between his son and himself. He has been a supporter of Pairings and its success since day one. The restaurant was on its way when Damiani received the indictment for tax fraud. She ultimately plead guilty. This led to issue of her not being eligible for a liquor
license as the owner of the business. She sold the business to the manager of Pairings. During this time the wine business completely changed leading to the wine store to lose money. The wine store was closed. The new owner accepted another job. He said as an officer on the board of the LLC he was aware of the need to find a new owner and he was the best option.

Tompkins said questions were raised in November-December 2013 about if he truly was the real owner of the business. The same questions still exist. This was based on year old information. He said he invested around $120,000 in the business in 2014 in order to keep it afloat. In the spring the business started coming back but not to the levels it had in the past. He discovered that there wasn’t enough time for one person who had the wherewithal to manage the day to day activities and also help things to implement strategies to evolve. He provided the business’s organization chart. He explained Betty Goff’s background. He brought Goff in to be the senior business consultant and acting general manager. He said Goff was a consultant and not an employee but had full management responsibility. The two communicate on a regular basis. Inconsistency of the food quality and customer service issues were addressed. He said beer and wine accounted for around 10.7 percent of the revenue but a lot of people that come in for the beer and wine end up buying food as well. He estimated without a liquor license there would be around a 25 percent revenue loss. The business could not sustain a loss of that size and would have to close. He did not understand why he didn’t qualify for a liquor license.

Wischnack noted there was no manager approval for Goff. Tompkins said Goff was a temporary consultant. Heine said the ordinance requires that on the license application the names of the manager or person in charge of the premises must be identified. The city records indicated this was Ed Douglass. She said there also had to be a list of responsible persons including the names of owners, managers, and assistant managers who could be contacted if there was an emergency. Information for each manager and assistant manager who have responsibility for service of liquor must also be provided. She said the only name provided was Douglass.

Schneider said the challenge before the council was determining there was not a relationship between the previous owner and the liquor operation during the past year and if this warranted not renewing the license. Heine said the question staff had was whether this was truly an independent business establishment with an arm’s length sale. The information the city had suggested the manager of the restaurant was under the impression the Damiani was the owner. Heine said for the staff responsible for liquor enforcement there was a breach of trust because the instructions to Damiani were clear that she was to have no involvement in
the business and the information that was discovered was clearly inconsistent with that. When the application came in during the fall it stated there were no changes. There were discussions about conducting further interviews but based on the fact the manager’s statements were markedly different a month after he knew the city was asking questions about the ownership, staff did not feel confident further interviews would make a difference.

Wiersum said having a liquor license was a privilege. The city granted the privilege to people who had demonstrated a squeaky clean record. Regardless of what the situation was now, this business had been a troubled organization. Damiani was convicted of a felony and misrepresented her ownership. There was some question about whether Tompkins had a real interest in ownership or if he was taking orders. Wiersum said this was not the issue because the operation was still not operating at a level where the city would grant a liquor license going forward based on how it was being run, and the information provided to the city. The city took everything about liquor very seriously. He said a rear view mirror look with all the questions including Tompkins ongoing relationship with Damiani were troubling. Had Damiani been completely honest about her ownership and that she turned the business over to Tompkins, he’d be more inclined to approve the renewal. The question was if the standards for granting a liquor license were being met. If the same set of facts were being presented for a new liquor license, it was unlikely the license would be granted. Wiersum said there was too much evidence and history to grant the privilege of a liquor license to Tompkins.

Allendorf asked if the chronology that was provided to the council was also provided to the applicant or his attorney. Heine said it was provided to the attorney. Allendorf said the information Tompkins provided did not address any of the issues that were identified. He said he didn’t have any basis to determine that the chronology was not true.

Bergstedt said Tompkins comments never got around to addressing the issues that were raised. Looking at the chronology of events, any one of them taken individually would give him pause. Looking at the serial nature, it appeared like a shell game was being played. There was dishonesty and a lack of transparency. A liquor license was a privilege and he had not heard anything to raise the veil of suspicion.

Rich Dahl, Madigan Dahl & Harlan, 222 South Ninth Street, Minneapolis, said the previous Thursday at 4 p.m. he was finally given the 353 pages of information supporting the history of bad conduct. He asked for the information last March. In March the recommendation was to revoke the license. The council decided to refer the matter to an administrative law judge. This would have allowed Pairings to present its case and challenge
the city’s findings. This was a disappointing decision but he recognized that a council meeting was not the right venue. The right venue was in a court with a neutral and impartial decision maker who could hear both sides of the story. Getting the information late on Thursday did not leave him enough time to prepare his client’s side of the story. He said there had been comments about Damiani being a bad person, that liquor licenses were a privilege, and that there were attempts to hide what was going on with the operation. If given a meaningful opportunity to respond to the information he could provide the council with the other side of the story.

Dahl said the hearing before an administrative law judge never happened. In May the day before the scheduled hearing, the city attorney canceled indicating it would be rescheduled for July. He was offered the opportunity to submit a settlement proposal, which he did. The settlement proposal was sent to the city on August 1. This was never presented to the council. On August 12 he again asked for the information supporting the history of bad conduct and was told it was nonpublic. Also on that date the city attorney indicated staff needed more time to consider the settlement proposal. On October 31 he contacted the city to inquire about the status of things. He was advised it was too late to have a hearing before an administrative law judge and instead the matter would come before the council. On December 8 he was notified the staff was going to recommend denial of the license but he was entitled to present information to the council. He said now that he had the documents he believed he could convince an administrative law judge that the business had been operated properly.

Dahl said he recognized that a liquor license was a privilege and not a right but it also had to be issued according to state law. There were two principles to the state law. One prohibits a license being issued to somebody convicted of a felony within the previous five years. He said Damiani was not the applicant. Pairings was the applicant with Tompkins being its owner. He had not been convicted of a felony. Another part of the statute specifies licenses be issued to a person of good moral character and repute. Dahl said Tompkins had demonstrated to the council he was a person of good moral character and repute. In response to the issue of whether or not Douglass was the manager in charge of alcohol service, Dahl noted on the organization chart provided by Tompkins, Douglass’ title was executive chef and lead operations manager. Goff was a consultant. Dahl said the city’s ordinance prohibits issuing a license to somebody who was not a real party in interest or the beneficial owner. He said this was very vague and subject to interpretation. The issue in this case was if Tompkins was the real party in interest. Dahl said this could be established before a neutral, fair-minded fact finder who heard all the evidence. He said procedurally and substantively what was going on was tantamount to a de facto revocation. Pairings’ application was open,
honest, and transparent. Any question that would have been asked would have been answered. He said staff’s determination was made without interviewing Damiani and Tompkins. It was based on innuendo and speculation.

Heine said Dahl had created the impression the entire packet of information had been withheld from him. She said the only piece that had been withheld from him was the investigative report from March. Despite that she said Dahl had all the information in the report. The information about how staff had contacted the manager and found out about the personal relationship between Tompkins and Damiani, she had disclosed to Dahl verbally on January 24. There were meetings including one with Damiani, Tompkins and Dahl where all the information was discussed. She said it was made very clear during the meeting Tompkins needed to show the city how he was going to prove and satisfy the council that Damiani would not be involved with the business. This was not done and had not been done tonight. The city had been led to believe the change in ownership was purely an arm’s length business transaction. This was not the case. Damiani had invited Tompkins to purchase the business. Heine said the essential problem was there was a breach of trust by the fact Damiani had been involved and hadn’t notified the city that she was in a pinch and the plan moving forward. This had not been disclosed. She said if the council was satisfied by some other representation about how Damiani would not be involved in the business, it could approve the license. To date staff had not been provided anything to show that Damiani was not involved.

Wagner said it gave him some pause that the administrative hearing the council asked for had not taken place. Heine said the ordinance has the same standard for transferring a liquor license and renewing a license. She discovered Tompkins had signed the application even though it was made clear to him the council had to approve the transfer. Because a license had been issued with Tompkins signature she recommended that the matter proceed as a revocation. This was why it was referred to the Office of Administrative Hearings. She said it was not a hearing that was scheduled but rather a pre-hearing conference where a discovery process would have occurred. She discovered she had failed to file a required document. She spoke with Dahl and asked for a settlement proposal. She said she should have been more aggressive in pursuing the matter and didn’t receive the settlement proposal until August.

Schneider said the revocation process was different than not approving a license. This did not change the facts just the process that was used. The matter before the council was whether the license should be renewed or not based on the facts that were presented. He said Tompkins and Dahl had not presented any facts about how Damiani would not be involved
with the business. The question was if the council felt it should issue a license to Tompkins given the unanswered questions. In his mind there were enough questions that raise serious doubts about the relationship and its relation to the ownership that it would constitute not renewing the license.

Wiersum said if a liquor license was a right then the nature of the council’s decision would be different because the burden of proof would be on the city. Because a license is a privilege, and given the time of year, the council had to decide if it would renew the license recognizing if it was not renewed, Pairings probably would go out of business. He said the evidence did not support granting a privilege based on what was known. There might be more information and process procedures that could have been done better, but given the time table the onus was on the applicant to follow through.

Wagner said it seemed what was missing was accountability and knowing what was required to run a restaurant with a liquor license. At the same time he was disappointed the city did not follow through on the actions it said it would. He said he saw both sides but because a liquor license was 100 percent a privilege and the lack of accountability by Pairings for following the process was very concerning. He suggested giving Pairings an extension until the next council meeting on January 5. This would give Tompkins the opportunity to provide information about how Damiani is not and will not be part of the business at all.

Allendorf said it was his understanding there was a pre-hearing in the spring. Common sense would dictate the owner could have provided answers to resolve the questions. It strained credibility that the applicant would wait until the previous Thursday before saying anything to rebut what the staff had been saying. He said there was not one piece of evidence that answered questions like why the manager thought Damiani was the owner or the reason why Tompkins brought Damiani to the business numerous times. He supported not renewing the license.

Schneider noted there was a pattern over a long period of time. This could have been clarified and resolved a long time ago. This stretched the credibility of the process. He said if the council valued the importance about how the city dealt with these types of issues a clear message had to be sent that if one was disqualified from being involved with a liquor license then that person had to stay completely away. This usually meant selling the business. There was no clear separation in this case.

Allendorf moved, Wiersum seconded a motion to non-renewal of the liquor license for Pairings Food and Wine Market LLC. Bergstedt, Allendorf, Acomb, Wiersum, and Schneider voted “yes.” Wagner and Ellingson voted “no.” Motion carried.
15. **Appointments and Reappointments:**

   A. **Appointment to the senior citizen advisory board**

      Schneider moved, Wagner seconded a motion to approve the appointment of Duane Hassig, to the senior citizen advisory board, to serve the remainder of a two-year term, effective December 15, 2014 and expiring on May 31, 2015. All voted “yes.” Motion carried.

16. **Adjournment**

    Wiersum moved, Wagner seconded a motion to adjourn the meeting at 11:31 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk
City Council Agenda Item #6A
Meeting of January 26, 2015

Brief Description: Citizen Lifesaving Award for Daniel Shaw

Recommended Action: Recognize Citizen

Background

On November 28, 2014 at approximately 12:17 p.m. Daniel Shaw was enjoying lunch with his wife Emma and their two young sons at the Perkins Restaurant in Minnetonka. It wasn't long before Daniel noticed several wait staff running over to a nearby table. He observed an adult female that was slumped over the table who appeared to be incoherent and was starting to turn blue.

Daniel immediately went over to the table to render aid. Daniel recalled later that the first aid training he had received in the military and at his current job just kicked in and he knew what to do. Daniel immediately got behind the unconscious woman and moved her to the floor. He determined that the victim was choking and immediately performed the Heimlich maneuver which caused the food to become dislodged from the victim's airway. The victim began to breathe on her own and Daniel placed cold towels on the victim's wrists and neck until she became oriented.

When EMS, Fire and Police Department personnel arrived on scene the victim had recovered to the point where she ultimately refused medical transport to the hospital.

Daniel's quick actions in recognizing the medical emergency and performing the Heimlich maneuver most likely saved the victim's life.

The city of Minnetonka would like to formally present a special recognition certificate to Daniel Shaw for his life saving actions on the afternoon of November 28, 2014. We are sincerely appreciative of his lifesaving actions.

Recommendation

Staff recommends that the City Council recognize Daniel.

Submitted through:
  Geralyn Barone, City Manager

Originated by:
  Jeffrey J. Sebenaler, Chief of Police
City Council Agenda Item #6B  
Meeting of January 26, 2015

**Brief Description:** Citizens Lifesaving Award for Adriene Luxford, Meagan Matrejek and Nathan Krogstad

**Recommended Action:** Recognize Citizens

**Background**

On December 11, 2014 at approximately 3:00 p.m. Adriene Luxford, Meagan Matrejek and Nathan Krogstad were all present at the Ridgedale YMCA when a 68 year old male patron went unconscious in the fitness area while utilizing a leg press machine. Upon hearing a call for help, Adriene and Nathan immediately ran over to render aid. They removed the victim from the leg press machine and it was determined that the male was not breathing, had no pulse and most likely had suffered a sudden cardiac arrest. Meagan, a staff member at the YMCA, also responded to the area with an AED and medical bag. Meagan opened the AED pads and handed them to Adriene who connected them to the victim. A shock was advised and given. Cardio Pulmonary Resuscitation (CPR) was advised and commenced by Adriene. While she was providing CPR, Meagan and Nathan set up supplemental oxygen with a bag valve mask (BVM) and provided ventilations. Two additional shocks were advised and provided to the victim. After the third shock was recommended and given, Nathan took over on chest compressions while Adriene and Meagan provided ventilations until Emergency Medical Service (EMS) personnel arrived on scene.

Once EMS personnel arrived, Adriene, Meagan and Nathan continued to provide assistance. After additional shocks were administered to the victim by Hennepin County Medical Center paramedics a heartbeat, pulse and respirations were restored. The victim was transported to a local hospital for additional care, has made a remarkable recovery and is back at his home in Minnetonka.

According to the EMS personnel on scene, they attribute the successful resuscitation of the victim to the quick actions of Adriene, Meagan and Nathan in starting CPR, applying the AED and providing oxygen within seconds of finding the victim unresponsive.

Adriene’s, Meagan’s and Nathan’s quick actions in recognizing the medical emergency and taking prompt and decisive measures to intervene most likely saved the victim’s life.

The city of Minnetonka would like to formally present a special recognition certificate to Adriene Luxford, Meagan Matrejek and Nathan Krogstad for their life saving actions on the afternoon of December 11, 2014. We are sincerely appreciative of their lifesaving actions.
Recommendation

Staff recommends that the City Council recognize Adriene, Meagan and Nathan.

Submitted through:
   Geralyn Barone, City Manager

Originated by:
   Jeffrey J. Sebenaler, Chief of Police
City Council Agenda Item #6C  
Meeting of January 26, 2015

**Brief Description**  
Recognition of Paul Lehman

**Recommendation**  
Recognize his service on the park board and the planning commission

**Background**

Paul Lehman has served eight years on the park board (1999-2007) and eight years on the planning commission (2007-2015).

During his tenure on the park board, Paul served as the board’s chair during the height of the park renewal process when all of Minnetonka’s 50 parks were upgraded. As a result of the leadership provided throughout his tenure, Paul was recognized in January of 2007 as the Minnetonka Recreation and Park Association’s Board & Commission Member of the year.

During his tenure on the planning commission, Paul served as the chair for four years. Paul was involved in over 200 meetings and the review of 1100 development applications. Of note during Paul’s tenure were Opus Headquarters, Syngenta office building, United Health Group, and ordinances including tree protection, shoreland and the expansion permit which had statewide implications. As chair, Paul was an ever-present stickler for thorough reviews, proper meeting procedures and decorum. Never was there a question about a clear and accurate record while Paul served his community on the commission.

Paul, on behalf of the city council, fellow park board and planning commission members and the Minnetonka residents you represented over the years, thank you for your outstanding service to the city of Minnetonka.

**Recommendation**

Recognize Paul Lehman.

Submitted through:  
  Geralyn Barone, City Manager

Originated by:  
  Dave Johnson, Recreation Director  
  Loren Gordon, AICP, City Planner
Brief Description: Bids for diseased and miscellaneous tree maintenance and removal

Recommended Action: Award contract to YTS Companies LLC

Background

Since the 1970’s the City of Minnetonka has annually taken bids for the removal of trees primarily for the city’s diseased tree program. This contract also provides for the removal of public trees that are damaged and beyond the capabilities of public works staff. In 2014 the city identified 253 diseased elms and 33 diseased oaks on city owned properties and in right-of-ways that were removed under the contract. There were also 244 non-diseased tree removals which include street and park trees that pose safety hazards, trees that are structurally unsound and ash trees that are being removed prior to Emerald Ash Borer arrival that display poor health or structure.

2015 Contract

The 2015 bid specifications provided for 22 size/bid classifications measured at 4 ½ feet above the ground. The first classification is 0 to 6.0 inches and each succeeding classification is increased by 2.0 inches. The last classification is any tree that is 46.0 inches in diameter or larger. Most trees removed are 20.0 inches in diameter or smaller. Based on removals averaged over the last 5 years, it is anticipated that 450 park and outlot trees and 258 boulevard trees will be removed in 2015, with an additional 100 ash trees to be removed as part of the city’s emerald ash borer preparedness program.

These bid prices are for public trees only. Residents are required to pay for their own removal costs for trees on private property. For those properties that require a forced removal, staff solicits specific removal pricing for that property.

Funding for city tree removal is through the Natural Resources operating budget and Capital Improvement Program (CIP), Emerald Ash Borer Program, which are both administered by the Natural Resources Division of the Public Works Department. Over the past five years the actual costs to the operating budget have been more than the budgeted amount due to an increase of hazard and storm damaged trees. Institutional work crews have also been removing more trees with no added expense to the city, thereby reducing the annual contracted cost.
On December 23, 2014, bids were received for this year’s tree removal and maintenance needs. The bids are tabulated as follows:

<table>
<thead>
<tr>
<th>Company</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>YTS Companies LLC</td>
<td>$114,979.00</td>
</tr>
<tr>
<td>Nature’s Tree Inc. dba St Croix SavA Tree</td>
<td>$148,988.42</td>
</tr>
<tr>
<td>S &amp; S Tree and Horticultural Specialists, Inc.</td>
<td>$156,385.00</td>
</tr>
</tbody>
</table>

Budgeted amounts:
- Natural Resources – General Fund: $87,800.00
- 2015 CIP – EAB Forestry Fund: $154,000.00*

*Note – Remainder of budget for other costs associated with the EAB program.

**Recommendation**

Based on the bid results and contractor references, staff recommends awarding the tree removal contract to YTS Companies LLC in the amount of $114,979.00.

Submitted through:
- Geralyn Barone, City Manager
- Merrill King, Finance Director

Originated by:
- Brian Wagstrom, Public Works Director
- Jo Colleran, Natural Resources Manager
- Emily Ball, City Forester
City Council Agenda Item #10A
Meeting of January 26, 2015

Brief Description: 2015 general liability insurance and workers’ compensation renewals

Recommended Action: Authorize renewal of policies as outlined

Background
The city council is being asked to review the proposed insurance package for the city’s 2015 policy term, and formally authorize the coverage options for the package policies and workers’ compensation policy as outlined by staff.

LMCIT Program
The city has been with the League of Minnesota Cities Insurance Trust (LMCIT) since the early 1980s. The program continues to offer the broadest coverage for municipal operations at very reasonable rates. LMCIT also offers a program for return of excess premiums based on successful experience ratings, and the city continues to receive dividends for the general liability program. Staff recommends that the city remain in the LMCIT program.

Package Policies
The coverage provided by the package policies are:

**General Liability**, which provides coverage when the city is liable for incidents such as sewer backups, injuries incurred on city property, employee actions, errors and omissions for elected officials, Open Meeting Law, and Inland Marine (coverage for vehicles not licensed for road use, such as the Zamboni).

**Property**, which provides coverage for physical losses to city-owned facilities. Coverage is purchased for replacement of structures and contents due to damage by fire or acts of nature.

**Automobile**, which provides liability and physical damage coverage for all city vehicles.

Premiums and Recommended Coverage

**Premiums**
The city’s general liability premium increases from $368,274 to $388,797. The primary factor for the increase was an increase in the city’s liability rating for the period 2009-2012. This rating is based on the actual cost of the city’s liability claims during that three year period.

Staff recommends the city stay with the $25,000 per claim and $150,000 annual deductibles.
**Open Meeting Law**
Staff recommends that the city continue with the Open Meeting Law coverage at 100% coverage.

**Waiver of Statutory Limits**
LMCIT writes its coverage to mirror the liability caps for governmental agencies. Staff continues to recommend that the city not waive those statutory limits.

These premiums are paid from the Insurance Fund, and a sufficient balance is maintained in that fund for these expenses.

**Workers’ Compensation**

The premium quotation for renewal of the city’s worker’s compensation for the upcoming insurance year through LMCIT, minus credits for a $10,000 deductible is $479,293. The workers compensation premium in 2014 was $545,822. The decrease was due to the city’s mod factor falling from 1.18 to 0.96. The mod factor relates to the frequency and severity of an employer’s claims over a three-year period, and it is used to calculate the premium. A mod factor of 1.00 is considered average for an employer’s particular industry.

The workers’ compensation premium fits within the budget allocation for the year.

Premiums for both general liability and worker’s compensation are expected to rise in future years. These projections are based on claims that will be reviewed during the next look back period. Staff will continue to implement recommendations identified in its workers’ compensation study and monitor the general liability claims as the potential for litigation is determined.

**Recommendation**

Staff recommends that the city council renew the city’s insurance policies through LMCIT for package policies with the following options:

- $25,000/$150,000 deductible for the package policies
- 100% Open Meeting law coverage
- No waiver of statutory limits

Staff recommends that the council also authorize renewal of the LMCIT workers’ compensation policy with a $10,000 deductible.

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

Originated by:
David Maeda, City Clerk
City Council Agenda Item #12A  
Meeting of January 26, 2015

**Brief Description**  
Ordinances amending various sections of city code pertaining to natural resources:

1) Tree Ordinance  
2) Wetland Ordinance  
3) Grading Ordinance  
4) Illicit Discharge Ordinance

**Recommendation**  
Introduce the ordinances and refer them to the planning commission

**Proposed Ordinances**

Staff is proposing ordinances amending four sections of city code that pertain to natural resources. Two of the ordinance amendments are considered “housekeeping” amendments and two are required under the city’s municipal separate storm sewer system (MS4) permit.

(1) **HOUSEKEEPING**

- **Tree Ordinance.** No substantive changes to ordinance requirements are proposed. Rather, the primary changes include: (1) removal of the ash trees from the definition of high-priority trees; (2) clarification of language that has proven difficult for staff, developers, and residents to interpret.

- **Wetland Ordinance.** No substantive changes to ordinance requirements are proposed. Rather, language is clarified and added to reflect the city’s existing practices

(2) **MS4 PERMIT REQUIREMENTS**

- **Grading Ordinance.** The proposed amendment incorporates requirements of the Minnesota Pollution Control Agency (MPCA).

- **Illicit Discharge Ordinance.** The proposed amendment incorporates regulations regarding illicit discharge.
Staff Recommendation

The purpose of introducing an ordinance is to give the city council the opportunity to review the ordinance before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission review of the proposed ordinances is tentatively set for February 5, 2015. Prior to that hearing, staff intends to reconfirm MPCA requirements with the agency.

Introduce the ordinances and refer them to the planning commission. (See pages A1–A37.)

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

Originated by:
  Susan Thomas, Principal Planner
Ordinance No. 2015-

An Ordinance amending sections 300.28, subdivision 19 of the
Minnetonka City Code regulating tree protection

The City of Minnetonka Ordains:

Section 1. Section 300.28, subdivision 19 of the Minnetonka City Code is amended as follows:

19. Tree Protection.
   a) Purpose. The goal of this subdivision is to preserve as much as practical Minnetonka's highly valued tree natural resources, ecosystems and viewsheds, while allowing reasonable development to take place and not interfering with how existing homeowners use their property. This subdivision provides incentives for property owners who wish to subdivide areas that include woodlands and high priority trees to use planned unit development (PUD), which allows the flexibility to both protect woodlands and property rights. Standards governing the preservation, protection, and planting of trees are necessary to:
      1) prevent tree loss by eliminating or reducing compaction, filling or excavation near tree roots;
      2) prevent or reduce soil erosion and sedimentation and stormwater runoff;
      3) improve air quality and reduce noise pollution;
      4) enhance energy conservation through natural insulation and shading;
      5) control the urban heat island effect;
      6) increase and maintain property values;
      7) maintain buffers between similar land uses and establishing and maintaining buffers between conflicting land uses; and
      8) preserve as much as practical the diversity and extent of the trees and woodlands that are an integral part of this city's identity, while allowing reasonable development and allowing existing homeowners freedom to use their land.

   b) Definitions. For the purposes of this subdivision, certain terms and words are defined as follows:
      1) "Basic Tree Removal Area" - consists of the following:
a. within the areas improved for reasonably-sized driveways, parking areas and structures without frost footings and within ten feet around those improvements;

b. within the footprints of, and 20 feet around, buildings with frost footings;

c. within the footprints of, and 10 feet around, structures with post footings such as decks or porches, if the structure is located at or outside of the area allowed by item 1)b; and

d. in areas where trees are being removed for ecological restoration in accordance with a city-approved restoration plan.

2) "Canopy" - The uppermost layer of a forest, formed by tree crowns.

3) "Critical root zone" - the minimum area around a tree that must remain undisturbed. The critical root radius is calculated by measuring the tree's diameter at breast height. For each inch of tree diameter, 1.5 feet of root zone radius must be protected. For example, if a tree's dbh is 10 inches, then its critical root zone radius is 15 feet (10 x 1.5 = 15).

4) "Diameter breast height (dbh)" - the diameter of a tree measured at 4.5 feet above the base of the tree. Multi-stem trees are considered one individual tree and each stem must be measured 4.5 feet above the base of the stem and added together to determine the diameter of the multi-stem tree.

5) "Protected tree" - a tree that is in a woodland preservation area, or is a high priority tree or significant tree.

6) "Redevelopment" -- reconstruction of the principal structure if it includes the removal of the principal structure by more than 50% of the square footage of the building footprint or an increase of the square footage of the building footprint by more than 50%.

7) "Sapling" - A young tree.

8) "Understory" - The trees, shrubs, and herbaceous plants that grow in the shade of the forest canopy, including trees that could potentially grow to reach the canopy.

9) "Woodland preservation area" - a remnant woodland ecosystem that is at least two acres in size regardless of property boundaries, is generally mapped in the city's Minnesota Land Cover Classification System, and although it may be degraded it generally meets the criteria for one of the following types of ecosystems as reasonably determined by the city:

a. "floodplain forest" - an area populated by deciduous tree species tolerant of seasonal flooding and deposition of silty or sandy soils. The canopy cover is extremely variable, and mature trees are typically greater than 70 feet tall. The
dominant tree species in the canopy are silver maple and eastern cottonwood. In floodplain areas with severe flooding, the understory will be sparsely vegetated. Trees in the understory include saplings from the canopy species, green ash, black willow, slippery elm, American elm, boxelder, and hackberry;

b. "lowland hardwood forest" - an area with a flat terrain populated by deciduous tree species tolerant of periodic soil saturation from seasonally high water tables. The soils are moderately well to poorly drained. The dominant tree species in the canopy are American elm, black ash, basswood, bur oak, red oak, white oak, quaking aspen, paper birch, and red maple. Trees in the understory include saplings from the canopy species, slippery elm, green ash, butternut, sugar maple, quaking aspen, balsam poplar, and American hornbeam. The large shrub or small tree layer of the understory is typically dense and can include ironwood, pagoda dogwood, prickly ash, American hazelnut, gray dogwood, and speckled alder;

c. "maple basswood forest" - an area with well drained soils and populated by a variety of shade-tolerant, fire sensitive, deciduous tree species. The mature trees are straight with narrow crowns greater than 60 feet tall. The dominant tree species in the canopy are basswood and sugar maple but mesic species such as slippery elm, red oak, bur oak, green ash, white ash and black ash may be found as well. Trees in the understory include saplings from the canopy species, bitternut, black cherry, and ironwood. The large shrub or small tree layer of the understory is typically dense and can include ironwood, pagoda dogwood, prickly ash, American hazelnut, black cherry, and ironwood; the understory is composed of primarily tree seedlings and herbaceous plants;

d. "mesic oak forest" - an area populated by tall, single stemmed deciduous trees greater than 60 feet tall that lack spreading lower branches. Mesic oak forests may have a moderately moist habitat, but can be dry depending on the slope and aspect of the forest. The dominant tree species in the canopy include red oak, white oak, and bur oak. Trees in the understory include saplings from the canopy, and fire-sensitive species such as basswood, green ash, bitternut hickory, big-toothed aspen, butternut, northern pin oak, black cherry, paper birch, American elm, boxelder and red maple. The large shrub or small tree layer in the understory tends to be sparse with greater herbaceous plant diversity but can include ironwood, chokecherry, prickly ash, American hazelnut, prickly gooseberry, red-berried elder, nannyberry, juneberry/serviceberry, and pagoda dogwood;

e. "oak woodland brushland" - an area with a canopy more open than a forest but less open than a savanna. It is characterized by open-grown trees and a distinct shrub layer in well-drained sandy, gravelly soils. The dominant tree species include red oak, northern pin oak, white oak, bur oak, and aspen. When it exists, the trees in the understory include saplings from the canopy, black cherry and red cedar. The large shrub or small tree layer can include American hazelnut, ironwood, juneberry and chokecherry;

f. "tamarack swamp" - an area that is a forested wetland community dominated by patches of tamarack, a deciduous coniferous tree. The dominant tree species in the canopy include tamarack, black spruce, paper birch, and
red maple. The trees in the understory include saplings from the canopy and the large shrub or small tree layer can include speckled alder and red osier dogwood; or

g. "willow swamp" - an area that is a forested wetland community or an area with seasonally flooded soils and scattered-to-dense shrub cover. The dominant tree species in the canopy include black willow and speckled alder. The trees in the understory include saplings from the canopy and the large shrub or small tree layer can include several species of willow and dogwood.

10) "High priority tree" - a tree that is not in a woodland preservation area but is still important to the site and the neighborhood character, that is structurally sound and healthy, and that meets at least one of the following standards:

a. a deciduous tree that is at least 15 inches dbh, except ash, box elders, elm species, poplar species, willow, silver maple, black locust, amur maple, fruit tree species, mulberry, and Norway maple.

b. a coniferous tree that is at least 20 feet in height, except a Colorado spruce that is not in a buffer as described in subparagraph (b)(10)(c); or

c. a tree that is in a group of deciduous trees that are at least eight inches dbh or coniferous trees that are at least 15 feet in height, that provide a buffer or screening along an adjacent public street, and that are within 50 feet of an arterial road and 35 feet of a minor collector, local, or private street and a trail. This distance will be measured from the edge of the pavement or curb of the road, street or trail.

11) "Significant tree" - a tree that is structurally sound and healthy and that is either a deciduous tree at least eight inches dbh or a coniferous tree at least 15 feet in height.

c) City authority. To preserve protected trees, the city may:

1) require and enforce a tree preservation plan as described in paragraph (d) below;

2) specify trees or groups of trees for preservation;

3) specify grading limits;

4) require the clustering of buildings or the relocation of roads, drives, buildings, utilities or storm water facilities when this would preserve protected trees;

5) grant variances;

6) specify time periods in which tree cutting, trimming or injury may not occur in order to prevent the spread of disease; and

7) require conservation easements or other legal means to ensure that woodland preservation areas or groups of high priority trees or significant trees are not intentionally destroyed after the development has been approved.

The stricken language is deleted; the underlined language is inserted.
d) Tree Preservation Plan. A tree preservation plan is required as part of an application for a preliminary plat, lot division, conditional use permit, variance, expansion permit, grading permit, site and building plan review, wetland/floodplain alteration permit, or building permit. A tree preservation plan is not required for a grading permit or building permit on an R-1 zoned property containing a single-family home when tree mitigation is not required under (e)(1) below, except a grading permit and building permit for R-1 property when no tree mitigation is required under (e)(1) below.

If the exception applies and if a tree preservation plan is not required and if the property owner retains a contractor to do the work, the contractor must submit a plan showing the proposed construction limits on the property and must not remove any trees outside the specified construction limits. A tree preservation plan must include:

1) a tree inventory that meets the following criteria:
   a. The species, sizes, and locations of high priority trees, significant trees, and trees in woodland preservation areas must be shown, regardless of health. Dead or structurally unsound trees should be noted as such in the inventory.
   b. Canopy species that exist in woodland preservation areas, including those that are in the understory, must be inventoried if they are four inches dbh or larger. Understory trees, excluding canopy species, and large shrubs that exist in woodland preservation areas must be inventoried if they are two inches dbh or larger.
   c. The size of high priority trees and significant trees must be inventoried regardless of location.
   d. The size of coniferous trees must be recorded in dbh and approximate height.
   e. Invasive species such as buckthorn and honeysuckle should not be inventoried.

2) a site plan that shows the dbh, location and size of the critical root zone for each protected tree, the trees to be removed, the trees to be preserved, the proposed construction limits, and the proposed tree protection methods in addition to construction limit fencing. If grading or construction limits are outside of a woodland preservation area, the trees in that woodland preservation area may be grouped together.

e) Tree Removal and Preservation. Removal of protected trees is prohibited except as follows:

1) Existing Structures.
   a. R-1 zoned properties containing single-family home. On property that is zoned R-1 and that has not have an existing principal structure, protected trees may be removed without any mitigation if the principal structure has been in existence and not externally expanded for at least two years after (1) a final building

The stricken language is deleted; the underlined language is inserted.
permit inspection or a certificate of occupancy was issued and (2) all of its final landscaping or ground cover was installed.

b. All other properties zones, including conditionally permitted educational institutions, religious institutions, nursing or convalescent homes, commercial greenhouse, or other similar uses within a R-1 zoning district: On property that is not zoned R-1 and that has an existing principal structure, protected trees may be removed subject to the same standards applicable to R-1 property if no site improvements are undertaken and the owner complies with the required tree preservation and landscape plan for the property.

2) Existing Vacant Parcels of Land, Redevelopment, Site Improvements.

a. R-1: For the construction of a principal structure single-family home on a vacant R-1 lot or for redevelopment of an existing R-1 lot through construction of a single-family home, protected trees may be removed with no mitigation only within the "basic tree removal area".

b. On all other properties, including conditionally permitted educational institutions, religious institutions, nursing or convalescent homes, commercial greenhouse, or other similar uses within a R-1 zoning district, an applicant can construct a principal structure on a vacant lot, redevelop an existing lot, or make site improvement to an existing lot and remove protected trees with no mitigation only as follows:

All other zones: On property not zoned R-1 for the construction of a principal structure on a vacant lot with no principal structure, for redevelopment of an existing lot, or for site improvements to an existing lot, protected trees may be removed with no mitigation only:

1. within the basic tree removal area; and
2. within the width of required easements for public and private streets and utilities, except that only significant trees may be removed in areas of required surface water ponding. The removal of woodland preservation area trees or high priority trees for surface water ponding must be mitigated.

3. The removal of protected trees under this subsection 2 must also comply with the general removal requirements under subsection 4 below.

3) Subdivisions.

a. Significant trees may be removed for any construction in a subdivision of land without mitigation only:

1. within the basic tree removal area; and
2. within the width of required easements for public and private streets and utilities, including areas required for surface water ponding.

The stricken language is deleted; the underlined language is inserted.
b. If more than 35% of the site’s high priority trees or more than 25% of a woodland preservation area on the site are to be removed for any construction in a subdivision of land, there can be no more than one lot per developable acre of land. High priority trees and trees within a woodland preservation area may be removed for any construction in a subdivision of land without mitigation only:

1. for the basic tree removal area; and
2. for the width of required easements for public and private streets and utilities, except in areas of required surface water ponding. The removal of high priority trees or trees in woodland preservation areas for surface water ponding must be mitigated.

c. A subdivision of land that proposes to remove more than 35% of the site’s high priority trees or more than 25% of a woodland preservation area on the site can be developed up to the full density normally allowed under other development regulations in the applicable zoning district if the property is developed under an approved planned unit development (PUD). There is no minimum size required for a PUD in this situation. In reviewing a PUD application, the city will consider the extent to which steps are taken to preserve protected trees, such as:

1. using creative design, which may include the clustering of homes, reducing lot sizes, reducing or expanding normal setbacks, custom grading, retaining walls, buffers, and establishing the size and location of building pads, roads, utilities and driveways;
2. preserving the continuity of woodland preservation areas by developing at the edges of those areas rather than at the core;
3. exercising good faith stewardship of the land and the trees both before subdivision and after, including the use of conservation easements when appropriate; and
4. minimizing the impact to the character of the existing landscape and neighborhood.

d. The removal of protected trees under this subsection 3 must also comply with the general removal requirements under subsection 4 below.

4) General removal requirements. The removal of protected trees under subsections (2) and (3) must also comply with the following general requirements:

a. Principal structures and associated facilities must be located to maximize tree preservation. The city may specify the location of the principal structures and associated facilities in order to ensure a reasonable amount of tree preservation.

b. Any tree removed outside of the specified allowable tree removal areas must be mitigated as specified below.

The stricken language is deleted; the underlined language is inserted.
c. The applicant must comply with any approved tree preservation or landscape plan.

d. Trees required to be saved as part of a subdivision approval must remain on a lot for two years after the final building permit inspection or certificate of occupancy is issued for the principal structure, whichever is later. Any tree that dies solely of natural causes such as disease or wind is exempt from this section.

e. Each protected tree that is removed in violation of ordinance requirements is a separate violation of the city code.

5) Greater Public Good. The city council may allow the removal of protected trees contrary to the provisions in subparagraphs (1) - (4) if it determines that there is a greater public good such as:

a. providing reasonable use or access to the property;

b. providing affordable housing;

c. allowing for the creation or rehabilitation of a public road or trail;

d. providing for a public utility service, such as a transmission line, ponding or a water tower;

e. allowing for the creation or rehabilitation of a public park; or

f. enabling redevelopment in a designated redevelopment area.

f) Tree Mitigation.

1) When tree mitigation is required, the applicant must submit a tree mitigation plan for staff review and approval. The plan must indicate the number of inches or feet of mitigation trees, the species and quantity of each species, and the caliper size or feet and location for each replacement tree. The plan may not be comprised of more than 25 percent of the same species or size unless approved by the city. The plan must comply with the mitigation standards required below. The applicant must implement the tree mitigation plan approved by city staff.

2) Specific mitigation standards. Mitigation for tree removal of trees in woodland preservation areas, high priority trees, and significant trees must meet the following specific standards;

a. Mitigation rate.

1. A tree or large shrub that is in a woodland preservation area or is a high priority tree must be replaced at the rate of one inch for each inch in diameter of a deciduous tree that was removed and at the rate of one foot for each foot in height of a coniferous tree that was removed; and

The stricken language is deleted; the underlined language is inserted.
2. A significant tree must be replaced with one two-inch tree.

b. Mitigation species.

1. Trees and large shrubs in woodland preservation areas must be replaced with species found in that eco-type as specified on the list of acceptable replacement species on file with the city;

2. High priority trees must be replaced with species of similar type that are normally found growing in similar conditions and that are included on the list of acceptable replacement species on file with the city;

3. Significant trees may be replaced with any tree species other than ash, box elder, silver maple, willow, Norway maple, amur maple and Colorado spruce, as approved by city staff; and

c. Mitigation size.

1. Replacement sizes for woodland preservation areas and high priority trees are:

   a) not less than one and one quarter inches but not more than three inches dbh for deciduous balled and burlapped trees, and not less than three inches but not more than six inches dbh for spade-moved deciduous trees;

   b) not less than 7 gallon stock for understory or small trees and not less than 3 gallon stock for shrubbery; and

   c) not less than six feet but not more than eight feet in height for balled and burlapped coniferous trees, and not less than eight feet but not more than 14 feet in height for spade-moved coniferous trees.

2. The city may allow larger balled and burlapped or spade moved trees if these trees are accompanied with a three year guarantee. Other size substitutions, based on site characteristics, may be allowed at the reasonable discretion of the city.

3. Replacement size for a significant tree is not less than a two-inches dbh.

3) General mitigation standards:

   a. All replacement trees and shrubs must meet the American Standard for Nursery Stock and the American National Standard relating to planting guidelines, quality of stock and appropriate sizing of the root ball for balled and burlapped, potted and spade-moved tree.

   b. If the city determines in its reasonable discretion that there is no appropriate location for some or all of the required replacement trees, those trees may not be required.

The striken language is deleted; the underlined language is inserted.
c. Replacement trees must be planted on the same property or development area from which the trees were removed.

d. A tree will be considered removed if girdled, if 30 percent or more of the trunk circumference is injured, if 30% or more of the crown is trimmed, if an oak is trimmed between April 1st and July 15th, or if the following percentage of the critical root zone is compacted, cut, filled or paved: 30 percent of the critical root zone for all species, except 40 percent for ash, elm, poplar species, silver maple and boxelder.

e. Development that is subject to landscape requirements in sections 300.27 and 300.31 must meet the minimum landscape requirements of the applicable section. Trees planted as part of a required landscaping plan may be counted as replacement trees under this section, at the city's discretion.

f. The required mitigation trees must be replaced by the current property owner if the trees have died, have severely declined or have been damaged after the end of the second full growing season following installation. A tree will be considered to be severely declined if more than 25 percent of the crown has died.

g. The city may require an escrow deposit to ensure the required planting and continued existence of the mitigation trees. The city will release the escrow deposit after the end of the second full growing season following installation of the mitigation trees and any replacement trees.

h. A tree or shrub that was required by the city to be saved but was removed must be replaced at a rate of 2:1 based on dbh for deciduous species and height for conifers. The city may also impose a financial penalty equal to $500.00 for each inch of dbh or foot of height removed, not to exceed $5000 for each tree or shrub. This provision also applies to a conservation easement area that is disturbed during or after development.

   g) General tree protection standards.

   1) Before construction, grading or land clearing begins, the city-approved tree protection fencing or other method must be installed and maintained at the critical root zones of the trees to be protected. The location of the fencing must be in conformance with the approved tree preservation plan. This fencing must be inspected by city staff before site work begins.

   2) No construction, compaction, construction access, stock piling of earth, storage of equipment or building materials, or grading of any kind may occur within the critical root zone areas of trees to be protected.

   3) A healthy protected tree that was not a hazard to personal safety or property damage and that was removed or otherwise destroyed by unnatural causes within three years before a development application will be regarded as if it were present at the time of construction or a development application. This provision does not
apply if the number of protected trees removed is less than 5% of the protected trees existing five years before the application.

4) An area of new or compensatory water storage may not be located where there are woodland preservation areas, high priority trees or significant trees, unless approved by the city. Mitigation will be required for the loss of woodland preservation areas and high priority trees due to ponding. The compensatory storage area must be created in a manner that prevents erosion into any nearby water resource.
Ordinance No. 2015-5

An Ordinance amending section 300.23 of the Minnetonka City Code concerning the wetland overlay district

Section 1. Section 300.23 of the Minnetonka City Code is amended as follows:

SECTION 300.23. WETLANDS PROTECTION.

1. Purpose and Intent.

   a) The purpose of this section is to recognize, preserve and protect the environmental, aesthetic and hydrologic functions of the city's wetlands by regulating the use of wetlands and their adjacent properties. These functions include, but are not limited to, sediment control, pollution control, filtration, fish and wildlife habitat and aquifer recharge.

   b) The intent of this section is to protect wetlands to the maximum extent possible while allowing a reasonable use of the property. This section adopts the regulations and standards of the Wetland Conservation Act of 1991 (WCA), Laws of Minnesota 1991, chapter 354, as amended, and the rules adopted pursuant to the WCA. It also establishes a wetland overlay district. This overlay district further regulates the underlying land use as allowed by other districts or the WCA.

2. Designation of Protected Wetlands and Exemptions.

   a) The wetlands protected and regulated by this Section are types 1, 2, 3, 4, 5, 6, 7, and 8 wetlands, as defined in circular 39, “Wetlands of the United States”, 1971 edition, United States Department of the Interior. Protected wetlands are further generally defined as follows:

      Type 1 Seasonally Flooded Basins or Floodplains: Type 1 wetlands are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottom lands along water courses. Vegetation varies greatly according to the season and duration of the flooding, and includes bottom land hardwoods, as well as herbaceous plants.

      Type 2 Inland Fresh Meadow: Occurs along the shallow edges of lakes, marshes and floodplains, or in perched depressions. The soil is usually without standing water during much of the growing season, but is waterlogged within at least a few inches of
the surface. Vegetation includes grasses, sedges, rushes and various herbaceous
plants.

Type 3 Inland Shallow Fresh Marsh: Soil is usually water logged during the
growing season, often covered with as much as six inches or more of water. Vegetation
includes grasses, bulrushes, cattails, arrowheads, smartweeds and other emergent
aquatic vegetation.

Type 4 Inland Deep Fresh Marsh: Soil covered with six inches to three feet or
more of water during growing season. Vegetation includes cattails, reeds, bulrushes
and wild rice. Open water areas may contain pondweeds, naiads, coontail, water
milfoils and other submergent aquatic vegetation.

Type 5 Inland Open Fresh Water: Water is usually less than 10 feet deep and is
fringed by a border of emergent vegetation. Vegetation includes pondweeds, naiads,
coontail, water milfoils and other submergent aquatic vegetation.

Type 6 Shrub Swamp: Occurs along sluggish streams or on floodplains. The soil
is usually waterlogged during the growing season, and is often covered with as much as
six inches of water. Vegetation includes alder, willow and dogwood.

Type 7 Wooded Swamp: Occurs along sluggish streams, on floodplains, on flat
perched depressions and in shallow lake basins. The soil is waterlogged to within a few
inches of its surface during the growing season and is often covered with as much as
one foot of water. Vegetation typical to this wetland includes tamarack, white cedar,
black spruce, balsam fir, red maple and black ash.

Type 8 Bog: Occurs along sluggish streams, on flat perched depressions and
shallow lake basins. The soil is waterlogged and supports a spongy covering of mosses.
Vegetation typical to this wetland type includes sphagnum moss, heath shrubs and
sedges. Minnesota bogs contain leatherleaf, Labrador tea, cranberries and pitcher
plants. Scattered stunted black spruce and tamarack also are common features of bogs.

b) Areas that exhibit wetland characteristics but were created for a purpose
other than to create a wetland are exempt from this section. This includes areas such as
storm water ponds, roadway ditches, or other areas that receive artificial hydrology. The
landowner has the responsibility to prove by a preponderance of the evidence that an
area is exempt under this paragraph.

c) The reconstruction and maintenance of existing public roads and
associated public utilities are exempt from this section 300.23 as long as they comply
with the WCA as approved by city staff.

This section establishes the presumptive wetland overlay districts. These districts are subject to additional requirements beyond those required by the WCA. The boundaries of the presumptive wetland overlay districts are identified by government survey section and contour elevation above mean sea level in Appendix A to this section. The city's official wetland map graphically shows these boundaries.

If a specific wetland delineation has been done under WCA rules, then the boundaries of the wetland overlay district for that location will be as shown in the delineation rather than the presumptive boundaries. The city may require wetland delineations to determine compliance with WCA rules and this section 300.23; however, property owners may have wetland delineations done for their properties on their own initiative. The delineation must be done by a professional wetland delineator according to WCA rules and be acceptable to the planning director. Public waters and public water wetlands are included in the overlay district.

4. Interpretation of Wetlands Boundaries.

Whenever a delineated wetland boundary is disputed or uncertain, the city planning director or designee may convene the technical evaluation panel according to WCA rules. The owner must have the delineated wetland boundary staked in the field in order for the panel to evaluate the area. The technical evaluation panel and city planning director or designee may require additional information require the submission of a registered survey of the property and field staking showing the wetland delineation, and such other information as the director may require to resolve the dispute or uncertainty. No boundary change may be authorized on the basis of fill that was placed on the site after the city designated the area as part of the wetland overlay district. Persons aggrieved by a decision of the city planning director, designee, or the technical evaluation panel may appeal such the decision as provided in accordance with the provisions of section 300.03, subdivision 1 of this ordinance and the WCA rules as applicable.

5. Wetland Buffer Areas.

   a) This subsection establishes requirements for wetland buffer areas around protected type 2-8 wetlands. Buffer areas are necessary and beneficial to maintain the health of wetlands. Buffer areas protect the edge of wetlands from erosion while filtering sediment, chemicals and other nutrients from runoff that drains into wetlands. Buffer areas can improve the biological diversity and health of a wetland environment while reducing the adverse impacts of human activities.

   b) Buffer areas regulated by this section are areas of vegetative cover that are upland of the wetland edge, and that occur in a natural condition or through restoration. Buffer areas consist of shrubbery and trees, and native grasses or forbs or both that are not mowed, fertilized or manicured in any manner.

The stricken language is deleted; the underlined language is inserted.
c) Wetland buffer areas must be created or existing buffer areas must be maintained around all protected type 2-8 wetlands in the following situations:

1) when wetlands are required to be replaced or restored;

2) when new development occurs. For purposes of this subsection, new development means:

   a) any subdivision that creates a new lot that has no principal use on it;

   b) construction of a principal use on an existing vacant parcel of land;

3) when redevelopment occurs. For purposes of this section redevelopment means the reconstruction of the principal structure if it includes the removal of the principal structure by more than 50 percent of the square footage of the building footprint or an increase of the square footage of the building footprint by more than 50 percent. This requirement does not apply if construction is the result of more than 50 percent of the building being damaged by an involuntary force, such as fire, wind, or vandalism;

4) when the city requires a buffer as part of a variance, expansion permit, conditional use permit, or a site plan review; or

5) on any preserve wetland when grading or construction is proposed that requires a city permit and the proposed activity could potentially impact the quality of the wetland by increasing hard surface run off, altering existing drainage, or impacting an existing buffer.

d) Buffer area widths will be based on the wetland classification in the city's water resources management plan. The following are the required buffer area widths:

<table>
<thead>
<tr>
<th>Wetland Classification</th>
<th>Width of Buffer Area From the Wetland Boundary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manage 2</td>
<td>16.5 feet</td>
</tr>
<tr>
<td>Manage 1</td>
<td>25 feet</td>
</tr>
<tr>
<td>Preserve</td>
<td>50 feet</td>
</tr>
</tbody>
</table>

e) In cases of new development or redevelopment the city may require that vegetation in the wetland buffer be installed prior to the issuance of the certificate of occupancy. To ensure installation of the buffer the city may require a cash escrow or letter of credit equal to 150 percent of the cost to install the required buffer.

f) The city may allow the disturbance of an existing buffer area during the course of construction activity. This disturbance must be kept to a minimum, soils must

The stricken language is deleted; the underlined language is inserted.
be decompacted to a level that will accommodate root growth, and the buffer area must be re-established as required by the city. The city will determine the amount of allowable disturbance. The city may require a cash escrow or letter of credit equal to 150 percent of the cost to re-establish the buffer to its original condition.

g) The city may require buffer area planting and maintenance when the city determines that there is inadequate vegetation in the buffer area to meet the intent of this section. The city may require a cash escrow or letter of credit equal to 150 percent of the estimated cost of the vegetation and installation. The escrow or letter of credit must be valid for up to two years and may be used by the city to replace any vegetation that dies.

h) The affected property owner or homeowner association that is responsible for the maintenance must:

1) maintain and repair damage to buffer areas from such activities as mowing, cutting, grading or other prohibited activities, unless mowing is approved by city staff as a buffer management strategy. Permission must be obtained from the city before implementing buffer management strategies, which may include mowing, burning, and the use of herbicides.

2) be responsible for maintaining only the permitted vegetation in the buffer area and must remove all noxious weeds and invasive, non-native species such as European buckthorn;

3) ensure that all soil surfaces in the buffer area are planted with the permitted vegetation and that there is no open soil surface that may result in erosion.

6. Permitted Uses.

a) Within the wetland overlay districts no land may be used except for one or more of the following uses:

1) native wetland vegetation, provided that no change is made to the ground elevation;

2) wildlife and nature preserves;

3) public overhead utility lines and poles that are less than two feet in diameter;

4) docks and reasonable access to the wetland, poles, posts or footings that are less than two feet in diameter to be used for boardwalks and bridges, and pervious hiking, skiing and horseback riding trails that comply with WCA standards. Pervious will mean an area where water is able to infiltrate into the ground;
5) public and private flood control structures, ponding and drainage facilities and associated accessory appurtenances;

6) environmental monitoring or control facilities, including those related to water quality and wildlife regulation;

7) in wetlands where impervious, public trails exist, maintenance of the trail will be allowed as long as there is not an increased impact to the wetland.

b) Within wetland buffer areas no land may be used except for one or more of the following uses:

1) native vegetation, provided that no change is made to the ground elevation;

2) wildlife and nature preserves;

3) docks and reasonable access to the wetland, poles, posts or footings that are less than two feet in diameter to be used for boardwalks and bridges, and pervious hiking, skiing and horseback riding trails. Pervious will mean an area where water is able to infiltrate into the ground;

4) public and private flood control structures, ponding and drainage facilities and associated accessory appurtenances;

5) environmental monitoring or control facilities, including those related to water quality and wildlife regulation;

6) public overhead utility poles and lines that are less than two feet in diameter, under-ground utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes and other equipment that provides an essential public service;

7) fences;

8) retaining walls if the city determines that the retaining wall will protect the wetland from existing conditions of erosion;

9) in wetland buffer areas where impervious, public trails exist, maintenance of the trail will be allowed as long as there is not any additional impact to the wetland buffer area.


The stricken language is deleted; the underlined language is inserted.
Within the wetland overlay districts and the wetland buffer areas no land may be used for the following except by conditional use permit and except in conformance with the standards specified in subsection 8 of this section:

a) private and public recreational uses, including golf courses, impervious trails, picnic grounds and boat ramps;

b) public utilities, including necessary structures;

c) other non-structural facilities similar to those permitted by this section which also meet the intent of this section, as determined by the city; or

d) public structures associated with recreational uses permitted by this subsection or by subsection 6 of this section that are designed in an environmentally sensitive manner and will withstand periodic flooding, except for structures designed or used for habitation or the storage of equipment.

8. Standards for Wetlands Districts, Buffer Areas and Neighboring Lands.

The following standards apply to all land within the wetland overlay districts, wetland buffer areas, and to neighboring lands:

a) Protection of wetlands and wetland buffer areas.

1) Except as modified or regulated by the standards of this subsection, all requirements of the underlying zoning district apply.

2) No structures are allowed in the wetland overlay districts, or wetland buffer area except those allowed as of right or by conditional use permit by subsections 6 or 7 of this section.

3) Activities including, but not limited to, building, paving, mowing, cutting, filling, dumping, yard waste disposal or fertilizer application are prohibited. Mowing may be permitted when approved by city staff as a buffer management strategy. However, invasive non-native vegetation, such as European buckthorn and noxious weeds, may be removed.

4) Before grading or construction near a wetland overlay district or buffer area, the owner or contractor must place erosion control fencing on the upland side of the perimeter of the wetland overlay district or wetland buffer area, whichever is more restrictive, or as required by the city. This fencing must remain in place until all development activities that may affect the wetland and the wetland buffer area have been finished and adequate vegetative cover has been established.

5) All structures must have a minimum basement floor elevation not less than two feet above the 100-year flood elevation.

The stricken language is deleted; the underlined language is inserted.
6) All hard surface runoff must be treated in accordance with the requirements of the city and the appropriate watershed district. Treatment may include site retention, skimmers, weirs, bioretention or infiltration basins, or sedimentation ponds of appropriate scale. Structures and ponds serving this purpose must be properly maintained and serviced by the property owner.

7) Discharge into the wetlands must occur at a rate no greater than allowed by the city engineer in accordance with the city's water resources management plan and the appropriate watershed district requirements.

b) Setbacks.

1) All structures, except those permitted within the wetland overlay districts, must be set back at least 35 feet from a wetland overlay district and at least 10 feet from a required wetland buffer, whichever is greater. The distance for a pool will be measured from the water’s edge of the pool. However, uncovered porches, decks, patios, sport courts, tennis courts, pool aprons, above ground hot tubs not exceeding 120 square feet-stairways, and walkways, as well as cantilevered building areas, porticos, and similar features may extend up to 10 feet into the required setbacks but not into buffer areas. For purposes of this section a pool apron is the hard surface or decking material that is contiguous to the water's edge of the pool.

2) Parking areas, roadways, driveway areas, trails and any retaining wall if it is structurally integral to the construction of these items must not be located within 20 feet of a wetland overlay district and must be outside of any required buffer area.

3) A setback is not required from the wetland overlay district for overhead utility poles and lines that are less than two feet in diameter, underground utility lines and distribution equipment, light poles, traffic signals, traffic regulatory signs, mailboxes, and other equipment that provides an essential public service.

4) A setback is not required from the wetland overlay district for fences or retaining

5) Retaining walls, except that retaining walls may not be within 25 feet of a wetland unless needed to control existing conditions of erosion as field verified by city staff. In this instance the location of the retaining wall must be approve by city staff.

6) An existing structure, driveway or parking area meeting the required setback from a city-designated wetland boundary or buffer area is considered a legal nonconforming development if a later wetland delineation or buffer area shows that the wetland or its buffer is closer than the required setback.

The stricken language is deleted; the underlined language is inserted.

   a) Removal of wetlands from a wetland overlay district requires a zoning amendment. An amendment must be made pursuant to the provisions of section 300.09 of this ordinance and WCA replacement rules. This amendment must be consistent with the purpose of this ordinance, the city’s water resources management plan and the goals and policies of the comprehensive plan. In determining the appropriateness of a rezoning request, the city council will consider the size of the wetland overlay district, the magnitude of the area proposed for removal, the overall impact on the function and value of the wetland, the hydrological and ecological effects and the type and function of wetlands involved in order to provide the maximum feasible protection.

   b) Wetlands within an overlay district may only be removed according to WCA rules and if at least an equal area of new wetland is created to compensate for the wetland being filled. Unless otherwise approved by the city council, compensatory wetland area must be provided within the same subwatershed district as the wetland being altered, it must be located outside of any public easement and it must not result in the loss of regulated trees. The city may require cash escrow or letter of credit equal to 150 percent of the cost to mitigate for the wetland.

   c) In addition to application requirements, the city may require submission and approval of the following information:

      1) a concept plan showing ultimate use of the property;
      2) a grading plan with appropriate drainage calculations and erosion controls prepared by a registered engineer;
      3) a landscaping or revegetation plan;
      4) such other information as may be necessary or convenient to evaluate the proposed rezoning; and
      5) a determination of the function and value of the wetland using the most recent version of the Minnesota Routine Assessment Method (MNRAM) for evaluating wetland functions (MNRAM) or other approved assessment methodology.

10. Alteration of the Wetlands.

   a) Except as provided below, no alteration of land within a wetland overlay district or a wetland buffer is allowed without a wetlands alteration permit, subject to recommendation by the planning commission and approval of the city council. The planning commission must hold a public hearing after notifying the property owners within 400 feet of the proposed alteration. Activities that constitute an alteration regulated by this section include changes to the size, depth or contour of the wetlands or its buffer, dredging, or alterations of wetlands or buffer vegetation.

The stricken language is deleted; the underlined language is inserted.
b) A wetland alteration permit is not required:

1) when a wetland district is rezoned to another zoning classification;

2) to remove vegetation from the wetland or its buffer pursuant to a restoration management plan approved by qualified city staff;

3) to alter vegetation in a type 1 wetland;

4) to plant native wetland vegetation;

5) to selectively clear or prune trees or vegetation that are dead, diseased, noxious or similar hazards;

6) to remove vegetation in a contiguous width not to exceed ten feet in order to install a dock or gain access to the wetland as permitted in 6(a) or 6(b) of this section and as approved by city staff;

7) to repair and maintain existing public facilities such as ponds, trails, and utilities if the work does not result in an increased impact to the wetland or its buffer; or

8) to remove sediment and debris from the wetland that has resulted from erosion, public works projects, transportation projects or other similar activities. The removal of sediment must not result in the removal of hydric soil from the wetland basin and must be approved by city staff.

c) Alteration of land within a wetland overlay district will only be allowed if the wetland and its buffer are provided in an amount compensatory to that being altered. Unless otherwise approved by the city council, compensatory wetland area and its buffer must be provided within the same subwatershed district as the wetland being altered, it must be located outside of any public easement and it must not result in the loss of regulated trees. The city may require cash escrow or letter of credit equal to 150 percent of the cost to restore the wetland and its buffer.

d) In determining the appropriateness of an alteration request, the city council will consider the size of the total wetland district, the magnitude of the area proposed for alteration, the impact on the overall function and value of the wetland, the aesthetic, hydrological and ecological effect, the type and function of wetlands involved, and such other factors as may be appropriate in order to provide the maximum feasible protection to the wetlands. Application for a wetlands alteration permit must be accompanied by such information as required by the city, including:

1) a concept plan showing the ultimate use of the property;
2) a grading plan, with appropriate drainage calculations and erosion controls prepared by a registered engineer;

3) a landscaping or revegetation plan;

4) such other information as may be necessary or convenient to evaluate the proposed permit; and

5) a determination of the function and value of the wetland using the most recent version of the Minnesota Routine Assessment Method (MNRAM) for evaluating wetland functions (MNRAM) or other approved assessment methodology.

11. Public Control of Wetlands.

   a) The city council may require that the owner of any property affected by this ordinance must record wetland and buffer area easements or restrictive covenants within the property's chain of title. These easements or covenants must describe the boundaries of the wetland and buffer area and prohibit any building, paving, mowing (unless approved as a management strategy), cutting, filling, dumping, yard waste disposal or fertilizer application within the wetland and the buffer area. The owner or developer must record these easements or covenants with the final plat, with deeds from a lot division or, if no subdivision is involved, before the city issues a grading permit or building permit for an affected property. The applicant must submit evidence that the easement or covenant has been submitted to the county for recording.

   b) If the city council does not require an easement or covenant, the city may record a notice of the wetland and buffer area requirements against the property. The property owner must still comply with the requirements of this section.

12. Wetland Buffer Markers.

When new development or redevelopment results in multifamily residential or a business use, the developer must place markers at the upland boundary of the wetland buffer edge at least every two hundred feet. The developer must use uniform markers provided by the city. The city will charge a reasonable cost for the markers.
Ordinance No. 2015-

An Ordinance amending section 300.28, subdivisions 16, 17 and 18 of the Minnetonka City Code; regulating grading and erosion control

The City of Minnetonka Ordains:

Section 1. Minnetonka City Code Section 300.28 subdivision 16, paragraph (a), clauses (5) and (6), relating to requirements for an application for grading permit or grading and erosion control plan, are amended to read as follows:

5) the location of any water body that is identified as impaired pursuant to section 303(d) of the Clean Water Act and meeting the specific impaired waters criteria of the Minnesota pollution control agency's stormwater permit for construction activities and that is within one mile of the site;

6) a drainage plan that includes the existing and proposed direction of drainage, stormwater conveyance systems to which the site drains, any stormwater management practices that are required by the city's water resources management plan WRMP and any engineering plans and specifications that may be deemed necessary by the city engineer, along with supporting calculations for all engineering work;

Section 2. Minnetonka City Code Section 300.28, subdivision 17 is amended to read as follows:


a) All plans must be consistent with the Minnesota pollution control agency's construction general permit as applicable.

ba) Except as otherwise provided by the director of planning, a grading and erosion control plan and the work conducted under an approved plan must comply with all of the following requirements as applicable:

1) The work must be scheduled so as to minimize the amount of soil exposed at any one time. Land disturbance and removal of existing vegetation must be minimized to avoid adverse impacts to adjacent properties and natural resources. All exposed soil must be stabilized as soon as possible if the exposed soil has not been worked for 14 days.

2) Structures must be designed to conform to the existing site topography as much as reasonably possible.
3) Temporary rock construction driveways or other acceptable best management practice must be installed and maintained as needed wherever vehicles enter and exit a site.

4) Streets must be cleaned and swept whenever tracking of sediments occurs and before sites are left idle for weekends and holidays. A regular sweeping schedule must be established. A copy of the street-sweeping service agreement and company contact information may be required before issuance of the permit.

5) Silt fence or equivalent sediment control measures to be used must conform to the city's standard.

6) Silt fences or equivalent sediment control measures must be installed along the downslope and sideslope perimeters of the approved grading and construction limits. Perimeter controls should be located to maintain a buffer of existing vegetation during construction, as site conditions allow, along the edges of any curbs, wetlands, channels or other water resources that could receive sediment from the site.

7) Tree protection or construction fence must be installed to minimize impacts to the critical root zones of adjacent trees or to prevent impacts to adjacent properties.

8) The city may require heavy-duty fencing such as chain link or wire mesh along the approved grading and construction limits. The city may require signs to be posted that prohibit construction or grading activity beyond the required fencing.

9) Sufficient silt fence or equivalent is required to hold all sheet flow runoff generated at an individual site. Additional measures such as check dams, diversion, temporary or permanent sedimentation basins are required to handle channelized flow.

10) All erosion and sediment control and tree and wetland protection measures must be inspected on a weekly basis and maintained. Sediment must be removed from these measures when it accumulates to a depth of 1/3 of the designed capacity.

11) All storm drain inlets must be protected during construction.

12) Newly installed and rehabilitated catch basins must be provided with a sump area or grit chamber for collecting coarse-grained material as required by the city engineer. Such basins must be cleaned when they are half filled with material and at the time of project completion.
13) Pipe outlets must be provided with temporary or permanent energy dissipation within 24 hours of connection to a surface water.

14) The normal wetted perimeter of any temporary or permanent drainage ditch or swale that drains water from the site, or diverts water around a site must be stabilized. Stabilization must be completed within 24 hours of connecting to a surface water. Portions of the ditch that are under construction must be stabilized within 24 hours after the construction activity in that portion has ceased. The normal wetted perimeter is defined as the area that is in contact with water during annual flow events.

15) Sediment, construction debris, or other temporary impacts from the activity must be removed from water resources, adjacent properties, or other areas that were intended to be protected as part of the city's approval. The removal must restore the sites to previous or improved conditions. The city must be contacted before removing sediment from a water resource, tree preservation area, or other protected area to ensure that the removal does not result in additional damage. A restoration plan may be required by the city.

16) Temporary soil stockpiles must have silt fence or other sediment controls in place if not already contained by perimeter controls, and must not be placed in any natural buffers, surface waters, drainage patterns or storm water conveyances.

17) Soil stockpiles and slopes equal to or greater than 3:1 that will not be worked for over 14 days must be stabilized with vegetation, mulch, tarps or other means unless no run-off from them is directed toward a watercourse, tree protection area, or the site perimeter. The city may require that slopes steeper than 12% that will not be worked for 14 days must be temporarily stabilized if directed toward a water resource, tree protection area, adjacent property, roadway, or other sensitive area.

18) The work must avoid creating or altering topography in a manner that appears artificial or out of place with adjacent property.

19) Slopes that are created may not be steeper than 3:1. The city may allow temporary or permanent created slopes steeper than 3:1 in an area where a retaining wall would pose a practical difficulty or in public improvements that serve the greater public good if the final grades are approved by the city engineer and the created slope:

   a. is not steeper than 2:1 in any event;

   b. is permanently stabilized with deep-rooted vegetation, rip-rap, boulders, or other groundcover adequate to control erosion and does not require mowing or other maintenance by equipment that would need to traverse the slope;
20) When one or more acres of disturbed soil drains to a common location the site must be in compliance with the Minnesota pollution control agency’s construction general permit which includes the installation of a temporary sediment basin to provide treatment to the runoff before it leaves the site or enters surface waters. A temporary basin may be converted into a permanent basin after construction is complete. The city engineer may also require a temporary sediment basin for those sites that are less than one acre based on site conditions. In both instances the basin must be designed and constructed according to the city’s water resources management plan.

21) Dewatering and draining activities must be discharged to on-site temporary or permanent sediment basins whenever possible. Dewatering and draining activities must not result in the release of sediment toward or into water resources, the street, or other areas that were intended to be protected as part of the city's approval. The dewatering rate and direction must be controlled and must incorporate energy dissipation to prevent flooding or other harm to water resources or adjacent property. The city must be notified of the dewatering schedule prior to the start of work.

20) Locations for cleaning concrete trucks designated as part of the grading and erosion control plan must be used to ensure that the discharge does not cause erosion, pollution or damage to trees or other natural resources.

22) All waste and unused building materials such as garbage, debris, cleaning wastes, wastewater, toxic materials or hazardous materials must be properly disposed of off-site and not allowed to be carried by runoff into a surface water, receiving channel or storm sewer conveyances.

a. Solid waste: All unused building materials and waste such as contaminated sediment, asphalt and concrete millings, floating debris, paper, plastic, and fabric must be disposed of accordingly and comply with disposal requirements set forth by the Minnesota pollution control agency.
b. Hazardous/toxic waste: Paint, gasoline, oil and any hazardous materials must be properly stored, including secondary containment, to prevent spills, leaks or other discharges. Access to the storage areas must be restricted to prevent vandalism. Storage and disposal of hazardous or toxic substance must be in compliance with the requirements set forth by the Minnesota pollution control agency.

c. Liquid waste: All other non-stormwater discharges such as concrete truck washout, vehicle washing or maintenance spills produced during the construction activity may not be discharged to any surface waters and must be properly disposed of.

d. External washing of equipment and vehicles: All external washing activities must be limited to a designated area of the site. All runoff must be contained and wastes from external washing activities must be disposed of properly. No engine degreasing is allowed on the site.

e. Wastes generated by concrete and other washout operations: All liquid and solid wastes generated by any concrete or other washout operations must be contained in a leak proof facility or impermeable liner. Concrete waste must not come into contact with the ground. Concrete waste must be disposed of properly and in compliance with applicable Minnesota pollution control agency regulations.

2324) Dust must be adequately controlled by site watering, temporary stabilization, or other means approved by the city.

2422) The burial of organic materials such as trees, lumber, and yard waste that could decompose is prohibited. No rock, concrete, or other construction material or debris may be buried unless approved by city staff.

2523) All on-site construction debris must be contained. A regularly scheduled trash removal service must be hired to remove this debris. A copy of the service agreement and company contact information may be required before issuance of the permit.

2624) All temporary erosion and sediment control, tree protection fencing, and other temporary protection measures must be removed within 30 days after permanent groundcover has been fully established, inspected, and approved by the city. The city may grant an extension for frozen ground conditions.

2725) At a minimum, the work must conform to the city’s water resources management plan, the current version of the Minnesota pollution control agency’s publication regarding protecting water quality in urban areas, and the Metropolitan Council’s publication about urban small sites best management practices, or equivalent.
A site that drains to a water identified as impaired pursuant to section 303(d) of the Clean Water Act and meeting the specific impaired waters criteria of the Minnesota pollution control agency's stormwater permit for construction activities and that is within a one-mile linear distance from that impaired water may be required to comply with additional site-specific standards, including:

a. stabilizing all exposed soil areas as soon as possible to limit soil erosion if the soil areas have not been worked for 7 days; and

b. using a temporary sediment basin for common drainage locations that serve an area with five or more acres disturbed at one time.

The plan and work must comply with the performance standards regulating trees and steep slopes under subdivisions 19 and 20 below.

During construction of an infiltration or biofiltration system, sediment controls must be used to prevent the discharge of sediment into the infiltration or biofiltration area. The area must not be compacted while the site is under construction. Infiltration or biofiltration areas must not be excavated to final grade until the contributing drainage areas have been permanently stabilized.

As-built plans must be provided for ponding, infiltration areas or other areas as required by the city engineer. The city may also require as-built plans for final grades and structures such as retaining walls, foundations, and catch basins.

Other measures may be required by the city if warranted at an individual site, such as:

a. screening retaining walls;

b. planting or re-vegetating large slopes with vegetation similar to that which was removed, except that turf grass must be re-vegetated with native deep rooted species;

c. providing a site maintenance inspection log to be maintained by the applicant or the applicant's contractor for compliance with the grading and erosion control plan or the construction management plan as required. The log must be a written record and include:

1) the name of the person who conducted the inspection;

2) the date of the inspection and any associated maintenance activity;
3) the findings of the inspection;
4) a description of corrective work completed, if any;
5) the date the corrective work was completed;
6) the date and amount of rainfall events in excess of 0.5 inches in a 24-hour period.

d. decompacting soils, outside the intact critical root zones of trees to be protected, to a depth of 18 inches;
e. spreading at least 6 inches of topsoil or other organic material and incorporating it into the underlying soil during final site treatment in order to increase infiltration or improve establishment of vegetation; and
f. imposing additional conditions to protect the public interest.

cb) All items listed in subdivision 17(a) must be maintained throughout the course of construction and grading activity.
dc) If a grading and erosion control plan has been implemented but is reasonably considered by the director of planning to be inadequate in achieving the policy objectives described in subdivision 15(a), the city may require the permittee to modify and implement the plan to achieve those objectives.
e) If a Minnesota pollution control agency construction general permit is required the applicant must obtain the permit, submit proof to the city that the permit has been acquired, submit proof to the city that the permit has been transferred if applicable, and comply with the regulation.
fd) Upon written notification from the applicant that all land-disturbing activities are complete, the site has been permanently stabilized or re-vegetated, and all temporary erosion and sediment controls, tree protection fencing and construction limit fencing have been removed, the city will inspect the site and release any security being held if the site is deemed to be in compliance with the approved grading permit and the grading and erosion control plan.

Section 3. Minnetonka City Code Section 300.28, subdivision 18 is amended to read as follows:

18. Grading and Erosion Control Enforcement.

The stricken language is deleted; the underlined language is inserted.
a) No person may undertake, authorize or permit any excavating, grading, filling or any other land-disturbing activity that exposes soil:

1) if the person does not have a city-approved grading permit or city-approved grading and erosion control plan; or

2) if the action violates or is not in compliance with a city-approved grading and erosion control plan or a required grading permit issued by the city, or a Minnesota pollution control agency construction general permit if required, including the approved plans and all terms and conditions of the permit.

b) The city may inspect any property subject to an approved grading and erosion control plan or grading permit to ensure that erosion and sediment control and tree protection measures are properly installed and maintained. Upon request by the city the site maintenance inspection log must be made available within 24 hours of the request.

c) If the soil is not permanently stabilized through landscaping when a certificate of occupancy is issued, the city may require a cash deposit or letter of credit in a form acceptable to the city attorney not to exceed 150% of the estimated cost, or 125% of an actual bid, to ensure compliance with the approved grading and erosion control plan for the site.

d) A public nuisance exists when there is any violation of the provisions of subdivisions 15 through 18 or the Minnesota pollution control agency construction general permit if required. A public nuisance also exists when erosion or drainage from a property is causing, or has the likelihood of causing, serious harm to neighboring property, the city's stormwater system, or to natural resources such as significant trees, water resources, and wetland buffers. Serious harm includes actual damage as well as interference with reasonable use of the property.

e) Whenever the city finds noncompliance with any provision of subdivisions 15 through 18, or the Minnesota pollution control agency construction general permit if required, staff will attempt to communicate with the permittee and the landowner to obtain immediate and voluntary compliance. If that person is not readily available or refuses to comply within reasonable deadlines, the city may take any or all of the following actions, provided that written notice of the noncompliance has been sent to the permittee and landowner or posted on the property:

1) implement the necessary corrective measures and pay for them with financial security deposited with the city;

2) initiate proceedings to abate a public nuisance under section 845 of this code;
3) withhold inspections or any city approvals for the property in question until compliance is achieved;
4) issue a stop work order for the project in question until compliance is achieved;
5) revoke the permit; and
6) pursue criminal and civil penalties under section 1310 of this code.

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

Section 5. This ordinance is effective the day after publication.

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

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

David E. Maeda, City Clerk
Ordinance No. 2015-2

An Ordinance amending sections 1205 and 300.28 of the Minnetonka City Code regulating discharges into the municipal storm sewer system

The City of Minnetonka Ordains:

Section 1. Section 1205.005 of the Minnetonka City Code is amended as follows:

1205.005. Obstruction Prohibited. A person must not without prior approval of the city engineer, block, obstruct, or impede to any extent the flowage of waters:

1. through any portion of a storm sewer system owned and maintained by the city of Minnetonka; or

2. to or from a lake, pond, designated storm water detention area, stream, creek, ditch, backwater, other open body of water, or wetlands designated on the city's wetlands map.

The city engineer may not approve action when, in his/her professional judgment, it violates the standards in city code section 300.23, 300.24, 300.25 or the city's water resources management plan as defined in city code section 300.02, creates the potential for unreasonable flooding or property damage, or otherwise creates a danger to the public health and safety.

Section 2. Section 1205 of the Minnetonka City Code is amended by adding a section as follows:

1205.015. Illicit Discharge and Connections.

1. Definitions. For purposes of this section, the following terms have the meanings provided below:

a. “Illicit connection” means (i) any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or (ii) any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an

The stricken language is deleted; the underlined language is inserted.
authorized enforcement agency.

b. “Illicit discharge” means any direct or indirect non-storm water discharge to the storm drain system, except as exempted by this section.

c. “Municipal Separate Storm Sewer System (MS4)” means the system of conveyances (including road with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

d. “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

2. Illicit discharge prohibition. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing pollutants, other than storm water.

3. Exemptions. The following discharges are exempt from discharge prohibitions established by this section:

a. Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and water used in street sweeping activities.

b. Discharges or flow from firefighting, and other discharges specified in writing by the city engineer or designee as being necessary to protect public health and safety.
c. Discharges associated with dye testing, however this activity requires a verbal notification to the city engineer or designee prior to the time of the test.

d. The prohibition does not apply to any non-storm water discharge permitted under a National Pollutant Discharge Elimination System (NPDES) permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

4. Prohibition of illicit connections.

a. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

b. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

c. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

d. Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the city engineer or designee.

e. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner of occupant of that property upon receipt of written notice of violation from the city engineer or designee requiring that such locating be completed. The notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city engineer or designee.
5. Compatibility with other regulations. This section is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law. In case of conflicts in provisions, the provision that is more restrictive or imposes higher protective standards for human health or the environment shall control.

Section 2. Section 300.28(11) of the Minnetonka City Code is amended to read as follows:

11. Performance Standards Regulating Liquid or Solid Waste.

All uses shall be subject to: (1) applicable regulations of the city and the metropolitan waste control commission governing discharge into a public storm or sanitary sewer, waterway or stream; and (2) the waste controls found in city ordinance and water resources management plan.

Section 5. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 6. Section 1 of this ordinance is effective 30 days after publication. Sections 2 through 4 of this ordinance are effective the day after publication.

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

Date of publication:

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

David E. Maeda, City Clerk

The stricken language is deleted; the underlined language is inserted.
City Council Agenda Item #12B
Meeting of January 26, 2015

Brief Description: Ordinance amendment regarding snow removal restrictions

Recommended Action: Introduce the ordinance

Background

This agenda item introduces an amendment to the current snow removal ordinance. Along with the amendment, staff has included a proposed council policy for snow and ice control on municipal streets, trails and sidewalks that will be presented at the next meeting. No action on the policy is required at this point but relevant to this ordinance amendment and presented for informational purposes.

Over the years, the city has thoughtfully expanded its recreational trail system. In recent years, largely during road reconstruction projects, the sidewalk system has gradually expanded as well. And through the city’s comprehensive guide plan process, a consistent value for greater connectivity and walkability in the community is reflected in the goals for our village center areas. Impacted by this gradual shift to more paved walkways is the maintenance of trails and sidewalks.

During the winter season, Minnetonka’s public works department removes snow on approximately 25 miles of sidewalks and 53 miles of trails, including many commercial areas (see attached map). A survey of nearby communities reveals that most of the cities also perform winter maintenance of sidewalks on public rights-of-way in commercial districts.

As the number of sidewalks and sidewalk users increases in commercial areas of the community, it is important that snow removal regulations clearly define the city’s expectations for winter sidewalk maintenance. The current ordinance is vague about placement of snow that is plowed from private property and deposited on the boulevard. Frequently, private snowplow operators move snow across property lines or streets and pile the snow on non-adjacent boulevards, which creates a number of problems.

The proposed ordinance amendment clearly prohibits that activity. It allows for the piling of snow on adjacent boulevards provided that the snow does not spill onto a sidewalk. In addition, tenants and business operators along with property owners would now be held responsible for the correct handling of snow that falls on private property. Finally, the ordinance removes sidewalks and boulevards from the definition of “street” for purposes of this section only; the amendment adds explicit language for sidewalks and boulevards, in order to make the requirements of the ordinance readily understandable.
The need for quicker snow removal is evident, and the public works department is developing a plan that will increase service levels in these areas. The use of winter seasonal employees and/or contracted services will be necessary along with some additional equipment. This plan will be incorporated into the 2016 Capital Improvement Plan and budget discussions with the Council.

County Road 101/County Road 5 Business District

Since this streetscape was improved a number of years ago, the plant maintenance and winter sidewalk snow plowing has been unsatisfactory. For years, businesses were encouraged to form a maintenance district for snowplowing and landscape needs but that has not happened. As a result, summer and winter maintenance is haphazard with very poor results. Staff and council members have regularly been contacted by residents requesting sidewalk snow removal for walkability during the winter months.

In order to remedy this situation, staff is planning city intervention in this area. Starting immediately, public works will be plowing these sidewalks on the second day after a snowfall. Due to limited snow storage on the boulevards, if necessary snow will be hauled away after each snowfall. This will not alleviate businesses from taking care of their own snow removal responsibilities. Any snow that is pushed from parking lots onto public sidewalks will result in an initial warning and subsequent ticketing for violations. Within the next month, staff will meet with area business owners to review the city’s ordinances and expected compliance.

As the city’s commercial areas redevelop, efforts will be made to include snow removal and landscaping requirements in land use approvals. This recently occurred with the Highland Bank project, which includes a stipulation that requires the landowner to participate in a future maintenance district as other area properties redevelop.

Council policy on snow and ice control on streets, trails and sidewalks

Attached for council information is a policy that staff will be bringing forward for approval at the next meeting. Because it also addresses winter maintenance of trails and sidewalks, it is also presented for completeness of topic at this time.

A review of the city council policies has revealed that the city is lacking an internal policy regarding snow and ice control on streets, trails and sidewalks. The League of Minnesota Cities Insurance Trust encourages the adoption of a formal policy because it then affords the city certain immunities from legal action in the event that a suit is filed as a result of a plowing accident. The League of Minnesota Cities provides a template for the development of a snow and ice control policy and the attached policy follows that recommended form.
The public works director is designated as the person that is responsible to carry out the city’s snow removal plan. The plan is prescriptive in that it says when plowing will start, how snow is plowed, what the priorities are, what chemicals are used, how damage is handled, snow that is plowed across driveways, garbage and recycling containers and how residents should file complaints or concerns. This policy rigidity is what provides the city immunity for claims under certain conditions.

It should be noted that this policy reflects the manner that the city has removed snow for many years. No changes result from the adoption of this policy. Besides legal advantages, the policy also limits expense from damage resulting from plowing. The city currently repairs all sod when a plow wanders off of the edge of the road. The city is not responsible for damage to shrubs, landscaping rocks, trees, irrigation systems and driveway approaches that are placed by the property owner in the city’s right-of-way.

Damage to mailboxes does occur during plowing operations. Plow operators struggle with getting close enough to boxes to allow for mail service and at times get too close and the box or post is hit by the plow. Currently the city pays for full replacement of mailboxes, regardless of cost. The recommended policy limits expense for mailbox repairs or replacements to $200 per event. There are a number of structures in the community that are very elaborate and expensive and replacement is questioned due to the cost. The council is asked to provide direction on this item.

Recommendation

Introduce the ordinance regarding snow removal restrictions.

Submitted through:
Geralyn Barone, City Manager

Originated by:
Brian Wagstrom, Public Works Director
Corrine Heine, City Attorney
Ordinance No. 2015-

An Ordinance amending sections 1130.05 and 1130.010 of the Minnetonka city code, regarding snow removal restrictions

The City of Minnetonka Ordains:

Section 1. Section 1130.010 of the Minnetonka city code is amended to read as follows:

1130.005. Definition.
"Street" as used in this section means the entire right-of-way, including sidewalks, boulevards, curb and gutter, as well as the traveled portion of any city street, alley, and highway, county road and state highway within the city of Minnetonka, including curb and gutter.

1130.010. Prohibitions.

1. A person must not deposit snow or ice, plowed or removed from private property, onto a public street, public sidewalk or other public property. Street boulevards are intended to provide storage for snow and ice that is removed from city streets. Snow or ice that is plowed or removed from private property may be deposited within the boulevard abutting the property from which it was removed but must not be deposited in non-abutting boulevard areas.

2. A person must not deposit snow or ice, regardless of place of origin, onto a public street or public sidewalk in a manner that unreasonably obstructs the use of the street or sidewalk, or interferes with city snowplowing operations.

3. An owner or occupant of private property must not permit or allow anyone who is plowing or removing snow or ice from the owner or occupant’s property to deposit snow or ice in violation of this ordinance.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 3. This ordinance is effective 30 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:  
Date of adoption:  
Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Ordinance adopted.

Date of publication:  

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

__________________________
David E. Maeda, City Clerk

The stricken language is deleted; the underlined language is inserted.
Policy Number 11.16
Snow and Ice Control of Municipal Streets, Trails, and Sidewalks

Purpose of Policy: This policy establishes the guidelines for snow and ice control on municipal streets, off-road trails, and sidewalks.

1. Introduction

The goals of the city of Minnetonka are to provide safe and reasonable passage of municipal roadways, off-road trails, and sidewalks during the snow and ice season and to provide access for emergency services and the motoring public. The city will provide a high level of service keeping in mind safety, budget, personnel and environmental concerns. The content of this policy is intended as a guideline, which may be changed depending on individual circumstances.

2. When the City Will Start Snow or Ice Control Operations

The Public Works Director or his/her designee will determine when to begin snow or ice control operations. The criteria for that decision are:

a. Predicted start, intensity, and duration of event.
b. Any combination of snow, freezing rain, sleet, or wind conditions that may require chemical ice control or a plowing operation to begin.
c. Snow accumulation.
d. Drifting of snow that causes problems for travel.
e. Other conditions which seriously affect travel.

Depending on weather and pavement conditions prior to the start of a snow event, anti-icing liquid may be applied to streets in order to help prevent bonding of snow and ice to the roadway.

Snow and ice control operations are expensive and involve the use of limited personnel and equipment. Consequently city wide or a full-scale snowplowing operations will not generally be conducted for a snowfall of less than two (2) inches.

3. How Snow will be Plowed

a. Municipal Streets

Snow will be plowed in a manner so as to minimize traffic obstructions. The center of the roadway is plowed first. The snow will then be pushed from left to right on two-way streets. On one-way streets or where there is a center boulevard, snow may be pushed in either direction. The discharge will go onto the boulevard area of the street. When plowing a bridge, the driver will slow down so snow does not go over the bridge, if possible. In times of extreme snowfall, streets will not always immediately be cleared of snow from curb to curb in order to open as many streets as soon as possible.
b. **Cul-de-sacs**

Mainline plow trucks and smaller pickup trucks will be used to clear snow from cul-de-sacs. Some cul-de-sacs within the city are assigned pickup trucks to assist mainline plow trucks. Generally mainline plow trucks will make a first pass to clear the center of the circle, similar to the first pass for streets. Pickups assigned to cul-de-sacs will then clear the remaining snow from the circle. For cul-de-sacs not assigned a pickup, the mainline truck will come back to clear the remaining snow curb to curb in an attempt to provide the largest turning radius possible for emergency vehicle ingress and egress.

Snow will be deposited on the boulevard, with the goal to evenly distribute snow on adjacent properties. However, depending on the number of obstructions (hydrants, mailboxes, driveways, etc.) it is not always possible to evenly distribute cleared snow in a cul-de-sac.

c. **Trails and Sidewalks**

The city will remove snow from some, but not all, public trails and sidewalks in the city. The Public Works Director will annually determine which trails and sidewalks will be plowed and in what priority, based on consideration of budgeted funds and personnel, public safety, level of public use, and equipment needed. As there are a limited number of resources available, the city will only plow these sidewalks after the streets have been plowed. It is the responsibility of the resident and/or property owner to remove all accumulated snow from all other sidewalks along public streets adjoining their property. This includes any snow plowed from public streets onto the sidewalk.

Trails and sidewalks that are at the edge of a street will initially be plowed using the wing of street snow removal equipment. Wings generally will clear approximately two to four feet of the trail or sidewalk. The remaining portion will subsequently be cleared to full width with other equipment. Other trails and sidewalks will be cleared with either pickups, skid loaders, toolcats, etc. equipped with plows, snow blowers, or brooms.

Trails and sidewalks have been classified in three priority types. For 2-inch and greater snowfalls, each priority area may take approximately one day to clear. If snow repeatedly falls over an extended time period, the City may return to the first priority area before clearing the other lower priority areas.

4. **Snow Removal**

The Public Works Director will determine if and when snow will be removed (hauled) from an area by truck. Such snow removal will occur in areas where there is no room on the boulevard for additional snow storage and in areas where accumulated piles of snow create a hazardous condition. Snow hauling
operations will not commence until other snowplowing operations have been completed. Snow hauling may also be delayed depending on weather conditions, personnel and other factors. The snow will be removed and hauled to a snow storage area. Snow storage areas will be located so as to minimize hauling distances and environmental impacts.

5. **Priorities and Schedule of Streets to be Plowed**

The city has classified city streets based on the street function, traffic volume and importance to the welfare of the community. Those streets classified as “Main Routes”, including minor arterial and major collector streets will be plowed first. These are high volume routes, which connect major sections of the city and provide access for emergency fire, police, and medical services. The second priority streets are lower volume neighborhood collector streets and local routes. Cul-de-sacs, dead-end routes, and alleys will be plowed last.

During significant and severe storms, the city must be prepared to move personnel and equipment to maintain priority routes first. In fulfilling the need to have all priority streets safe and passable, when resources are limited, plowing of all other streets may be delayed at any time so resources can be shifted to priority routes.

Unforeseeable circumstances may cause delays in completing assigned plow routes. Such circumstances may include weather conditions that endanger the safety of snowplow operators and/or safe and effective operation of equipment, commuter traffic, disabled vehicles, poor visibility, parked or abandoned cars on streets, assistance of emergency response vehicles, equipment breakdown, and personnel shortages.

For snow events less than 2”, the Public Works Director will assign an appropriate number of snow equipment to maintain safe travel on the city’s streets. Operators will follow the priorities listed above, with the exception that cul-de-sacs, dead-end routes, and alleys will not be plowed.

6. **Traffic Regulations**

The city recognizes that snowplow operators are exempt from traffic regulations set forth in Minnesota Statutes, Chapter 169 while engaged in work on streets, except for regulations related to driving while impaired and the safety of school children. Pursuant to this authority, snowplow operators engaged in snow removal or ice control on city streets have discretion to deviate from traffic laws set forth in Chapter 169, except for laws relating to impaired driving and school children safety, when in their judgment, it is safe to disregard such laws. These privileges granted to operators of snow removal and ice control vehicles will apply only if the vehicle is equipped with at least one lighted lamp displaying a flashing, oscillating, or rotating amber light placed in such a position on the vehicle as to be visible throughout an arc of 360 degrees.
7. **Weather Conditions**

Snow and ice control operations will be conducted only when weather conditions do not endanger the safety of snowplow operators and equipment. Factors that may delay snow and ice control operations include: severe cold, significant winds, and limited visibility.

8. **Use of Sand, Salt, and Other Chemicals**

The city is committed to the prudent use of salt, sand and other chemical treatments and will limit the use to the extent possible to reduce the effects on the environment. The application of salt or deicing chemicals may be limited to major routes, steep grades, curves, and intersections. A salt/sand mixture will only be used in extremely icy conditions. Chemical treatments for control of snow and ice may not necessarily provide a bare pavement during winter conditions.

Trail and sidewalk surfaces are limited to snow removal only and are not chemically treated. Once icy, trails and sidewalks generally stay that way until melting occurs. A sand mixture will only be used in extremely icy conditions. Sidewalks at public buildings may be treated to eliminate slippery conditions.

9. **Boulevard Considerations**

Snow removal and ice control can cause property damage even under the best circumstances. The city will repair turf that was damaged on the boulevard which was the direct result of plowing beyond the road edge. All other damage within the public right of way is the owner’s responsibility (e.g. shrubs, bushes, rocks, trees, irrigation systems, driveways, etc.) The city is not responsible for damage to utility appurtenances (electrical, gas, telephone, and cable) as a result of snow removal operations. All utility infrastructure located in the city right of way must be clearly marked to avoid contact.

10. **Mailboxes**

Plow operators will make every effort to push snow as close to the curb as possible to provide access to mailboxes for postal carriers. In instances where snow extends greater than three feet into the street in front of a mailbox, city crews will return to clear snow upon request. The final cleaning around mailboxes is the responsibility of each property owner.

Damage to a mailbox is a risk that snowplow operators face during their winter plowing requirements. The city will conduct a review of each mailbox damage claim to determine whether the city has any legal responsibility for the damage and if so to repair, replace, or provide reimbursement for the mailbox. The deadline to report mailbox damage to the city is June 1. If the city, in its discretion, determines that reimbursement or replacement is appropriate, the city may:
1) At the mailbox owner’s request, replace the mailbox with a standard size, non-decorative metal mailbox and replace the support post as necessary with a decay resistant wood support post, both of which will be installed by the city. The city will attempt to match the size of the existing post with either a 4”x4” or 6”x6” support post.
2) Provide reimbursement ($200 maximum upon receipt of paid invoice) for the mailbox and support posts that meet the city’s ordinance standards, as well as state and federal requirements for mailbox size, support and placement.

11. Driveways

The snow removal operators will attempt to minimize the amount of snow that is deposited in front of driveways where possible, but the amount can be significant. The city does not clean driveways or private sidewalks. It is the homeowner’s responsibility to clear these areas, including snow pushed from public streets onto driveways or private sidewalks.

12. Trash and Recycling Containers

Residents are responsible for placing trash and recycling containers far enough from the curb or driveway end line in order to not interfere with snow removal operations. The city is not responsible for repairs, replacements, or clean-up of debris relating to trash or recycling containers.

13. Complaint Procedure

Service requests regarding snow and ice control operations or claims for damages to property should be directed to the city Public Works Department. Response time should not exceed 36 hours for any request. Responses are to ensure that the provisions of this policy have been fulfilled and that all residents of the city have been treated uniformly.

Complaints will be logged on the city’s telephone or computer system. Calls requiring service will be transferred to a work order and forwarded to the appropriate supervisor for scheduling. Emergency complaints or requests for service will be handled in an expeditious manner as resources are available.

14. Deviation From Policy

The Public Works Director may deviate from this policy when in his or her judgment it is in the best interest of the city or is necessary because of budget needs or other circumstances.

15. Review and Modification of Policy

The Public Works Director will keep on file all comments and complaints received regarding this policy. The policy will be reviewed periodically. Any review will consider comments and complaints since the last review and any other factors affecting the policy or its implementation.
Adopted by Resolution No.
Council Meeting of
This map was created using the City of Minnetonka’s Geographic Information Systems (GIS). It is a compilation of information and data from various City, County, State, Federal, and other sources. This map is not surveyed or legally recorded and is intended to be used as a reference. The City of Minnetonka is not responsible for any inaccuracies contained herein.
City Council Agenda Item #13A1  
Meeting of January 26, 2015

**Brief Description**  
Resolution vacating an obsolete drainage and utility easement at 15501 Legacy Oaks Trail

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

**Request**  
Prior to approving the final plat of LEGACY OAKS, the council vacated several easements that would have become obsolete with the recording of the new plat and associated easements. One small, 415 square-foot easement area was missed. At this time the applicant, Ron Clark Construction, is requesting vacation of that now obsolete easement. (See page A2.)

**Staff Recommendation**  
Hold a public hearing and adopt the resolution vacating an obsolete drainage and utility easement at 15501 Legacy Oaks Trail. (See pages A3-A5.)

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

Project: Legacy Oaks
Address: 15501 Legacy Oaks Trail
Applicant: Ron Clark Construction
(11003.14b)

This map is for illustrative purposes only.
Resolution No. 2015-
Resolution vacating an obsolete drainage and utility easement on the property at 15501 Legacy Oaks Trail

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

Section 1. Background.

1.01 Ron Clark Construction has petitioned the Minnetonka City Council to vacate an existing drainage and utility easement on the property at 15501 Legacy Oaks Trail.

1.02 The permanent easement for drainage and utility purposes was created by Document No. 9725459 and is legally described as follows:

A 20.00 foot wide strip over, under, across and upon Lot 1, Block 3, Legacy Oaks, formerly a part of Outlot A, Evergreen 2nd Addition, according to the record plats thereof, Hennepin County, Minnesota, the center line of said easement is described as follows: Commencing at the northwest corner of said Outlot A; thence South 00 degrees 52 minutes 40 seconds West, along the west line of said Outlot A, a distance of 249.45 feet to an angle point in said west line; thence South 89 degrees 07 minutes 20 seconds East, along said west line, a distance of 24.55 feet to an angle point in said west line; thence South 00 degrees 46 minutes 11 seconds West, along said west line, a distance of 131.02 feet to the beginning of the center line to be described; thence South 67 degrees 11 minutes 32 seconds East a distance of 20.84 feet and there terminating.

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 26, 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 makes the following findings:

1. Given the infrastructure and easements granted within LEGACY OAKS, the drainage and utility easement described above is no longer required.

2. The vacation is not counter to the public interest.


4.01 The city council vacates the above-described easement.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 26, 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 26, 2015.

______________________________
David E. Maeda, City Clerk
City Council Agenda Item #13A2
Meeting of January 26, 2015

Brief Description
Resolution approving the final plat of LEGACY OAKS 2nd ADDITION

Recommendation
Hold the public hearing and adopt the resolution approving the request

Introduction
In June 2013, the city council approved the LEGACY OAKS preliminary plat. The plat allowed for development of the existing 26-acre Jondahl Farm. As per the approved preliminary plat, LEGACY OAKS includes single-family homes, twin homes, and either condominium units, townhomes or a combination of both. (See pages A1–A2.)

In April 2014, the city council approved the LEGACY OAKS final plat. The plat created the single-family and twin home lot portion of the property in the west and central area of the development. The east area was platted as outlots, with the expectation that future phases would be “final platted” just ahead of construction. (See pages A3–A4.)

At this time the applicant, Ron Clark Construction, is requesting approval of the LEGACY OAKS 2nd ADDITION final plat. This plat creates a lot for the first of three, 20-unit condominium buildings. The site and building plans for the building itself were recently reviewed and approved by the planning commission. (See pages A5–A13.)

Staff Recommendation
The LEGACY OAKS 2nd ADDITION generally reflects the site design approved as the preliminary plat, as well as a phased approach to development. As such, staff recommends the council adopt the resolution approving the final plat for LEGACY OAKS 2nd ADDITION. (See pages A14–A15.)

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

Project: Legacy Oaks 2nd Addition
Applicant: Ron Clark Construction
(11003.14c)

This map is for illustrative purposes only.
KNOW ALL PERSONS BY THESE PRESENTS:

That RE Clark Land Investments, LLC, a Minnesota limited liability company, owner of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

Outlot E, Legacy Oaks, Hennepin County, Minnesota.

Has caused the same to be surveyed and platted as LEGACY OAKS 2ND ADDITION and does hereby dedicate to the public for public use the easements for drainage and utility purposes as shown on this plat.

In witness whereof said RE Clark Land Investments, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this ______ day of __________________, 20____.

RE CLARK LAND INVESTMENTS, LLC

_____________________________________________
its: __________________________________________

STATE OF MINNESOTA COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this ______ day of _____________________, 20____ by _______________________ ______, the ___________________________ of RE Clark Land Investments, LLC, a Minnesota limited liability company, on behalf of the company.

_____________________________________________
_____________________________________________
Notary Public, Hennepin County, Minnesota
My Commission Expires __________________

Eric B. Lindgren do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey, that all mathematical data and data on this plat are correctly designated on this plat, that all monuments depicted on this plat have been, or will be correctly set within one year, that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat, and all public ways are shown and labeled on this plat.

Dated this _________ day of ___________________, 20____.

_______________________________________________
Erich B. Lindgren, Licensed Land Surveyor
Minnesota License Number 48176

STATE OF MINNESOTA COUNTY OF DAKOTA

The foregoing instrument was acknowledged before me this _________ day of ___________________, 20____ by Jeffrey D. Lindgren.

_____________________________________________
_____________________________________________
Notary Public, Dakota County, Minnesota
My Commission Expires __________________

MINNETONKA, MINNESOTA

This plat of LEGACY OAKS 2ND ADDITION was approved and accepted by the City Council of Minnetonka, Minnesota at a regular meeting held on this ______ day of ____________________, 20____. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the city or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 505.03, Subdivision 2.

CITY COUNCIL OF MINNETONKA, MINNESOTA

By: ____________________________________________ Mayor

By: ___________________________________________ Clerk

RESIDENT AND REAL ESTATE SERVICES, HENNEPIN COUNTY, MINNESOTA

I hereby certify that taxes payable in _________ and prior years have been paid in full for all land described on this plat.

Dated this _________ day of __________________, 20____.

Mark V. Chapin, Hennepin County Auditor

SURVEY DIVISION, HENNEPIN COUNTY, MINNESOTA

Pursuant to Minnesota Statutes, Section 383B.565 (1969), this plat has been approved this _________ day of ____________________, 20____.

Chris F. Mavis, Hennepin County Surveyor

COUNTY RECORDER, HENNEPIN COUNTY, MINNESOTA

I hereby certify that the within plat of LEGACY OAKS 2ND ADDITION was recorded in this office this _________ day of __________________, 20____. I am the County Recorder.

Martin McConnell, County Recorder
Resolution No. 2015-
Resolution approving the final plat for LEGACY OAKS 2ND ADDITION

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

Section 1. Background.

1.01 Ron Clark Construction has requested final plat approval for LEGACY OAKS 2ND ADDITION.

1.02 The properties to be included in the plat is legal described as:

OUTLOT E, LEGACY OAKS, HENNEPIN COUNTY, MINNESOTA.

1.03 On February 10, 2014, the city council approved the LEGACY OAKS preliminary plat.

1.04 On January 22, 2014, the planning commission approved site and building plans for the condominium building to be constructed within LEGACY OAKS 2nd ADDITION.

1.05 The proposed LEGACY OAKS 2nd ADDITION generally reflects the site design approved as the preliminary plat.

Section 2. Council Action.

2.01 The city council grants final plat approval of LEGACY OAKS 2nd ADDITION. Approval is subject to the following condition

1. Prior to release of the final plat, provide title evidence that is current within thirty days of submittal for review and approval of the city attorney.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 26, 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 26, 2015.

David E. Maeda, City Clerk
City Council Agenda Item #14A
Meeting of January 26, 2015

Brief Description Items concerning One Two One Development at 14217 and 14301 Stewart Lane:

1) Land Use Item:
   - Final site and building plan review for construction of a senior cooperative building.

2) Contract for Private Redevelopment:
   - Resolution approving an amendment to the existing contract for private redevelopment.

Recommendation Adopt the resolutions approving the final site and building plans and the amendment to the contract.

Proposal

One Two One Development is proposing to construct a four-story, 54-unit senior cooperative building on the properties at 14217 and 14301 Stewart Lane. In addition to the building, various outdoor amenities would be constructed including a public trail connection to Kinsel Park.

1) Land Use Item – Site and Building Plan Review

The planning commission considered the proposal on January 8, 2015. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1–A69. Staff recommended approval of the proposal noting:

- The proposal is consistent with the comprehensive plan guide plan designation for the property; and
- The proposal would result in a smaller building with greater setbacks than the building previously approved for the site.

At the commission meeting, a public hearing was opened to take comment. Several area residents addressed the commission, expressing concern about the proposed building height, setbacks, consistency with previous approvals, and implications on the existing TIF contract for the area. Following the public hearing, the commission discussed the proposal and raised three primary questions/concerns:
Building Height.

Several commissioners questioned the difference in height between the previously approved and proposed buildings. By city code definition, building height is measured from grade to the highest point of the coping of a flat roof. When the grade change over the footprint of a building is less than 10 feet, the height measurement is taken from the highest grade to the roof. When the grade change is greater than 10 feet, the height measurement is taken from a point 10 feet above the lowest grade to the roof. The following simple diagrams illustrate this often confusing measurement.

Based on code definition, the building approved in 2006 was 69 feet in height; the measurement was taken from a point 10 feet above the lowest grade to the roof of the then proposed penthouse apartment. The building currently proposed is 51 feet in height; the measurement is taken from the highest grade to the top of the parapet wall.

Setback Requirements.

Several commissioners and area residents questioned the difference in side and rear yard setback requirements between the previously approved and proposed buildings. By city code, within the R-5 zoning district the required setback is 1.5 times the height of the building, but no greater than 100 ft. As such, the difference in the height of the two buildings results in a difference in setback requirement.

<table>
<thead>
<tr>
<th></th>
<th>Required Setbacks</th>
<th>Actual Setbacks Per Submitted Site Plan</th>
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<tbody>
<tr>
<td></td>
<td>Side – (north)</td>
<td>Side – (southwest)</td>
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<tr>
<td>2006 Approval</td>
<td>100 ft</td>
<td>33 ft</td>
</tr>
<tr>
<td>2015 Proposal</td>
<td>76.5 ft</td>
<td>39 ft</td>
</tr>
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</table>
The difference in setback requirements also results in a difference in buildable area. (See page A79.) It is important to note that though there is a difference in the setback requirement between the 2006 approval and the current request, there is little difference in the actual setbacks of the 2006 and 2015 buildings.

Trail Location.

Commissioners did not express concern regarding the proposed “northeast” location of the public trail on the site. However, they did acknowledge the concerns raised by area residents and requested that staff again review the proposed location versus a location on the southwest side of the building. The city engineer has thoroughly analyzed the two locations and found that the proposed “northeast” location is the more feasible of the two. The majority of the trail has an acceptable 5% grade achieved through roughly 140 feet of switchback configuration. Achieving the same acceptable grade on the “southwest” side would require 500 feet of switchback trail.

Planning Commission Recommendation

At the planning commission meeting, staff presented a revised resolution. The resolution did not contain any substantive changes to the one contained in the commission’s packet. Rather, the formatting and order of several conditions was changed. On a 5-1 vote, the commission recommended that the city council deny the proposal. Meeting minutes may be found on pages A80–A85.

Since Planning Commission Hearing

Staff has updated the report attachments to include additional public comments and inserted the revised resolution presented to the planning commission at its January 8th meeting. There have been no changes to the proposal.

2) Contract for Private Redevelopment Item – Amended Contract

At the time of the original Glen Lake redevelopment approvals in January 2006, the city and the EDA entered into a Contract for Private Redevelopment. The contract has been amended on several occasions since that time to reflect the changes in the development, as well as to extend the time period in which the third phase – the Kinsel site – of the redevelopment could occur.

With the proposed changes to Phase III being requested now, the contract must be amended again. The city’s legal counsel at Kennedy & Graven have drafted a Third Amendment to the Second Amended and Restated Contract for Private Development (See pages A103–A124.) The amendment changes Phase III from a 45 unit condominium building to a 54 unit senior cooperative. The second substantive change is that of the dates for construction commencement and completion. These dates have
been extended to no later than September 30, 2015 for commencement and completion by December 31, 2016. This was done so that, in the event construction did not begin by June 20, 2015, the contract did not need to come back for another amendment within such a short period of time.

**Staff Recommendation**

1) Adopt the resolution approving final site and building plans and associated variances for One Two One Development at 14217 and 14301 Stewart Lane. This is the resolution presented to the planning commission at its January 8th meeting. (See pages A87–A99.)

2) Adopt the resolution approving a Third Amendment to the Second Amended Contract For Private Redevelopment between the economic development authority, the city and Glen Lake Redevelopment LLC. (See pages A100–A102.)

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

Originators: Susan Thomas, AICP, Principal Planner
Elise Durbin, AICP, Community Development Supervisor
MINNETONKA PLANNING COMMISSION
January 8, 2015

Brief Description       Items concerning One Two One Development located at 14217 Stewart Lane

Recommendation        Recommend the city council approve the request

Background

This item was tabled at the December 11, 2014 Planning Commission meeting due to the lateness of the hour. The commission asked staff to provide additional information and responses to comments and questions raised during the public hearing.

1. Trail – The location of the trail along the north property line was questioned as the 2006 proposal and current temporary trail are located along the west property line.

   Response - Given the slope of the site and need to have an accessible public trail, the northern property line location was demonstrated by the applicant to be a better location than the current location.

2. Development Agreement – Questions were raised about the city’s ability to approve a 54-unit senior cooperative project when the Redevelopment Contract states “…45 for-sale condominium housing units….”

   Response – The city could only approve a 54-unit senior cooperative with a change to the Redevelopment Contract. The city and EDA would need to approve that change. For purposes of the Planning Commission deliberations, the proposal should be reviewed on the merits of site and building plan review as recommendations on the Redevelopment Contract is not in the purview of the planning commission.

3. Variances – Previous variance approvals do not apply to this proposal.

   Response – The 2006 proposal required variances for building and parking lot setbacks. Although the previous approvals lapsed, the circumstances and conditions of the property are the same. The requested variances need to be approved based on the current conditions. The resolution provides findings to support those variances.
4. **Parking** – There would not be enough parking if the building were converted in the future to an apartment building.

   **Response** – The staff report identifies the provision in the ordinance that contemplates the accommodation of parking should a conversion occur. A conversion from a senior to apartment building would leave the parking could 5 stalls short of meeting code minimums. This does not take into account a reality based parking study of an apartment building that may suggest 1 stall per unit may be appropriate for adaptations such as single bedroom units or transit considerations that would reduce parking.

5. **Stewart Lane** – Stewart Lane is not able to accommodate traffic generated by the proposal.

   **Response** – As noted in the staff report, Stewart Lane can accommodate traffic generated by proposal. The roadway is 26 feet in width which meets the required engineering standard for a street that is designed for residential traffic.

**Since Planning Commission Meeting**

One comment was received since the meeting. (See pages A87-A99).

**Staff Recommendation**

Adopt the resolution on pages A79-A91 which approves final site and building plans and associated variances for One Two One Development at 14217 and 14301 Stewart Lane.

Originator: Loren Gordon, AICP, City Planner
MINNETONKA PLANNING COMMISSION
December 11, 2014

Brief Description
Items concerning One Two One Development located at 14217 Stewart Lane

Recommendation
Recommend the city council approve the request

Project No. 14028.14a
Property 14217 and 14301 Stewart Lane
Applicant One Two One Development

Proposal
One Two One Development has submitted plans to develop the property at 14217 and 14301 Stewart Lane, commonly known as the Kinsel site. The proposed project would consist of constructing a four-story, residential senior cooperative building with 54 dwelling units. The building would have common community space for activities and outdoor amenities including a public trail connection to Kinsel Park. Parking is accommodated with 76 underground and 27 surface parking spaces. The proposal requires site and building plan review and building and parking lot setback variances. (See pages A1-A27).

The Planning Commission and City Council have held three concept plan review meetings on the proposed development. In addition to the city review meetings, the developer has held at two neighborhood meetings to receive input. These meetings have helped shape the project causing a reduction in units from 58 to 54 and increased building setbacks from the north property line and Kinsel Park. (See pages A28-A61).

The proposal for the site has a history dating back to approvals for a similar four-story high density residential building. (See pages A62-A79 for a history.)

Proposal Requirements
The proposal requires:

- Site and Building Plan review
- Variances for building and parking lot setbacks
Approving Body
The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request. This action is not customary but is required for this project as other city council actions related to the development agreement for the property are needed. (City Code §300.06 Subd. 4)

Site Features
The site is comprised of two parcels, one privately owned and one owned by the city of Minnetonka. It is irregularly shaped, with a narrower frontage on Stewart Lane and much wider south and easterly width at Kinsel Park and Glen Lake. The site is vacant except for a trail connection which connects Stewart Lane to Kinsel Park.

- **Topography**
  The portion of the site near Stewart Lane is generally flat as it provided home sites for two residential homes prior to 2006. From that area it slopes southeasterly toward Kinsel Park and Glen Lake. The change of elevation is 40 feet.

- **Trees**
  The site is generally open field except for trees along the lower portions of the slope adjacent to Glen Lake.

- **Other Natural Features**
  Wetland, floodplain and Glen Lake are natural features of the property.

Building Use
The proposed residential building includes four levels of residential units and lower level parking garage. Included on the lower and main/first levels are common spaces and amenities for residents.

Building Architecture
Building architecture more traditional in nature with strong shape geometric shapes and lines. The building is designed with a flat roof and parapets walls with varied heights and details. Building height at the Stewart Lane elevation is 45 feet. On the rear or Glen Lake elevation, the height is 56 feet 1 inch.

Building Location
The building is generally situated in the center of the site on the southeasterly sloping area. Proposed setbacks are as follows:
<table>
<thead>
<tr>
<th></th>
<th>Proposed Setbacks</th>
<th>Required Setbacks</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>76.5 feet</td>
<td>37 feet</td>
<td>33 feet</td>
</tr>
<tr>
<td>Side (West)</td>
<td>43 feet 2 inches</td>
<td>76.5 feet</td>
<td>33.5 feet</td>
<td>40 feet</td>
</tr>
<tr>
<td>Rear (Kinsel Park)</td>
<td>48 feet 3 inches</td>
<td>76.5 feet</td>
<td>28 feet</td>
<td>34 feet</td>
</tr>
</tbody>
</table>

**Proposed Parking**

Parking is accommodated on site to include a total of 103 stalls of which 76 are in the lower building level and 27 in the front surface parking area. The parking ratio of stall per residential unit is 1.9 which exceeds the required 1 space per unit for senior housing developments. The code also contemplates the need for additional parking if a conversion of occupancy would occur. If the development were to convert to a more typical multi-family apartment in the future, the project would be 5 stalls under the code minimum of 2 per unit. The proposal would exceed the Institute of Traffic Engineers (ITE) study average of 1.46 stalls per unit for a residential condominium.

The surface parking lot is primarily for visitor parking. The design allows for a small but organized area for deliveries and emergency vehicle access. Setback variances would be required for the parking stalls from the north and west setbacks of 8 and 12 feet respectively and 10 feet from Stewart Lane.

**Traffic**

The site includes one access driveway at Stewart Lane. Stewart Lane provides direct access to the two main arterial roadways in the Glen Lake village center - Excelsior Boulevard to the north and Eden Prairie Road to the west. Based on similar residential cooperative uses, the Institute of Traffic Engineers (ITE) manual eighth edition, the proposal would generate approximately 378 trips per day. This is consistent with trip generation rates for other adjacent residential developments and would not overburden the vehicle capacity of Stewart Lane.

**Staff Analysis**

Staff finds that the applicant’s proposal is reasonable.

- The proposed development is consistent with the city’s comprehensive plan guidance and master plan.
• The proposal reflects a smaller building than originally approved by the 2006 master plan for the property.

• The proposal meets the city’s ordinances

**Staff Recommendation**

Adopt the resolution on pages A87–A99 which approves final site and building plans and associated variances for One Two One Development at 14217 and 14301 Stewart Lane.

Originator: Loren Gordon, AICP, City Planner
## Supporting Information

### Surrounding Land Uses
- **Northerly:** Townhomes zoned R-3
- **Easterly:** Kinsel Park zoned R-1
- **Southerly:** Condominium zoned R-4
- **Westerly:** Condominium zoned R-4

### Planning
- **Guide Plan designation:** High Density Residential (12+ units/acre)
- **Zoning:** R-5 High Density Residential

### Grading/Drainage
The proposal would use existing site typography. Existing drainage patterns would remain generally intact with a number of stormwater management improvements to meet city and watershed district rules. Primary grading impacts would be for building construction and stormwater pond improvements.

### Stormwater
The proposal includes stormwater system plan designed to meet city and Nine Mile Creek Watershed District requirements. The system improvements include stormwater pond facilities located between the wetland/lake edge and the rear of the buildings.

### SBP Standards
The proposed building would comply with site and building standards as outlined in city code.

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

   **Finding:** The proposal is consistent with the city's comprehensive plan guidance of high density residential and the master plan for Glen Lake adopted in 2006.

2. Consistency with the ordinance;

   **Finding:** The proposal meets the standards of the R-5 zoning district and applicable performance standards.

3. Preservation of the site in its natural state to the extent practicable by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;
Finding: The proposal will maintain the natural state significant natural features adjacent to the wetland edge of Glen Lake. A city order required the current property owner to replant vegetation at the foot of the slope adjacent to Glen Lake. These plantings were the result of unauthorized site clearing in 2006. This area is a preservation area on the plans. Additional site landscaping will improve the natural amenities and connection to the natural environment surrounding Glen Lake.

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

Finding: The building is situated on the property to allow residents to enjoy site amenities and views of the natural environment surrounding Glen Lake.

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;

Finding: The site and building are well organized to provide a desirable place to live. The building is a high quality design which adds value to the living experience for residents. Indoor and outdoor site amenities create an enjoyable environment.

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

Finding: The site contains an adequate amount of open space and landscaping. The building footprint impacts 25 percent of the site area allowing a rich landscaping and site amenities.

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
Finding: Building materials are comprised of high quality brick, stone and engineered materials. Colors and textures are compatibly designed with adjacent development in the surrounding environment. The building design is similar to the adjacent multi-story condominium buildings.

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

Finding: A public trail system will connect the site to Kinsel Park providing opportunities for residents to connect to the natural environment. Stewart Lane provides vehicular and pedestrian connections to the surrounding area.

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

Finding: The building is designed and situated appropriately on the property to take advantage of southern exposure for added winter energy considerations. As site landscaping matures, summer heat gain will be reduced over time.

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

Finding: The building is sited with the consideration of setbacks and views. Proposed landscaping will buffer adjacent properties while allowing views, light and movement of air. Surface water management systems will improve the surface water runoff quality which benefits the natural environment.
VARIANCE STANDARDS

The proposal meets the variance standard outlined in City Code §300.07 Subd. 1(a):

1. PURPOSE AND INTENT OF THE ZONING ORDINANCE: The proposal would be consistent with the zoning ordinance.

2. CONSISTENT WITH COMPREHENSIVE PLAN: The proposal would be consistent with the comprehensive plan.

3. PRACTICAL DIFFICULTIES: There are practical difficulties in complying with the ordinance:
   a. REASONABLENESS: The proposed variances are reasonable. The proposed variances for the building are less than what was approved in 2006 for a similar building at the same location.
   b. UNIQUE CIRCUMSTANCE: The property is unique in shape and location. The irregular shape makes the design and placement of a more commonly designed building difficult.
   c. CHARACTER OF LOCATILTY: There are other high density residential buildings on Stewart Lane with similar building and parking lot setbacks.

Natural Resources

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

Motion Options

The planning commission has three options:

1. Concur with staff’s recommendation. In this case a motion should be made to approve the proposal based on the findings outlined in the staff-drafted resolution.

2. Disagree with staff’s recommendation. In this case a motion should be made recommending denial of the proposal. The motion should include findings for denial.
(3) Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant or both.

**Appeals**
Any person aggrieved by the planning commission’s decision regarding the requested variances may appeal such decision to the city council. A written appeal must be submitted to the planning staff within ten days of the date of the decision.

**Neighborhood Comments**
The city sent notices to 734 area property owners and received no comments to date.

**Deadline for Decision:**
March 20, 2015
Location Map

Project: OneTwoOne Development
Address: 14217 & 14301 Stewart La
(14028.14a)
Selective Site Demolition Plan

NOTE:
THIS SITE HAS ALREADY BEEN RAZED. PRIOR TO BIDDING, THE CONTRACTOR IS TO VISIT THE SITE TO DETERMINE IF ALL FOUNDATION WALLS/FOOTINGS, FENCING, PAVEMENTS, TREES, ETC. HAVE BEEN REMOVED PREVIOUSLY BY OTHERS. ITEMS NOT REMOVED, THAT ARE SHOWN TO BE REMOVED ON THIS DRAWING, ARE TO BE REMOVED AS PART OF THIS CONSTRUCTION PACKAGE. NON-CONSTRUCTION COMPENSATION WILL BE GIVEN FOR ITEMS THAT COULD HAVE BEEN OBSERVED BY A SITE VISIT OR CLARIFIED BY OWNER/ARCHITECT PRIOR TO BIDDING.
NOT FOR CONSTRUCTION

Date: 11-19-14
Project Number: 1301 American Blvd E
Minneapolis, MN 55425
tel: (612) 879-6000
fax: (612) 879-6666
www.kaaswilson.com

Owner:
One2One Development
14301 Stewart Lane
Minnetonka, MN 55345-5821

Electrical Engineer
Mechanical Engineer
Civil & Structural Engineer

3530 Lexington Avenue N
Shoreview, MN 55126
(651) 766-4300

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the state of Minnesota.

Date Lic. No.

14444

Preliminary

SJH/KAB/KAM

TJC

11-19-2014

Grading, Drainage, and Erosion Control Plan

C200
### Planting Schedules - Trees

<table>
<thead>
<tr>
<th>No.</th>
<th>Variety</th>
<th>Amount</th>
<th>Specimen Size</th>
<th>Code</th>
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### Planting Schedules - Shrubs

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### Planting Schedules - Perennials

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**DECIDUOUS TREE PLANTING - SECTION**

**CONIFEROUS TREE PLANTING - SECTION**

**TYP. SHRUB PLANTING - SECTION**

**TYP. PERENNIAL PLANTING - SECTION**

**TYP. VINE PLANTING DETAIL**

**ROCK MULCH TYP. SECTION**

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**LANDSCAPE DETAILS**

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SEE SHEET L101 FOR LANDSCAPE LAYOUT PLAN
Building has shifted 22' to increase the angle of the view corridor from the north.

Current Side Setback

C1: 48'-3" (FORMAL PLAN REVIEW: RESIDENTIAL)
C1: 55'-4" (FORMAL PLAN REVIEW: RESIDENTIAL)
C1: 41'-0" (FORMAL PLAN REVIEW: RESIDENTIAL & GARAGE)
D3: 36'-5" (FORMAL PLAN REVIEW: RESIDENTIAL & GARAGE)

Current Rear Setback

C1: 1504 ft²
C1: 1215 ft²
D3: 1504 ft²
D3: 959 ft²
C1: 1215 ft²
D2: 1427 ft²
D4: 1878 ft²

14301 Stewart Lane: Site Plan City Concept Review, Oct. 2014 (in red)
14301 Stewart Lane: Site Plan City Final Review, Dec. 2014/Jan. 2015 (currently shown)

Glen Lake Cooperative, Minnetonka, MN
City of Minnetonka Final Review 11/21/2014

Submitted by Applicant
A 6’ walking path along the west property line has been examined. Related issues that require further study include:

A.) A minimum 4’ retaining wall between the walking path and proposed parking lot would be required to maintain a minimal slope suitable for walking. A continuous handrail will also be required along the walls directly adjacent to the path.

B.) Stairs would be required along the southern end of the trail to maintain a minimal slope suitable for walking. A handrail would be required at these areas as well.

C.) A west trail along the property line would fill in areas otherwise used for vegetative screening. A 6’ high fence may be required instead.

D.) Snow storage could impact the trail as the driveway is plowed during the winter months. Snow could melt along the west trail and run down the stairs, and may need to be closed until the weather is more agreeable.
14217 Stewart Lane:

2006 Zoning Code Requirements - conforms with the prior Kinsel Pointe Development with approved variances.

- Zoning: R-5
- Site Area: 3.24 acres
- Unit Count: 50 units with 4 affordable (54 total)
- DENSITY = 16.6 units/acre
- Setbacks (Southwest side = 48', North side = 40')
- Footprint size = 26,365 sf
- Number of Units/floor = approx. 15 (1,300 SF average)
- Stories (Housing) = 4 stories (11'-2" floor to floor)
- Stories (Underground parking) = 1 story (10'-8" floor to floor)
- Elevation from 1st Floor to Roof Truss Bearing = 42'-7"

14217 Stewart Lane:

2014 Zoning Code Requirements - assuming no variances that had been previously approved from the Kinsel Pointe Development

- Zoning: R-5
- Site Area: 3.24 acres
- Unit Count: 60
- DENSITY = 18.5 units/acre
- Setbacks (side, rear) = 100' maximum
- Footprint size = 11,500 sf (approx.)
- Number of Units/floor = approx. 8 (1,300 SF average)
- Stories (Housing) = 8 stories (10'-8" floor to floor)
- Stories (Underground parking) = 3 stories (10'-8" floor to floor)
- Elevation from 1st Floor to top of Roof = 96'-0"

Glen Lake Cooperative, Minnetonka, MN
Wilson Architects
City of Minnetonka Final Review 11/21/2014

One Two One Development
14217 and 14301 Stewart Lane
**14301 Stewart Lane: 2006 Kinsel Pointe Development**

Elevation from 1st Floor Grade to Roof = 42'-8" + parapet wall = **44'-8"**

Elevation of the most exposed portion of the Kinsel Pointe Development (Southeast End), from Garage to Roof Parapet Edge = **65'-8"**

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**14301 Stewart Lane: 2014 Glen Lake Cooperative Development**

Elevation from 1st Floor Grade to Truss Bearing = 42'-7" + Roof Trusses + parapet wall = **45'-7"**

Elevation of the most exposed portion of the Kinsel Pointe Development (Southeast End), from Garage to Roof Parapet Edge = **57'-1"**

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Glen Lake Cooperative, Minnetonka, MN
City of Minnetonka Final Review 11/21/2014

Submission by Applicant

One Two One Development
14217 and 14301 Stewart Lane
GLEN LAKE COOPERATIVE
inspiration images
GLEN LAKE COOPERATIVE

inspiration

interiors | architecture

One Two One Development
14217 and 14301 Stewart Lane
GLEN LAKE COOPERATIVE
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interiors | architecture

One Two One Development
14217 and 14301 Stewart Lane
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One Two One Development
14217 and 14301 Stewart Lane
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One Two One Development
14217 and 14301 Stewart Lane
CONCEPT PLAN REVIEW
MINNETONKA PLANNING COMMISSION  
October 23, 2014

**Brief Description**  
Concept plan for 14217 Stewart Lane (Kinsel site)

**Action Requested**  
Discuss concept plan with the applicant. No formal action is required.

---

**Proposal**

One Two One Development has submitted concept plans to develop the property 14217 Stewart Lane, commonly known as the Kinsel site. The proposed project would consist of constructing a four story, residential senior cooperative building with 58 dwelling units. The building would have common community space for activities and outdoor amenities including a public trail connection to Kinsel Park. Parking is accommodated with 79 underground and 27 surface parking spaces. (See pages A1-A7.)

**Background**

The city’s comprehensive plan guides the property for high density residential. The proposal would require amendment to master development plans and site and building plan review. The Glen Lake master development plan approvals identify the Kinsel site as phase III of the redevelopment effort which commenced in 2007 with the Exchange Building. The contract for redevelopment supporting the master development plan identifies 45 condominium units for the Kinsel site. During the initial approvals the property was rezoned to R-5 high density residential district. (See page A8).

**Review Process**

Staff has outlined the following review process for the proposal. At this time, a formal application has not been submitted.

- **Neighborhood Meeting.** The developer hosted a neighborhood meeting on August 20th to discuss the project. Approximately 41 people were in attendance. The following comments were raised:
  
  - Dead against the project. Need more young people.
  - Stewart Lane is a service road. Xcel substation is a health hazard.
  - Project increases traffic.
  - Plans are in conflict with businesses in Glen Lake because these people won’t help businesses.
  - More elderly means businesses will die.
  - Need to address environmental impact.
  - What type of amenities will the coop have?
  - Need more surface parking. Residents will have 2 cars.
  - Where are the trails?
• What to do about other Glen Lake planning?

The developer also hosted a second neighborhood meeting on October 16th. Meeting follow-up will be provided at the planning commission meeting.

• **Planning Commission Concept Plan Review.** The planning commission Concept Plan Review is intended as a follow-up to the neighborhood meeting. The objective of this meeting is to identify major issues and challenges in order to inform the subsequent review and discussion. The meeting will include a presentation by the developer of conceptual sketches and ideas, but not detailed engineering or architectural drawings. No staff recommendations are provided, the public is invited to offer comments, and planning commissioners are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.

• **City Council Concept Plan Review.** The city council Concept Plan Review is intended as a follow-up to the planning commission meeting and would follow the same format as the planning commission Concept Plan Review. No staff recommendations are provided, the public is invited to offer comments, and council members are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.

**Staff Recommendation**

During review of a formal application, commissioners may ask questions – and receive answers – regarding details of a proposal. Commissioners may also debate points of the proposal with each other and with the applicant.

Concept plan review should be approached differently than the formal development application process. To provide the most useful feedback to the applicant, rather than asking questions, the commission should spend the majority of the concept review engaged in discussion as a commission. After discussion, it would be appropriate to provide specific comments to the applicant. The applicant may consider the commission’s comments in the preparation of more detailed development plans and formal development review application.

Originator: Loren Gordon, AICP, City Planner
ADDITIONAL INFORMATION

Next Steps

- **Formal Application.** If the developer chooses to file a formal application, notification of the application would be mailed to area property owners. Property owners are encouraged to view plans and provide feedback via the city’s website. Through recent website updates: (1) staff can provide residents with ongoing project updates, (2) residents can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) residents may provide project feedback on project; and (4) staff can review resident comments.

- **Council Introduction.** The proposal would be introduced at a city council meeting. At that time, the council would be provided another opportunity to review the issues identified during the initial Concept Plan Review meeting, and to provide direction about any refinements or additional issues they wish to be researched, and for which staff recommendations should be prepared.

- **Planning Commission Review.** The planning commission would hold an official public hearing for the development review and would subsequently recommend action to the city council.

- **City Council Action.** Based on input from the planning commission, professional staff and general public, the city council would take final action.

City Roles and Responsibilities

- **City Council.** As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, planning commissioners, applicants and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.

- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and concerns prior to the council’s consideration by carefully balancing the interests of applicants, neighbors, and the general public.
City Staff. City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
Brief Description  Concept plan for 14217 Stewart Lane (Kinsel site)

Action Requested  Discuss concept plan with the applicant. No formal action is required.

Proposal

One Two One Development has submitted concept plans to develop the property 14217 Stewart Lane, commonly known as the Kinsel site. The proposed project would consist of constructing a four story, residential senior cooperative building with 58 dwelling units. The building is proposed to include common community space for activities and outdoor amenities including a public trail connection to Kinsel Park. Parking is accommodated with 79 underground and 27 surface parking spaces. (See pages A1-A7.)

Background

The city’s comprehensive plan guides the property for high density residential. During the initial approvals the property was zoned to R-5 high density residential district. (See page A8). The revised proposal would require amendment to master development plans and site and building plan review. The Glen Lake master development plan approvals identify the Kinsel site as phase III of the redevelopment effort which commenced in 2007 with the Exchange Building (now the Oaks at Glen Lake). The redevelopment contract supporting the master development plan identified 45 condominium units for the Kinsel site.

On June 23, 2014, the property owner sought an extension to the contract development for the Glen Lake redevelopment. The economic development authority approved the extension for an additional year to June 2015. The property owner also introduced the One Two One Development team at that time as the prospective Kinsel site developer.

Review Process

Staff has outlined the following review process for the proposal. At this time, a formal application has not been submitted.

- Neighborhood Meeting. The developer hosted a neighborhood meeting on August 20th to discuss the project. Approximately 41 people were in attendance. The following comments were raised:
  - Dead against the project. Need more young people.
  - Stewart Lane is a service road. Xcel substation is a health hazard.
  - Project increases traffic.
• Plans are in conflict with businesses in Glen Lake because these people won’t help businesses.
• More elderly means businesses will die.
• Need to address environmental impact.
• What type of amenities will the coop have?
• Need more surface parking. Residents will have 2 cars.
• Where are the trails?
• What to do about other Glen Lake planning?

The developer also hosted a second neighborhood meeting on October 16th. Approximately 14 people were in attendance. The following comments were raised:

• What variances will be requested?
• Is the footprint the same as previous condo proposal? What were the unit sizes?
• How many developments has Ecumen built in the twin cities?
• What is relationship of a nonprofit and a for profit organization?
• Good project but wrong place. Site should be public. City should purchase.
• Will the east wing shadow townhomes in winter?
• Moving trucks not allowed on Stewart lane.
• Is the location of the pond location appropriate?
• Could townhomes purchase trees for their property too?
• Lighting and windows need to respect natural environment.
• Trail location in right place? Connections to public sidewalks?
• Does the project meet DNR lakeshore regulations?
• Any conversations about grocer?
• People want to stay in Minnetonka. We need more of these developments.
• Moving trucks will be ok on Stewart lane. They will use shorter trucks instead.
• What are demographics?
• What is a cooperative profile?

Three neighborhood comments have been received. (see pages A9-A16).

• Planning Commission Concept Plan Review. The planning commission Concept Plan Review is intended as a follow-up to the neighborhood meeting. The planning commission will review the concept plan at their October 23, 2014 meeting. A summary of that meeting will be provided during the October 27, 2014 city council review of the project. The objective of this meeting is to identify major issues and challenges in order to inform the subsequent review and discussion. The meeting will include a presentation by the developer of conceptual sketches.
and ideas, but not detailed engineering or architectural drawings. No staff recommendations are provided, the public is invited to offer comments, and planning commissioners are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.

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**Staff Recommendation**

During review of a formal application, council members may ask questions – and receive answers – regarding details of a proposal. Council members may also debate points of the proposal with each other and with the applicant.

Concept plan review should be approached differently than the formal development application process. To provide the most useful feedback to the applicant, rather than asking questions, the council should spend the majority of the concept review engaged in discussion as a council. After discussion, it would be appropriate to provide specific comments to the applicant. The applicant may consider the commission’s comments in the preparation of more detailed development plans and formal development review application.

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

Originator:
- Loren Gordon, AICP, City Planner
Next Steps

- **Formal Application.** If the developer chooses to file a formal application, notification of the application would be mailed to area property owners. Property owners are encouraged to view plans and provide feedback via the city's website. Through recent website updates: (1) staff can provide residents with ongoing project updates, (2) residents can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) residents may provide project feedback on project; and (4) staff can review resident comments.

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- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and concerns prior to the council's consideration by carefully balancing the interests of applicants, neighbors, and the general public.
• **City Staff.** City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
Mr. Gordon,

Just a little bit of information about our organization and our objectives:

Born out of Ecumen, with a long standing reputation in senior housing and management, and Lifestyle Communities, LLC, OneTwoOne Development brings a depth of finance, management and cooperative development expertise to various communities throughout the Midwest and nationwide. Our mission is to form strong bonds with individuals and their communities – and to produce cooperative that promote and enhance where they live.

The proposed Glen Lake Cooperative is an ownership option for empty nesters who would own and govern the community in which they live. The ownership structure creates substantial freedom, flexibility and value to individuals looking for a form of simplified ownership. The owners’ investment is secured with a one-time share payment—which has an annual fixed appreciation—along with a monthly carrying charge that includes many of the basic utility bills, 40 year fixed master mortgage, property taxes and insurance. The Glen Lake Cooperative is designed to offer peace-of-mind in an ever-changing real estate market.

Building partnerships with communities is as important as the individuals we develop cooperatives for. That is why OneTwoOne makes a point to collaborate with cities and their residents to fulfill our commitment to each community we touch. In fact, these relationships help us tell the story of who we are as we partner with cities to be a flexible and responsive developer.

Please feel free to contact us with any additional questions or comments you may have at any time.

Regards,

Dena R. Meyer
Director of Business Development
OneTwoOne Development
3530 Lexington Avenue N
Shoreview, MN 55126
w: (651) 766-4440
m: (651) 491-9076
denameyer@ecumen.org
August 23, 2014

14501 Atrium Way, Apt. 218
Minnetonka, Minnesota 55345

Mr. Loren Gordon, Planning Director
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, Minnesota 55305

Dear Mr. Gordon:

Unfortunately my husband and I had to miss the meeting at City Hall earlier this week regarding the construction of the senior housing co-op building on the Kinsel Point site.

We are seniors and reside at The Glen Condominiums here in Minnetonka. We have watched this area ("village") grow for ten years and have been very pleased with all the changes over time in the improvements. Of course we were sad to see Fresh Seasons close. It is really too bad that a lot of people in this area did not shop at the store and did not treat the store as a primary destination.

This is truly a senior area, and there is nothing wrong with that! The senior living spaces make the area quiet and not crowded with traffic. The peaceful location of the Kinsel Point land is a perfect location for quiet senior living which will enhance the entire "village" even more so. We urge the City to approve this construction project. We believe it will continue to attract the kinds of neighbors everyone would like. The security of multiple dwellings will cut down on break-ins and theft attempts. The quietness of these residences will enhance the neighborhood. This type of continuing redevelopment of the area is more likely to attract honest, decent, upstanding people. Regular upkeep of such buildings and better landscaping will also enhance the "village." I know that there must have been many naysayers at the meeting because I remember a few years ago when our present changes were discussed and many voiced how terrible the changes would be. Well, they were proven wrong. Unfortunately, many are always against change for foolish reasons, and want to keep things "as is" forever. This is no way to run a city; I am sure you will agree.
We love living in Glen Lake and hope the City will see the need for additional residences such as the Kinsel Point development plan and see how this will be a boon to the City as a whole. I would appreciate it if you would pass our opinions on to the City Council. We would very much like to see this project move forward.

Yours truly,

[Signature]

Louise M. Davis
October 20, 2014

Dear City Council:

As I watch the morphing of the concept plan for the Glen Lake parcel, I need to let you know my concerns. I have recently read again some of the approvals from 2006 and I have my memories of attending each meeting to support my conversation with you here. I suggest that you too start your own reviews now. I understand that the concept plan for this site will be presented at Planning Commission this Thursday. For the purposes of this letter, I will call the project on Stewart lane GLENBLDG.

First, let me say at the outset if you decide that the GLENBLDG must progress, I welcome both the ONETWOONE Company and their cooperative product to Minnetonka. In fact, it is in part because this company is reputable, that I am sorry that they will be dragged into the debate on whether any GLENBLDG should even be built. I hold you each responsible for your votes each year that have allowed Mr. Wartman’s extensions for this GLENBLDG. However, ONETWOONE’s concept is not what you approved.

In 2006, when this large TIF project was approved each of you voted reluctantly to approve the Glen Lake Development. You believed that the project needed both the TIF and size from GLENBLDG to proceed. Clearly, this is no longer true and I question whether it was true in 2006. As approved, the GLENBLDG also would not have any affordable units for Glen Lake Development’s financial math to work. The GLENBLDG was universally not wanted by you as a council nor its community. A setback variance
was also approved that allowed an R5 project to fit where land use will naturally permit only a R4 building. This setback variance was 15 feet from a city park effectively reducing the city park space 85 feet of its normal 100 foot variance. Basically, 85 feet of city park space was given to the development.

I am wondering why this version of the GLENBLDG is allowed to move forward. It is cooperative living for seniors not condos for all ages. Both the ownership and age changes are clearly not as approved. The entire Glen Lake Development was to have provided many condo units. Instead, Glen Lake Development built assisted living for seniors and apartment units. Neither of these was part of the concept plan that you approved. I understand the economy drives what ultimately gets built but you have a responsibility to the community to meet our expectations. I expected new residents beside seniors and I expected homeowners. Owners live in their community housing full-time and are multi-generational so they are involved in various aspects of their community. I also expected a grocery store and again the economy seems to have driven its demise. You asked for a Glen Lake market study and it detailed why a grocery store will not succeed in Glen Lake. Please do not continue to buy into someone’s vision for a grocery store. And also please observe that the Glen Lake Café did not survive in Glen Lake for more than one year.

I am asking you to hold to your commitment on at least one parcel of this project. I want ownership and I do not want any more senior designations if this GLENBLDG moves forward. Clearly, ONETWOONE's concept is a wonderful concept and this company should build somewhere else in Minnetonka.
I am also concerned that the City be more proactive with any developments on Stewart Lane. The McConnell property is for sale on the other side of the Glen Lake Shores. Developers have already tried to see if it could be developed with higher density than its single family home R1 designation. I am concerned that the City has not been proactive in constructing or planning Stewart Lane with the width needed for the added vehicles (delivery trucks and cars) that high density housing areas requires. Stewart Lane will need bike paths and sidewalks to connect the GLENBLDG's required walking path to the new sidewalks on Eden Prairie Road.

Finally, I believe that if you continue to approve Mr. Wartman’s modifications to the Glen Lake Development (especially the GLENBLDG site), he is in effect being rewarded financially for his bad behaviors (overpaying for the property, clear cutting the trees, poorly closing the grocery store). You also have a responsibility to establish and ensure that the need for eminent domain still is upheld. I am not alone in my feelings that the Glen Lake Development appears at times to be a “bait and switch”. I do not want to see the City involved in a law suit because citizens were promised one vision and you have accepted another.

I do not want high density at the GLENBLDG site. I would like my park variance to be rescinded. I do not like wish for any more senior housing restrictions in Glen Lake. I would like homeownership.

It is important that you review videos and notes of this project immediately. Please meet with the citizens affected – Glen Lake Shores, Glen Lake Drive townhouses, persons who
spoke out at the approval process in 2006. I would like to believe that you could spare ONETWOONE and my community some financial cost and emotional stress by agreeing with me that this project does not meet either the approved requirements or the community's expectations for Glen Lake Development. Please stop the concept from moving forward any further and suggest that ONETWOONE look elsewhere.

Sincerely,

Grace Sheely
14325 Grenier Road
Minnetonka, MN 55345
October 21, 2014

Mayor Terry Schneider  
Council Members Allendorf, Acomb, Ellingson, Wagner, Wiersom and Bergstedt  
City of Minnetonka  
14600 Minnetonka Blvd.  
Minnetonka, MN 55345

RE: Glen Lake Redevelopment

Dear Mayor Schneider and Council Members:

Please find attached the names and addresses of our Lakeside Estates Townhome Association members. I am writing as President of the association. Our thirteen units currently are home to twenty some residents. A few of us have been around since the beginning of Mr. Wartman’s project, but most are new to the discussions. Please include all of our members on the mailing list for legal notices and updates on the new proposed project on the Glen Lake site.

I understand the planning commission will be hearing an initial concept proposal for the new project Thursday evening (October 23, 2014), and perhaps as early as next Monday (October 27th), it will be heard by the full council. As the neighbors closest to the proposed building, we will be taking a keen interest in the discussions and look to be included in the group of stakeholders providing input for the proposal. We would gladly host a community meeting in one of our homes.

It is now over nine years since this project was first discussed. Lots of promises were made, and controversial decisions were made by the council back in 2006 based on those promises. We heard strong sentiment against the size and mass of the proposed luxury condo to be built on the Glen Lake site. We heard individual concerns stated by planning commission and city council members that the size of the building bothered them, but it was needed to make the project work. Others expressed concern about the use of eminent domain, but gave their vote for the common good to make the project happen based on developer assurances. The Tax Increment Finance plan would not work if the building was not oversized was another developer claim as council members voted to re-guide and re-zone the property. In addition variances were granted, allowing the entire building to be moved unjustifiably close to our association property and homeowners.
After nine years, the developer should be a motivated seller. The community and neighbors want something smaller. The prospective purchaser should be directed to lower the size and scale to R-4 zoning requirements and negotiate for that size of project. The city should reconsider the entire new proposal based on 2014 circumstances, not overly optimistic thinking from nine years ago.

We look forward to the opportunity to discuss any proposed plans for our neighborhood. We thank you for your attention to our concerns and your service to our community.

Sincerely,

Randall Neal
President, Lakeside Estates Townhome Association

cc. Geralyn Barone, City Manager
City Council Agenda Item #14_
Meeting of November 10, 2014

Brief Description
Concept plan for 14217 Stewart Lane (Kinsel site)

Recommendation
Provide feedback on concept plan

Background

During the One Two One concept plan review at the October 27, 2014 city council meeting, the council requested the approval history for the Kinsel site, including legal latitude the council may have for approval or denial of a project at that location.

In January 23, 2006, the city council approved the Glen Lake Master Plan. Included as a part of the master plan approvals was action on a site and building plan for Site C, the Kinsel site. This action included approval of final site and building plans with variances for building and parking lot setbacks. The following is an excerpt of the motion from the meeting minutes:

6) Approve the final site and building plans for Site C [Kinsel site], with the following variances:

   a. building setback variances from 100 feet to 33 feet from the north property line, 100 feet to 40 feet from the southwest property line, and 100 feet to 34 feet from Kinsel Park; and

   b. parking lot setback variances from 20 feet to 8 feet from the north lot line, from 20 feet to 15 feet from the northwest property line, and 20 feet to 10 feet from the southwest property line.

Presumably, the proposed One Two One plan would build to the same or very similar building and parking lot setbacks as the footprint size and location is nearly identical.

The city attorney has determined that, although the variance approvals granted in 2006 have expired, the city is obligated by the redevelopment contract to provide land use approvals consistent with the development contemplated by the contract, TIF plan, and master site plan. (See pages A1-A3). This is due to the fact that the master development plan was approved with the expectation that the Kinsel site would not develop immediately, but in a number of years, as it was the third phase of the Glen Lake redevelopment program.
Staff Recommendation

At the last council meeting, during concept review, the council was concerned about the legal status of the development. Based on the information contained in the report, staff is now requesting additional feedback on the proposed concept plan. (See pages A4-A7.)

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

Originator:
   Loren Gordon, AICP, City Planner
To: Mayor and Council Members
    Geralyn Barone, City Manager
    Julie Wischnack, Community Development Director

From: Corrine Heine, City Attorney

Date: November 5, 2014

Subject: Glen Lake Redevelopment, Site C

You requested advice regarding the city council’s options with respect to the land use approvals for the proposed development of Site C in the Glen Lake redevelopment area. In particular, the council asked whether and to what extent the Second Amended and Restated Contract for Private Redevelopment, among the city, EDA and Glen Lake Redevelopment LLC, dated January 4, 2010 (the “Redevelopment Contract”), impacts the council’s discretion on land use approvals.

Background

The parties approved the Redevelopment Contract as of January 4, 2010, replacing earlier contracts dated January 31, 2006 and May 15, 2007. The Redevelopment Contract contemplates a phased development of three different sites in the Glen Lake Area. Development of Sites A and B has been completed. The OneTwoOne development proposal relates to the site designated as Site C under the Redevelopment Contract.

Improvements to be built

The Redevelopment Contract provides that Site C must be improved with a project of approximately 45 for-sale condominium housing units. The city and EDA have each warranted to use their “best efforts to facilitate development of the Minimum Improvements [the 45 housing units], including but not limited to cooperating with the Redeveloper in obtaining necessary administrative and land use approvals ...” Redevelopment Contract, Section 2.1(b)(emphasis added).

The Redevelopment Contract also requires that development of Site C conform to the TIF plan and a master site plan attached to the contract. The master site plan indicates that Site C would be rezoned to R-5 High Density Residential and that it would be improved with a U-shaped building with the bottom of the U oriented toward Stewart Lane. The TIF plan described the proposed redevelopment of Site C (identified as Phase 2 in the TIF plan) as an approximately 50-unit condominium unit.
Timeline for construction

The Redevelopment Contract initially required construction on Site C to start by June 30, 2013 and to be completed by June 30, 2014. The parties to the Redevelopment Contract have subsequently amended those deadlines, most recently in April of this year. The current deadlines are June 30, 2014 for commencement of construction and June 30, 2015 for completion of construction. The city and EDA were aware at the time of those approvals that the market for condominium development was no longer favorable and that the redeveloper was considering a cooperative development.

Land use approvals given

The city council provided the following land use approvals for Site C on January 23, 2006:

- Amended the comprehensive guide plan to guide Site C as residential high density
- Rezoned Site C as R-5 High Density Residential
- Approved the final site and building plans for Site C, on the condition that the east 18 feet of the building be removed, and with the following variances:
  - Building setback of 33 feet from the north property line, 40 feet from the southwest property line, and 34 feet from Kinsel Park
  - Parking setbacks of 8 feet from the north property line, 15 feet from the northwest property line, and 10 feet from the southwest property line

Discussion

The comprehensive guide plan and rezoning are in effect. However, the final site and building plans, and the variances, have all expired. Under section 300.07(5) of the city code, a variance automatically expires if a building permit does not issue by December 31 of the year following approval. Where the variance is part of an approved site and building plan, any extension of that deadline is contingent on a similar extension of the site and building plan approval. Like variances, site and building plan approvals also require issuance of a building permit by December 31 of the year following approval. The planning commission may not grant more than three consecutive one-year extensions of the deadline, unless a variance from § 300.27(10) is approved.

The council approved the site and building plan and variances in 2006. Although the Redevelopment Contract contemplated phased development, and the parties have extended the deadlines in the Redevelopment Contract, the original land use approvals were not re-approved or extended as required by city code. The approvals therefore
lapsed on December 31, 2007. The developer will need to submit new applications for site and building plan approval and for approval of the variances.

In reviewing any land use applications for Site C that are made on behalf of or in cooperation with the Redeveloper, the city must comply with the Redevelopment Contract. The council must use its “best efforts” to cooperate with the Redeveloper to provide the land use approvals necessary for the construction of the Minimum Improvements contemplated by Site C. The term “best efforts” does not have a single meaning, but Minnesota courts have consistently held that it is a higher standard than acting in “good faith.” A “best efforts” clause requires the promisor to perform contractual obligations diligently and with efforts that are reasonable in light of the promisor’s ability and in light of the other party’s justifiable expectations. A “best efforts” clause may limit the discretion that a government body might otherwise have. In one case, the 8th Circuit held that five Minnesota counties had breached a “best efforts” clause by refusing to approve a tax levy to support a deficit in HRA-issued revenue bonds. The court stated that the counties had shown “no extenuating circumstances” to justify rejection of the tax levy and indicated that unpopularity with voters was not an adequate justification.

Conclusion

In my opinion, the city is obligated to use due diligence to issue land use approvals for a 45- to 50-unit, for-sale housing development that is substantially consistent with the master site plan approved in 2006. The change in form of ownership, from condominium to cooperative, is not materially different from what was approved in 2006. The parties’ actions in restating the contract in 2010 and extending the performance deadlines in 2014, when all parties were aware that the condominium market was no longer attractive, support the conclusion that the form of ownership was not significant to the parties. The city is not obligated to approve more than 50 units of housing and may exercise its typical discretion in reviewing applications for more than 50 units.
PREVIOUS APPROVALS
**Glen Lake Approvals History summary**

2006 - Original Glen Lake Approvals (link provided)

In January of 2006, official action on the entire request was taken and included the following in the motion excerpt from the minutes.


6) Approve the final site and building plans for Site C [Kinsel site], with the following variances:

   a. building setback variances from 100 feet to 33 feet from the north property line, 100 feet to 40 feet from the southwest property line, and 100 feet to 34 feet from Kinsel Park; and

   b. parking lot setback variances from 20 feet to 8 feet from the north lot line, from 20 feet to 15 feet from the northwest property line, and 20 feet to 10 feet from the southwest property line.

http://eminnetonka.com/news_events/show_project.cfm?link_id=Glen_Lake_Initial_Approvals&cat_link_id=Planning

2007 – Exchange (Site B)

The Exchange or Site B is considered for a conversion from condos to apartments. Started in construction in 2007 – completed in 2008.


2008 - 2009 – St. Therese (Site A)

St. Therese is considered (Site A) for conversion of condos to apartments. Project construction was delayed by the economic recession and financing with HUD. Actual construction started and 2010 and it opened in 2011.

http://eminnetonka.com/community_development/planning/show_project.cfm?link_id=st_therese&cat_link_id=Planning

2008 - 2009 - City completed streetscaping in the area.

2010 - Glen Lake Station (Plaza) completed by city.
2012/2013/2014 – Development Contract Extensions

The development contract was extended multiple times. The latest was June of 2014 for construction of Kinsel to begin by 2015 and finish by 2016.

Latest extension to the contract:

- Page 292 -
- Change memo for that agenda:
Glen Lake
Minnetonka, MN  11.17.2005

Concept Marketing Sketch: Building C

Glen Lake
Minnetonka, MN 11.17.2005

Concept Marketing Sketch: Building C

Glen Lake
Minnetonka, MN  11.17.2005

Concept Marketing Sketch: Building C
WRITTEN COMMENTS RECEIVED
Geralyn -
Today I received in my mail a postcard on a proposed Glen Lake Co-operative. Given that my mother was in a co-operative in Edina and struggled through a lengthy, painful and expensive bankruptcy with the developer that spanned more than 4 years (Gramercy Club), and given that the entire senior community there was wounded from the experience, and that me and my family are Minnetonka residents, I wanted to do a quick check on what was being proposed in Minnetonka.

Quick google search led me determine that the same developer who left my mother and many other seniors strapped with lengthy legal process and excessive bills to restructure their co-op is involved in this development:

"Plymouth-based Lifestyle Communities, which is owned by industry veteran Tim Nichols, Meyer said".


Here is a quote from one of the Creekside (previously Gramercy of Edina) residents that lived through the experience when Tim Nichols’ enterprise failed about 7 years ago:

Our case lasted 4 1/2 years and was complicated by the fact that there was no case law in MN re what happens when a co-op is insolvent. Our case finally went to Federal court when Tim filed for personal bankruptcy. It was settled by mediation in Judge Frank's court. The settlement requires all parties to contribute to the deficit. That included the owners, Tim, the builders and the 40 some banks who held the mortgage. The cost to each homeowner was between 20,000 and 30,000 each. As a result of this case we also incurred the expense. Basically what initially happened is that the banks sued us and said we needed to give up our property because we didn't own them, just shares in the co-op. We also incurred the cost of changing our property from a co-op to a condo, to protect our investment.
I would urge City of Minnetonka to fully investigate the circumstances in Edina before approving this as a co-op. I would not like to see more seniors injured by intentional or unintentional activities of Lifestyle Communities, or due to vague MN state laws surrounding co-ops.

I would appreciate hearing back from you that this message was received and whether the City is aware of the Edina happenings.

If you have any questions please feel free to contact me via email.

Thank you

Elisabeth W Young
Questions for City Staff – Loren Gordon, Julie Wischnak and Elise Durbin:

1) In 2009, the Minnesota Legislature approved a seven year extension to the Glenhaven TIF district. Why was seven years requested and not eight, nine or ten years? Without any TIF income from the Kinsel site, will the completed developments on the Exchange and St. Therese sites pay off the TIF debt within the seven year extension?

2) The TIF Management Report dated 12/15/14 on Page 30 shows an ending fund balance of approximately 2 million dollars. Does this amount include the approximately $500,000 asset that the City and EDA invested in the condemnation and purchase of the 65 foot lot on the Kinsel Point site?

3) The final Alano payment is the lowest priority because its location and benefits extend outside of the Glenhaven TIF district. Why is this payment listed as a Glenhaven debt obligation?

4) The 5 year rule deadline was extended from 5 years to 10 years because of the housing slowdown. The deadline is now June, 2016 as stated in the report. No Kinsel site revenue can be used outside of the Glenhaven TIF district after the June, 2016 date. Considering that it takes approximately two years to construct the building, move in buyers and collect taxes, no TIF revenue that is generated from the Kinsel site (no matter what is built) can be used outside of the Glenhaven area because it will be generated after the June, 2016 date. Do I understand this correctly?

5) Loren Gordon’s best effort review addresses the shape of the building, its size and setbacks along with its contractual obligations very well. My questions have to do with the primary purpose of the Glenhaven TIF district which was to develop a plan. The plan was to change the reputation of Glen Lake from a senior housing community to a vibrant community with housing and jobs for citizens of all ages and all incomes. A) How does this proposed project (another senior housing project) meet the contractual obligations of the redeveloper to meet this TIF objective? B) How does an apartment building with its economies of construction and the size of its individual units and with half of the original market values meet the contract obligations listed in all of the redeveloper’s agreements including all three extensions? C) How do the city and the EDA honor its commitment to the 4th District Court when eminent domain was required to create a space for a public path to the lake? They stated that space was also needed to allow the redeveloper to build high end condominiums. They stated that they needed stacked units or condominiums on the site with an average market value of $500,000 to assure sufficient funding for the TIF district? If the current need for the 45 units is reduced, then why not honor this agreement by building less units and not by building more less expensive units. D) The city and redeveloper have done an excellent job to date negotiating through these tough economic times. What does the city gain towards their goal to redevelop Glen Lake by giving up condominium ownership for more senior housing?

6) To meet the contract obligations, should the redeveloper be given more time to get this right?

Sincerely,

Jim Zachman
I am here tonight to ask the Planning Commission to review the variances and the size of a new project. I am certain many of you are not aware of Glenhaven TIF project and its many condominiums that will never be built. Tonight’s proposal seems to be dictated by the City’s attorney determination that you can only consider if the number of units and the variances for this project are following City codes. I am going to ask you to support my belief that the units on this site are approved at a maximum of 45 units and that the variances are not appropriate or warranted for this R5 building. I also ask you to review the public trail that is a requirement within this proposal.

Tonight’s variances are supported in your packet in part 3:

3. PRACTICAL DIFFICULTIES: There are practical difficulties in complying with the ordinance:
   a. REASONABLENESS: The proposed variances are reasonable. The proposed variances for the building are less than what was approved in 2006 for a similar building at the same location.
   b. UNIQUE CIRCUMSTANCE: The property is unique in shape and location. The irregular shape makes the design and placement of a more commonly designed building difficult.
   c. CHARACTER OF LOCALITY: There are other high density residential buildings on Stewart Lane with similar building and parking lot setbacks.
      a. REASONABLENESS: It is not reasonable to allow an R5 building to exceed 50% of its setback variances. And relevant to tonight’s review, I can lead you through a discussion of how such large setbacks were allowed in 2006. None of the 2006 setback reasoning applies today. I suggest that you ask again. Why are the variances reasonable?
      b. UNIQUE CHARACTER is not a hardship. I have two examples that outline an R5 building site on the property with both 100 and 75 foot setbacks depending on the height of the proposed building. A buildable pad for R5 housing exists on this unique 3.2 acre triangular site. I have a concept plan to share with you. It was considered by a 2002 Glen Lake focus group with a high density building very similar to the design of its neighbor Glen Lake Shores.
      c. CHARACTER OF LOCALITY: The setbacks for the other high density neighbors are not similar. I have a diagram of the 3 small setbacks that were given for the Lakeside Condominiums R3 development. Each was for a corner of a 2 story building in a development that was required to have an affordable unit. The Glen Lake Shores R4 building appears to meet its 50 foot setbacks and even the Planning Department’s documents state no variances were required at the time of project approval. The setback variances proposed are not similar to its high density neighbors.

The ONE TWO ONE proposal before you tonight differs from the project approved for the Glenhaven TIF district’s Site C with variances in 2006. The specific differences are as follows:
1) Most significant difference is the 2006 approval was to build high end ($505K per unit) condominiums. This proposal is a mid-range cooperative with an average estimated value of $250K per unit. The words “high end condominiums” are mentioned in both the condemnation documentation for this location and in the TIF financials.
2) The 2006 approval was for 45 units on Site C. The council specifically reduced the density of this building during their approval meeting (01/23/06) from 50 units to 45 units by removing the affordable housing component within Site C. This 5 unit reduction came through the loss of 5 affordable units and it was intended to reduce some of the building’s mass and density. This proposal is for 54 units and these 9 additional units represent more than a 15% increase in unit density. The variances were given for a 45 unit building.
3) The 2006 approval was for condominium individual ownership. This proposal is for cooperative ownership.
4) The 2006 approval was not restricted to senior buyers. This proposal is for a restricted market to seniors, 55 years and older.

The TIF contractual agreements on this project suggest that a maximum of 50 units could be considered for this site. I would like to read you part of John Gunyou, our past city manager, 2006 explanation of Site C. He states, “Like all major projects, the Glen Lake redevelopment is not without controversy. Most of the concern has been over the Site C condos. Building size is a legitimate issue, but the interrelated nature of the project makes it impossible to consider the density of this one site in isolation. All the
project components, Site A, B and C, are integral to its overall feasibility." And then he continues later, "I'm pleased to report that the developer has agreed today to additional concessions that address two major areas of concern. First, the size of the Site C condo building will be reduced from 50 units to 45. The leg closest to the new townhomes will be shortened by 18 feet so that the benefit of the size reduction will accrue to those homeowners. He concludes, "We are hopeful that this response to the main concerns about the project will be viewed positively. With this compromise, staff believes that the project represents our best last chance for a quality, comprehensive redevelopment of the Glen Lake area." Mr. Gunyou's statements were not all incorporated into the ordinance but they all should have been. The setback change was made. The affordable housing was removed. The 45 unit maximum was not included as a number in the ordinance but is reflected in the floor plan that was submitted during final approval. Only 45 units exist on the approved floor plan.

I would also like to further quote directly from the January 23, 2006 approval meeting notes. The head city planner, Geoff Olson admitted that if he looked at Site C by itself, he would view it differently. He read the criteria in the guide plan for review. He said that the changes to Site A and B would not be dramatic, but they would be for Site C. That site is incredibly increased in terms of density and mass. He said that the guide plan said that the change should provide a transition from one use to another. That argument was used for the townhouses on the Mason property (note now Lakeside Condominiums). The criteria cut both ways, and we are ignoring the planning related criteria in favor of economic considerations.

I must emphasize that the City no longer needs to consider the economic considerations to the TIF as a package. The package has changed. The TIF is working. Can we please stop ignoring the planning related criteria? Specifically, what is the justification for each setback? What does the City code allow for this specific new R5 proposal? Is this building too dense in mass and units? Does the building transition well with its neighbors? Where is the 65 feet for the creation of a public trail?

The language for the variances needed to build the 45 unit high end condominiums was distributed to the public as part of the standard City Council packets on the Friday prior to their 01/23/06 meetings was as follows:

(1) There is a unique hardship to the property caused by the triangular shape of the lot and the shoreland setback.
(2) The variance would meet the intent of the ordinance because it allows reasonable development that is creative and attractive and that is similar to other high density developments in the area.
(3) The parking lot setback variances are for minor point intrusions into the required setback area.
(4) The city approved two setback variances for the townhouses to the north to allow setbacks of 20 and 25 feet from the park. As in this case, justification for the variances is based on the fact that the adjacent land is park and there are no buildings that would be affected by the variances.
(5) Economic consideration is not the sole basis for the variances. Although the size of the building is generated by the financial needs of the tax increment district, there are significant public benefits that result from the coordinated development of the three sites and that serve as justification and trade offs for the variances.

On 01/23/06, the night of the Council meeting, the public was presented with an addendum to the packet with new language supporting the need for the variances as follows:

(1) The unique hardship to these properties is the deteriorated nature of the Glen Lake commercial area.
(2) An additional hardship is that the zoning code was developed before the "new urbanism" concept became prominent and therefore does not accommodate the reduced setbacks and mixed uses inherent in that planning technique. The Glen Lake area has been identified by the Economic Development Authority as an area where more dense development is appropriate to encourage affordable housing. The planning concept of "new urbanism" is on way to implement more dense development.
(3) Neither of these hardships was created by the landowner.
(4) The variances would meet the intent of the ordinance and would not alter the essential character of the neighborhood because they allow reasonable development that is creative and attractive and that is similar to other high density developments in the area.

(5) The variances on Site C are further justified by the fact that the parking lot setback variances are for minor point intrusions into the required setback area. Also, the reduced setback toward the park is appropriate because there are no buildings that would be affected and it is consistent with the variances granted to the adjacent townhomes.

(6) Economic consideration is not the sole basis for the variances. Although the sizes of the buildings are generated by the financial needs of the tax increment district, there are significant public benefits that result from the coordinated development of the three sites and that serve as justification and trade-offs for the variances. These public benefits are discussed in the staff report. The economic impact on the developer is only one consideration in the analysis.

The approval of a similar building on this site which had many “justifications and trade-offs,” many of which no longer apply, and applied only to original plan for 45 high end condominiums to which the variances were directly given. Many changes have occurred within the Glenhaven TIF district since 2006. First, it has none of the planned condominium ownership on Site A, B or C and instead has 52 apartments on Site A and 150 units of memory care, assisted living and senior units on Site B. Second, the TIF district financing was extended from 16 years to 23 years (2029). The 2006 TIF numbers and the Site C variances were all dependent on a 45 unit high end condominium building set on Site C; no other size modifications could meet the demands of the TIF and no affordable units could be placed within Site C for the accounting to work. My review of the current Glenhaven tax increment district’s financing from the report filed with the State of MN (August, 2014) suggests that without significant economic downturns, the City may possibly collect $1 million extra in funding from the TIF district even if nothing is built on this proposed Site C.

I cannot get past the simple facts that tonight’s proposed development is not the 2006 development that was given excessive variances that today do not follow our city codes for a 45 unit high end (luxury) condominium. I believe that I represent my community of Glen Lake (and several council members have publicly concurred) if I say that the Exchange building (Site A) and the Glenn building (Site B) are too large and could have been improved if they had not been given “new urbanism” as part of their setback justifications. I believe that the Planning Department must also agree because the language for “New Urbanism” as setback justifications is not detailed in the City Code eight years later.

Denying variances is often the best mechanisms for making neighbors happy. In Minnetonka, homeowners are often denied 2 feet into their setbacks for home or garage building variances. An example is the million dollar home that the commission denied variances to just this evening. Each foot matters to someone. Developers and developments need to be held to the same standards as homeowners.

I care deeply about each variance to an established setback. Allowing a variance to park land reduces my sense of open space. A good neighbor would not be 40 feet from my park land when his house should be more than 70 feet. I would like to point out where the picnic table at this park is now situated. If the table can be seen in this aerial view, how will private will its space feel with a 5 story building façade a mere 50 feet away from it. At 100 feet with full variances from both the park setback and the building’s setback, is each then a better less intrusive neighbor? Allowing variance to the lake side setback places impervious surfaces closer to the lake. I care about the lake as I am both a Minnehaha Creek Watershed water steward and as I live on Glen Lake.

I ask that you consider the location and width for the trail. The smaller lot seen in green was acquired by the City together with the EDA through eminent domain for an expressed public purpose of a trail. While the trail may be placed on either side of the proposed building, the documentation within the eminent domain proceedings state that the excess property (25 feet) not needed for the trail may be used by the development. This excess 25 feet of property was purchased by the EDA. No document states that the development may instead allow its setback space to be used as the trail. The trail property purchased by the City provides 40 feet of buffered open space. The proposed building tucks the trail into the 40 feet of

A76

One Two One Development
14217 and 14301 Stewart Lane
its reduced setback variance. If the side setback were placed correctly at 75 feet, the trail would have 115 feet of open space that it rightfully earned through eminent domain and it might truly be a valued public amenity. Please examine carefully both the physical width of the public trail and the width of its setback placement.

Finally, I would like to allay any concerns you may have that by denying these variances, there is not a reasonable use for this property. I showed you diagrams supporting a buildable plat on this R5 site with both 75 and 100 foot variances indicated. These diagrams are away from the lake and the park land; each restricts fewer of its neighbor’s views. A building that followed the City Code for variances would also be less visible across the lake. You do not have to over build to use this property. This site has a buildable pad and if it were correctly placed with all City Codes met, it will make a better neighbor. I am explaining to you that there is no justification for each of these setback variances and I am asking you to deny your approval of the variances for this specific new project that exceeds the approved 45 unit maximum.

Thank you each for your time and consideration.

Grace Sheely
14325 Grenier Road
Minnetonka, MN
MISC. and MINUTES
Chair Lehman stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

B. Items concerning One Two One Development located at 14217 Stewart Lane.

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.

Wischnack provided an overview of tax increment financing (TIF). Under TIF the difference in tax dollars between the newly developed property the “pre-developed” property are captured and used to pay the costs to do the improvements including property acquisition and clean up, demolition, and relocation. The project and site improvements would not have been done, but for the TIF making the financing possible. The TIF district is eventually eliminated. The EDAC and city council deal with TIF districts.

The public hearing was opened.

Keith Weigel, 14209 Glen Lake Drive, stated that:

- A building should be built that does not need variances.
- Glen Lake Shores, Glen Lake Landing, and The Atrium did not require variances. Beacon Hill did have a variance to allow a setback to be 30 feet instead of 40 feet.

Grace Sheely, 14325 Grenier Road, stated that:

- She was concerned that eminent domain was done to create a park path, but the proposal has the path located in the 40-foot variance for the building. There should be 40 feet for a path that does not involve setbacks. It is still really important.
- A path without stairs is needed. There are 6 senior housing facilities in the area.
- The path belongs on the west side. The Glen Shores building has the right setbacks.
- The original plan included 124 parking stalls. The proposal would have 93. It does not make sense that the number of units increased from 45 to 54 and the amount of parking decreased. There is no
room for parking on Stewart Lane or Excelsior Boulevard. It needs more parking to plan for potential future uses.

- The building should be setback 85 feet due to its size based on what was originally there.

Jim Zachman, 14194 Glen Lake Drive, stated that:

- It seems like the proposal has been driven by TIF. The TIF report he saw at the EDAC meeting shows a $2 million surplus. He did not see a need to push things through that would be contrary to the plan. He heard over and over from the previous city manager that a price had to be paid to take steps forward. The TIF problem has been solved.
- Obviously, the project wants to go ahead. Time is not a big issue. Let’s give the developer another extension. The requirement of tax increment from Site C is not there. The proposal being rammed through gives about 50 percent of the money originally projected.
- Planning staff ought to take a little more time to study the agreements. Commitments were made to a lot of people to get the TIF approved.
- It would cost nothing to do it right and it would benefit a lot of seniors. Seniors need the property values to go up.

No additional testimony was submitted and the hearing was closed.

Chair Lehman noted that staff explained the reasons for the proposed location of the trail in the staff report. Wischnack explained that there is a drop in elevation of 20 feet on the west side. The north side is wider and has a drop in elevation of 14 feet. She was open to suggestions. Commissioners may amend the conditions of staff’s recommendation. For this site, a specific location for the trail should be discussed due to the site’s issues restricting its location. The trail would be located on the west side or north side of the site. Staff has provided their opinion.

Chair Lehman asked staff to address the size of existing R-5 buildings and the previous proposal with the current proposal. Thomas noted that ordinance requirements have changed over time. Some of the buildings were built in the 1970s and 1980s. The proposal’s setbacks would be within the range of setbacks that have been approved for the various sites. There is one setback that is being proposed that would be a foot less than what was previously approved. The other setbacks would be slightly greater than what was previously approved for the
site. Thomas explained that under the R-5 zoning code, side-yard setbacks are required to be equal to 1.5 times the height of the building.

Chair Lehman reviewed the proposed parking provided in the staff report. The staff report also covers future uses and found that the site would be five stalls short for a heavier use. Thomas agreed. The parking ordinance requires two parking stalls per apartment unit. Staff believes the parking code is outdated and requires more parking than necessary. The Institute of Transportation Engineers (ITE) manual is now being used to provide a more realistic approach. Rather than requiring parking stalls per living unit, the number of bedrooms should be used for rental apartment uses to determine the adequate number of parking stalls.

Chair Lehman noted that TIF is not part of the planning commission’s purview. Wischnack noted that the city council is advised by a financial consultant and legal counsel. Both have reviewed the proposal. She has no concerns with the TIF portion of the proposal.

In response to Kirk’s question, Wischnack explained that the city council has control over what type of units would be constructed. A cooperative is a model of ownership like a condominium. Kirk agreed.

Kirk asked if commissioners could require an age restriction. Wischnack answered in the negative. That would be an unfair housing requirement. The owner of the building may require a tenant to be 55 years or older. The city does not enforce building owner’s policies.

Kirk asked what prompted the eminent domain to be done in 2006 and the level of obligation that the community might perceive. Wischnack explained that the city has a deed for the west, skinny parcel that was purchased with the use of eminent domain but it has not been recorded. The city would enter into a contract agreement to deed the parcel to the developer if the proposal moves forward. In 2006, it was designated that the trail would have to be on the development property and connect to Kinsel Park, but the location within the development was not determined at that time. The setbacks have been measured with the assumption that the skinny parcel on the west side would be included in the development site.

In response to Kirk’s question, Wischnack explained that the developer would grant an access easement to the city to allow public use of the trail. Tonka on the Creek is a similar development. Locating that trail was also difficult due to the topography.
Kirk asked if the trail would have to be accessible. Wischnack stated that the north location would have a better slope. Neither trail location would allow the trail to meet ADA accessibility requirements. The city is required to provide accessibility to the park. There are other accessible entrances to the park.

Kirk suggested locating the parking lane on the northeast which would locate the drive lane behind the townhouses. Wischnack said that the developers did provide a drawing of that plan. She would allow the applicant to explain why that would not work. Kirk could think why that would not work, so he concluded that the proposal would be the best location for the site.

Kirk asked if the number of parking stalls would be impacted by the building housing seniors. Thomas explained that a senior development requires fewer parking stalls than a development not designated for seniors. The proposal would meet and exceed the senior development parking requirement. Staff is still comfortable that the site would accommodate parking for a use housing a variety of ages.

In response to Kirk’s request, staff provided a drawing that shows a conforming building. The builder provided the drawing the last time to show what the site would allow from a setback and height standpoint. The drawing has nine floors. Staff drew the 76-foot setback on the drawing with the 46-foot setback. The building would meet all natural resources setbacks on the site. Kirk saw a site benefit to what would be happening in the southeast area where the retainage areas and Glen Lake are located. Based on the height of the buildings, the setbacks seemed tight to the property lines. The variance for the setbacks is somewhat being driven by the 2006 proposal. It was approved in 2006. Thomas explained that the variance standards have stayed the same. In 2006, there were unique circumstances associated with the property. The unique circumstances have not changed. The variance findings would be the same. Commissioners may come to a different conclusion.

Rettew asked if the ITE standards for parking include parking for staff. Thomas answered that an assisted living facility would, but a senior cooperative use would not. There would be one staff member.

Kirk said that it appeared that the building elevation increased in height. Thomas answered that the square footage of the proposed building was decreased. The wing on the north property line shrunk. The proposed building height was 44’8” in 2006 and is now feet 45’7”. Wischnack noted that the height reduction occurred in the rear of the building. The rear of the proposed building in 2006 was 65 feet and now 57 feet. The original building included 2 levels of parking which created
a much higher view shed from the rear of the building. It depends on the side of
the building. The mass of the proposed building is similar in the front and
decreased in the rear compared to the approval from 2006.

Kirk said that the developer of Applewood Pointe was able to sandwich the
building between Minnetonka Boulevard and the trail in a way that was more
empathetic to the environment. Parts of the building were stepped back so it
would not seem so massive. The proposed building seems quite large to him.
The lack of articulation of the building makes the front abrupt architecturally
against the property lines. Wischnack provided that the building would look
similar to the architecture of the Duffy building. It would have four stories over a
parking garage. The Duffy building site has much smaller setbacks than the
proposal. Kirk noted that the adjacent uses are different. Wischnack agreed.

Odland asked Kirk if he felt the building would be too large for the area. Kirk
answered affirmatively. He appreciated the developer reducing the overall square
footage, but the mass has not been reduced enough. A larger retaining wall was
added to the south. The four floors would remain at a similar height. Odland felt
that was a fair statement. She asked how to restate that she would like the
building changed so that it would not appear as large.

Kirk said that the zoning merits R-5. The number of units could be reduced to 45.
That might help. It would not help to have 45 larger units. The overall square
footage of the building could be reduced. He preferred a plan that would not
require variances and fit within the building footprint. He would like to see the
setbacks be more generous or the building articulated or stepped down in a way
that would not create a four-story, abrupt wall next to a walking path or
neighboring properties. The other points made are consistent with the
comprehensive guide plan. He struggled with the mass and size of the building.
He would like the mass of the building reduced. In his mind, it did not help to
remove the lowest floor and add a retaining wall. He did not know if it would be
possible to step the building as it neared Glen Lake.

Rettew felt like the commission would be trying to design the proposal which is
not in its purview. He agreed with Kirk’s sentiments, but was inclined to accept
the proposal before them as “good enough.”

Odland commended Kirk for identifying the problem that the building would be
too massive and suggesting a solution.

Rettew said that requiring a specific design style would be out of the
commission’s purview.
Odland noted that the number of units was decreased, but the mass of the structure did not change. Leaving the wall at the same height is not a solution. The building is too large for the property. The commission does have a duty to set a precedent of what would be appropriate.

Knight agreed that building the retaining wall and keeping the building at the same elevation would not solve anything. He would like to see something a little smaller. He knew nothing of what would be financially feasible. A decrease in the number of units would not change the situation if the units would be made larger.

Chair Lehman never expects a previous commission’s actions to be binding on current or future commissions. He respects the decisions of the 2006 planning commission and city council. He believes strongly that the commission needs to look at all of the factors. He was inclined to support a proposal that was similar to one approved by the city council in 2006 and staff’s recommendation. It was a tough decision.

*Kirk moved, second by Odland, to recommend that the city council deny final site and building plans and associated variances for One Two One Development at 14217 and 14301 Stewart Lane.*

*Odland, Kirk, Knight, and Lehman voted yes. Rettew voted no. O’Connell and Magney were absent. Motion carried.*

Chair Lehman voted to pass the motion to deny to allow the item to move on to the city council for review although he was more inclined to support staff’s recommendation.

9. Adjournment

*Odland moved, second by Rettew, to adjourn the meeting at 8:30 p.m. Motion carried unanimously.*

By: ____________________________
Lois T. Mason
Planning Secretary
RESOLUTIONS
Resolution No. 2015-

Resolution approving a final site and building plan with variances for One Two One Development at 14217 and 14301 Stewart Lane.

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

Section 1. Background.

1.01 On January 23, 2006, the city council approved as master development plan for the Glen Lake redevelopment project. As approved, the redevelopment included three sites: A, B and C.

1.02 Site C, commonly referred to as the Kinsel Site, includes the properties addressed at 14217 and 14301 Stewart Lane. The site is legally described as:

That part of Lot 1 in Glen Lake Park described as follows, to wit: Commencing at the Northwesterly corner of said Lot 1; thence Northeasterly along the Northwesterly line of said Lot a distance of 65 feet; thence Southeasterly along a line parallel with the Southwesterly line of said Lot to the South line of said lot; thence West along the said South line to the Southwesterly corner of said Lot; thence Northwesterly along the Southwesterly line of said Lot to the point of commencement, Hennepin County, Minnesota, according to the recorded plat thereof.

and,

That part of Lot 1 in Glen Lake Park, Hennepin County, Minnesota, lying West of the East 570 feet thereof and Northeasterly of the Southwesterly 65 feet thereof.

1.03 On January 23, 2006, the city council approved the following land use actions for site C:

1. A comprehensive guide plan amendment to high-density residential;
2. A rezoning to R-5 high-density residential;

3. Approval of final site and building plans with the following variances:

   Building setback variances to:
   • 33 feet from the north property line
   • 40 feet from the southwest property line; and
   • 34 feet from Kinsel Park

   Parking setbacks to
   • 8 feet from the north property line;
   • 15 feet from the northwest property line; and
   • 10 feet from the southwest property line

1.04 The 2006 site and building plan approvals for site C have expired. However, the high-density residential comprehensive guide plan designation and R-5 zoning remain.

1.05 One Two One Development is requesting approval of final site and building plans for construction of a four-story, 54-unit residential senior cooperative building on site C. The request includes the following setback variances:

1. Building setback variances to:
   • 39 feet from the north property line;
   • 43 feet from the southwest property line; and
   • 48 feet from east property line

2. Parking setbacks to
   • 7 feet from the property line adjacent to Stewart Lane;
   • 15 feet from the north property line; and
   • 10 feet from the southwest property line

3. Building Height to 51 feet

1.06 On December 11, 2014, the Planning Commission held a hearing on the proposal. The applicant was provided the opportunity to present information and public comments were received by the Planning Commission.

1.07 On January 8, 2015, the Planning Commission continued review of the proposal considering all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended the city deny the final site and building plans, with variances.

Section 2. General Standards.
2.01 City Code §300.27, Subd. 5, states that in evaluating a site and building plan, the city will consider its compliance with the following:

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

2. Consistency with the ordinance;

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

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

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:
   a) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;
   b) the amount and location of open space and landscaping;
   c) materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
   d) vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures and the use of landscape materials and site grading; and
7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.

2.02 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorize the city to grant variances.

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

Section 3. Findings.

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

1. The proposal is consistent with the high-density comprehensive guide plan designation of the property and with the site and building plans previously approved for the property.

2. The proposal would meet the R-5, performance, and variance standards.

3. The proposal would maintain significant natural features adjacent to the wetland edge of Glen Lake. A city order required the current property owner to replant vegetation at the foot of the slope adjacent to Glen Lake. These plantings were the result of unauthorized site clearing in 2006. This area is illustrated as a preservation area on the current plans. Additional site landscaping will improve the natural amenities and connection to the natural environment surrounding Glen Lake.

4. The building would be situated on the property to allow residents to enjoy site amenities and views of the natural environment.
surrounding Glen Lake.

5. The site and building would be well organized to provide a desirable place to live. The building is a high quality design which adds value to the living experience for residents. Indoor and outdoor site amenities create an enjoyable environment.

6. The site would contain adequate amount of open space and landscaping. The building footprint impacts 25 percent of the site area allowing a rich landscaping and site amenities.

7. Building materials would be comprised of high quality brick, stone and engineered materials. Colors and textures are compatibly designed with adjacent development the surrounding environment. The building design is similar to the adjacent multi-story condominium buildings.

8. A public trail system would connect the site to Kinsel Park providing opportunities for residents to connect to the natural environment. Stewart Lane provides vehicular and pedestrian connections to the surrounding area.

9. The building has been designed and situated appropriately on the property to take advantage of southern exposure for added winter energy considerations. As site landscaping matures, summer heat gain will be reduced over time.

10. The building has been sited with the consideration of setbacks and views. Proposed landscaping would buffer adjacent properties while allowing views, light and movement of air. Surface water management systems would improve the surface water runoff quality which benefits the natural environment.

3.02 The proposal would meet the variance standard outlined in City Code §300.07 Subd. 1(a):

1. PURPOSE AND INTENT OF THE ZONING ORDINANCE: The general intent of setback requirements outlined within the zoning ordinance is to maintain appropriate separation between land uses. The proposal would be consistent with this intent. The proposed residential building would be over 67 feet from the closest residential building.
2. CONSISTENT WITH COMPREHENSIVE PLAN: The proposal would be consistent with the high-density residential comprehensive guide plan designation.

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

1) REASONABLENESS: The proposed variances are reasonable. Though less than the code requirement, they would result in greater setbacks than previously approved for development at the site.

2) UNIQUE CIRCUMSTANCE: The irregular, triangular shape of the property is unique and not common to other properties of similar guide plan and zoning designations.

3) CHARACTER OF LOCALITY: There are other high-density residential buildings in the area with similar building and parking lot setbacks.

Section 4. City Council Action.

4.01 The City Council approves the final site and building plans and variances for One Two One Development with the following conditions:

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

   - Site plan dated November 19, 2014
   - Preliminary grading, drainage and erosion control plan, dated November 19, 2014
   - Preliminary utility plan, dated November 19, 2014
   - Preliminary stormwater pollution protection plan (SWPPP), dated November 19, 2014
   - Landscaping plan dated October 20, 2014
   - Building elevations dated November 19, 2014

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

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

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

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

a. Final site plan must:

   • Illustrate that all structures and improvement meet minimum wetland, floodplain, and shoreland setback requirements.

   • Demonstrate that the property would meet impervious surface restrictions as outlined in city code.

b. Final grading plan must:

   • Demonstrate how proposed grading will minimize impact to neighboring trees

   • Identify the restitution area.

   • Show a reduced trail grade between the two infiltration basins. Maximum allowable grade is 8.3%.

   • Include top and bottom wall elevations for all retaining walls.

   • Include plans prepared by a licensed structural engineer for all retaining walls

   • Illustrate no floodplain fill or alteration. Any grading conducted within the floodplain will require a separate floodplain alteration permit.
c. Final utility plan must:

- Include additional sump pretreatment, such as a SAFL baffle or equivalent sump retrofit.
- Illustrate no conflict between proposed pipe segments and wall elevations.
- Illustrate looped water main service to the site. Two service legs must be extended from the main with valves on each leg and a central valve on the main between the two legs – 3 valves total.
- Illustrate that existing sewer and water services will be removed back to the main, wyes cut out and sleeved, and corporation stops shut off.
- Note that curb and street replacement or restoration associated with connections to water and sewer must match existing.

d. Final stormwater management plan must:

- Include clarification on storm sewer details, including pipe invert elevation and materials. The details must be consistent with the information provided in the HydroCAD model dated October 20, 2014.
- Illustrate a maximum 2 feet depth of the infiltration basins.
- Provide consistent infiltration rates described in the stormwater narrative and used in the model.
- Include results of infiltrometer testing conducted at the bottom elevation of the infiltration basin. The results must confirm infiltration rates.
e. Final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.

4) Stormwater maintenance agreements for all water quality facilities. The facilities will be considered private and must be privately maintained.

5) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct streets and utility improvements, comply with grading permit, wetland restoration, landscaping and tree mitigation requirements, and to restore the site. One itemized letter of credit is permissible, if approved by staff. The city will not fully release the letters of credit or cash escrow until: (1) as-built drawings have been submitted; (2) a letter certifying that the streets and utilities have been completed according to the plans approved by the city has been submitted; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

6) A construction management plan. The plan must be in a city approved format and must outlined minimum site management practices and penalties for non-compliance.

7) A copy of the approved MPCA NPDES permit.

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

9) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
• The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

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

b) Prior to issuance of a grading permit:

1) This resolution must be recorded at Hennepin County.

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

3) Submit a full Alta survey to confirm no conflict between existing easements and the proposed building, parking areas, and associated utilities.

4) The following documents must be submitted for the city attorney’s review and approval. The documents must be prepared by an attorney knowledgeable in the area of real estate:

• A public trail easement to replace the temporary trail easement on the 14217 Stewart land parcel.

• A trail maintenance agreement.

• A drainage and utility easement over delineated wetland.

• A conservation easement over the wetland, code-required wetland buffer, and restitution area. The easement must be based on a wetland delineation conducted and approved in 2015.
• A restoration management plan for the restitution area. The plan be recorded against the property ad must include annual submittal for city staff review and approval prior to yearly implementation.

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

3. Prior to issuance of a building permit:

a) Submit the following items for staff review and approval:

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

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

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

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

3) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.

4) An illumination plan.
b) Submit all required hook-up fees.

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

5. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

6. Construction must begin by December 31, 2016, unless the city council grants a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on January 26, 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 26, 2015.

__________________________________________
David E. Maeda, City Clerk
Resolution No. 2015-xx

Resolution Approving a Third Amendment to Second Amended Contract For Private Redevelopment Between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Glen Lake Redevelopment LLC

BE IT RESOLVED by the City Council (the “Council”) of the City of Minnetonka, Minnesota (the “City”) as follows:

Section 1. Background.

1.01. The City and the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) have approved the creation of the Glenhaven Tax Increment Financing District (the “TIF District”) within the housing development and redevelopment project known as the Glen Lake Housing Development and Redevelopment Project (the “Project”), and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Project.

1.02. The Authority and City entered into an Amended and Restated Contract for Private Redevelopment, dated May 15, 2007 (the “Original Contract”), with Glen Lake Redevelopment LLC, a Minnesota limited liability company (the “Redeveloper”), which set forth the terms and conditions of the housing and commercial redevelopment project to be constructed by the Redeveloper within the TIF District in three separate phases designated as “Phase I” (rental housing units and commercial facilities), “Phase II” (senior rental housing units), and “Phase III” (for-sale condominium housing units).

1.03. To address changes in the housing market, timing of construction, and other development details, the Authority, the City, and the Redeveloper modified the Original Contract and entered into a Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010 (the “Second Amended Contract”). The Second Amended Contract was previously amended by the First Amendment to Second Amended and Restated Contract for Private Development and the Second Amendment to Second Amended and Restated Contract for Private Development.

1.04. The Redeveloper has requested that the terms of the Second Amended Contract related to Phase III of the redevelopment project be amended to allow the construction of a residential senior cooperative building with approximately 54 dwelling units rather than 45 condominium units as required in the Original Contract.

1.05. There has been presented to this Council a Third Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Third Amendment to Second Amended Contract”), which allows the Redeveloper to construct a residential senior cooperative building with approximately 54 dwelling units including community space and outdoor amenities as Phase III of the redevelopment project.
1.06. The Council has reviewed the Third Amendment to Second Amended Contract, and finds that the execution thereof by the City and performance of the Authority’s obligations thereunder are in the best interest of the City and its residents.

Section 2. Council Action.

2.01. The Third Amendment to Second Amended Contract is approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the Mayor and City Manager; provided that execution of the document will be conclusive evidence of their approval.

2.02. The Mayor and City Manager are authorized and directed to execute the Third Amendment to Second Amended Contract and any other documents or certificates necessary to carry out the transactions described therein.

Adopted by the City Council of the City of Minnetonka, Minnesota this 26th day of January, 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 January 26, 2015.

City Clerk
THIRD AMENDMENT TO
SECOND AMENDED AND RESTATED
CONTRACT FOR PRIVATE REDEVELOPMENT

THIS THIRD AMENDMENT TO SECOND AMENDED AND RESTATED CONTRACT FOR PRIVATE REDEVELOPMENT, made on or as of the ____ day of _________, 2015 (the “Third Amendment to Agreement”), is by and between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic (the “Authority”), established pursuant to Minnesota Statutes, Sections 469.090 to 469.1081 (hereinafter referred to as the “Act”), the CITY OF MINNETONKA, a Minnesota municipal corporation (the “City”) and GLEN LAKE REDEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”), and consented to by The Exchange Development LLC, a Minnesota limited liability company (“The Exchange Development”), Kinsel Point Development LLC, a Minnesota limited liability company (“Kinsel Point Development”), and Glen Lake Senior Housing, LLC, a Minnesota limited liability company, as permitted assignees hereunder.

WITNESSETH:

WHEREAS, the Authority, the City, and the Redeveloper previously entered into that certain Second Amended and Restated Contract for Private Development, dated January 4, 2010 (the “Agreement”), which amended and restated a Contract for Private Redevelopment, dated January 31, 2006, between the Authority, the City, and the Redeveloper, as amended and restated by the Amended and Restated Contract for Private Redevelopment, dated May 15, 2007, which was partially assigned to The Exchange Development and Kinsel Point Development; and

WHEREAS, the Agreement was previously amended by the First Amendment to Second Amended and Restated Contract for Private Development (the “First Amendment”) to extend the time period in which a third phase of redevelopment could occur; and

WHEREAS, the Agreement was previously amended by the Second Amendment to Second Amended and Restated Contract for Private Development (the “Second Amendment”) to further extend the time period in which a third phase of redevelopment could occur; and

WHEREAS, pursuant to the Agreement, the Redeveloper agreed to develop the real property in the City legally described in SCHEDULE A attached hereto (the “Redevelopment Property”) in three separate phases designated as “Phase I” (rental housing units and commercial facilities), “Phase II” (senior rental housing units), and “Phase III” (for-sale condominium housing units); and

WHEREAS, Phase III of the redevelopment was initially expected to include 45 units of for-sale condominium housing units; and

WHEREAS, the Redeveloper requested that the Agreement be amended to require the construction of a residential senior cooperative building with approximately 54 dwelling units as Phase III and the Authority and City have to amend the Agreement accordingly; and
NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

Section 1. Amendment to Section 1.1 Definitions. Section 1.1 of the Original Agreement is amended as follows (amended language is underlined):

“Exchange/Kinsel Replacement Note” means the Taxable Tax Increment Revenue Note, Series 2010B issued by the Authority in the principal amount of $2,128,802, as a replacement note for the outstanding principal amount of the Exchange/Kinsel Initial Note.

“Minimum Improvements” means the construction on the Phase I Property of approximately 52 units of Rental Housing Units, and approximately 20,500 square feet of commercial facilities (together, “Phase I” or “Exchange”); the construction on the Phase II Property of approximately 145 to 150 units of senior rental housing units, with 65 to 70 independent living units and 80 to 85 assisted living units and memory care units (“Phase II”); and the construction on the Phase III Property of a residential senior cooperative building with approximately 54 dwelling units (“Phase III” or “Kinsel”).

“Phase III Deficiency” means an occurrence of the following conditions on any Payment Date: (1) pledged Available Tax Increment from the Phase I Property and the Phase II Property is insufficient to pay principal and interest then due on the TIF Bonds, and (2) Phase III Negative Tax Increment exists as of that Payment Date. In that event, the Phase III Deficiency on that Payment Date is the smaller of the debt service shortfall under clause (1) or the Phase III Negative Tax Increment under clause (2).

“Phase III Negative Tax Increment” means a reduction in Available Tax Increment from the Phase I Property and Phase II Property resulting from a decline in the current market value of the Phase III Property (for any tax-payable year) below that parcel’s original tax capacity (within the meaning the TIF Act).

“TIF Bonds” means the Tax Increment Revenue Bonds (Glen Lake Project, Phases I & III), Series 2010 issued by the Authority in the principal amount of $2,380,000, and any bonds or notes issued to redeem and prepay such bonds.

Section 2. Amendment to Section 3.1 - Status of Property. Section 3.1(f) of the Original Agreement is amended as follows (amended language is underlined):

(f) The Redeveloper shall not permit the Transfer of any portion of the Phase I Property or Phase III Property to any Subdeveloper (or to itself or an Affiliate for any Phase or portion thereof retained and constructed by the Redeveloper) at a price less than the following:
$ 750,000 for all Phase I (Exchange) Rental Housing Units (52 units)
$ 500,000 for the commercial portion of Phase I
$ 1,912,500 for Phase III (Kinsel) residential senior cooperative housing with approximately 54 dwelling units

The above amounts are payable at closing on any such Transfer. If any portion of the Phase I Property or Phase III Property is transferred for more than the prices listed above, or if the Phase II Property is transferred for more than the agreed-upon fair market value referenced in Section 3.1(d), then the amount of the Initial Notes will be decreased in size pursuant to Section 3.7(b)(ii). Redeveloper expressly acknowledges that, while there is no minimum sale price for transfer of the Phase II Property, any reduction in overall revenues caused by such reduced price will not change the amount of tax increment assistance provided under this Agreement.

Section 3. Amendment to Section 3.7 - TIF Lookback. Section 3.7(b)(i) of the Original Agreement is amended as follows:

(b) Phase I, Phase II, and Phase III Redeveloper as Master Developer. (i) Within thirty days after the later of the sale of the last cooperative housing share sold in Phase III (Kinsel) or sale of the Phase II Property by Redeveloper (or Phase II Property Owners”) to a third party, the Redeveloper shall submit a certified cost and revenue analysis for all portions of the Redevelopment Property to the Authority’s financial advisor in the form of the Development Budget and prepared in accordance with generally accepted accounting principles. As shown in Schedule H, the Development Budget shall include developer profit of $167,000 and a contingency for increases in cost of $265,000 and savings in any category may be used to offset overruns in any other category, but any other cost changes shall be handled in accordance with subsection (ii) of this paragraph (b). The Redeveloper agrees to provide to the Authority’s consultant any background documentation related to the financial data, upon request. The Authority may retain an accountant to audit the submitted Development Budget, at the Redeveloper’s cost.

Section 4. Amendment to Section 3.8 - Authority Refinancing of Initial Notes. Section 3.8 of the Original Agreement is amended by adding the following section 3.8(g):

(g) Refinancing Notes. On November 4, 2010, the Authority issued its Tax Increment Revenue Bonds (Glen Lake Project, Phases I & III), Series 2010 in the principal amount of $2,380,000 (the “TIF Bonds”). The proceeds of the TIF Bonds refinanced a portion of the Exchange/Kinsel Initial Note and the Taxable TIF revenue Note, Series 2010A issued in the principal amount of $1,276,263. The TIF Bonds are payable from Available Tax Increment derived from Phase I Property and Phase II Property. If a Phase III Deficiency occurs on any Payment Date, then on any subsequent Payment Date after such deficiency, Available Tax Increment shall include 95% of the Tax Increment derived from Phase III Property received as of that Payment Date, up to the amount necessary to cure the aggregate prior Phase III Deficiency.

On November 4, 2010, the Authority also issued its Taxable Tax Increment Revenue Note, Series 2010B in the principal amount of $2,128,802, as a replacement note for the outstanding principal amount of the Exchange/Kinsel Initial Note (the “Exchange/Kinsel Replacement Note”).
The Exchange/Kinsel Replacement Note is payable from (1) Available Tax Increment attributable to the Phase III Property, except as otherwise provided below; and (2) Available Tax Increment attributable to the Phase I Property and Phase II Property remaining after application of such Available Tax Increment to the following senior obligations in the following order of priority: first, payment of principal and interest due on such Payment Date with respect to the TIF Bonds, and second, payment in full of the principal and interest on the interfund loan for 2008 Public Improvements in accordance with Sections 4.11(b) and 4.12 of this Agreement.

If a Phase III Negative Tax Increment occurs on any Payment Date, then on any Payment Date subsequent to such Phase III Negative Tax Increment, Available Tax Increment attributable to the Phase III Property shall be applied to the following obligations in the following order of priority: first, to cure the aggregate Phase III TIF Deficiency (if any) with respect to the TIF Bonds; second to pay principal and interest on the Authority’s interfund loan for 2008 Public Improvements in accordance with this Agreement, to the extent required to cure the aggregate Phase III Negative Increment remaining after payment in full of any Phase III TIF Deficiency; and third, to pay principal and interest then due with respect to the Exchange/Kinsel Replacement Note.

Section 5. Amendment to Section 4.3 - Completion of Construction. Section 4.3(a) of the Original Agreement is amended as follows:

Phase III (Kinsel): A four-story, residential senior cooperative building with approximately 54 dwelling units including community space and outdoor amenities on the Phase III Property commenced not later than September 30, 2015 and completed by no later than December 31, 2016.

Section 6. Amendment to Section 4.8 - Association Covenants. Section 4.8 of the Original Agreement is deleted in its entirety.

Section 7. Effective Date. The amendments and supplements made to the Original Agreement, as amended and supplemented by this Third Amendment to Agreement, shall be effective as of January 26, 2015.

Section 8. Certain Defined Terms. Terms used in this Third Amendment to Agreement and not defined herein shall have the meanings given in the Agreement.

Section 9. Confirmation of Original Agreement. Except as specifically amended by this Third Amendment to Agreement, the Original Agreement is hereby ratified and confirmed, and remains in full force and effect.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Authority, the City, and the Redeveloper have caused this Third Amendment to Second Amended and Restated Contract for Private Redevelopment to be duly executed in their respective names and behalf as of the date and year first written above.

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its President

By ________________________________
Its Executive Director

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by ____________________, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the Authority.

__________________________________
Notary Public

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the Authority.

__________________________________
Notary Public

This document was drafted by:
KENNEDY & GRAVEN, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota  55402
Telephone: (612) 337-9300
Execution page of the City to the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By ______________________________________
Its Mayor

By ______________________________________
Its City Manager

STATE OF MINNESOTA  )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by ______________, the Mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

__________________________________________
Notary Public

STATE OF MINNESOTA  )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by Geralyn Barone, the City Manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

__________________________________________
Notary Public
Execution page of the Redeveloper to the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above.

GLEN LAKE REDEVELOPMENT LLC

By ________________________________
Its Chief Manager

STATE OF MINNESOTA   )
COUNTY OF HENNEPIN    ) SS.

The foregoing instrument was acknowledged before me this _____ day of January, 2015, by Thomas Wartman, the Chief Manager of Glen Lake Redevelopment LLC, a Minnesota limited liability corporation, on behalf of the corporation.

_____________________________________
Notary Public
This Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement.

THE EXCHANGE DEVELOPMENT LLC

By

Its Chief Manager

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by Thomas Wartman, the Chief Manager of The Exchange Development LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public
This Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement.

KINSEL POINT DEVELOPMENT LLC

By ____________________________________________

Its Chief Manager

STATE OF MINNESOTA   
) ) SS.
COUNTY OF HENNEPIN   

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by Thomas Wartman, the Chief Manager of Kinsel Point Development LLC, a Minnesota limited liability company, on behalf of the company.

______________________________________________

Notary Public
This Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement and owner of the Phase II property.

GLEN LAKE SENIOR HOUSING, LLC

By ________________________________
Its Chief Manager

STATE OF MINNESOTA  )
 ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by Michael Pagh, the Chief Manager of Glen Lake Senior Housing, LLC, a Minnesota limited liability company, on behalf of the company.

____________________________________
Notary Public

____________________________________
Notary Public
SCHEDULE A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Phase I (Exchange) Property
Lot 1, Block 1, The Exchange, according to the recorded plat thereof, Hennepin County, Minnesota

Phase II Property
Lot 2, Block 1, Glen Haven Shopping Center, according to the recorded plat thereof, Hennepin County, Minnesota.

Phase III (Kinsel) Property
Lot 1, “Glen Lake Park”, except the East 570 feet of Lot 1, according to the recorded plat thereof, Hennepin County, Minnesota.
City Council Agenda Item #15A  
Meeting of January 26, 2015

**Brief Description:**  Appointments and reappointments to Minnetonka boards and commissions

**Recommended Action:**  Approve the recommended appointments and reappointments

**Background**

On January 13th, the city council interviewed a number of applicants for the open positions on the charter, park board and planning commission. After reviewing the comments from each council member and my notes, I am recommending appointing Chris Gabler to fill the vacancy on the park board and Deb Calvert to fill the vacancy on the planning commission. I have spoken with both applicants and they both expressed the willingness to dedicate the time and energy necessary to be contributing members.

In addition, on January 31, 2015, the terms of office will expire for some members of the EDAC, park board and planning commission. All of them are eligible to be reappointed and have been valuable and productive members. In addition, each member has indicated an interest in continuing to serve an additional term. I am recommending reappointment of all of the eligible members with the exception of Laurie McKendry to the EDAC. While Laurie has been a contributing member she has only been able to attend four of the nine EDAC meetings in 2014, which is far below the general expectation for meeting attendance. It is my intent to go through the last couple of rounds of applicants and select someone to fill that position in the next week or so.

The updated membership rosters showing the composition of the above boards and commissions following these reappointments are attached.

**Recommendation**

To approve the following appointments and reappointments to the Minnetonka Boards, Commissions and Committees:

- **Chris Gabler, to the park board, to serve a two-year term, effective February 1, 2015 and expiring on January 31, 2017.**
- **Deb Calvert, to the planning commission, to serve a two-year term, effective February 1, 2015 and expiring on January 31, 2017.**
- **Kathryn Aanenson, to the EDAC, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.**
- **Benita Bjorgo, to the EDAC, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.**
- **Ken Isaacson, to the EDAC, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.**
- **Nelson Evenrud, to the park board, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.**
Peggy Kvam, to the park board, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.

Elise Raarup, to the park board, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.

Brian Kirk, to the planning commission, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.

Heather Odland, to the planning commission, to serve another two-year term, effective February 1, 2015 and expiring on January 31, 2017.

Also I recommend Kathryn Aanenson as chair and Ken Isaacson as vice chair for the EDAC for 2015.

Respectfully submitted,
Terry Schneider
Mayor
# Charter Commission

**Current Members**

This commission is comprised of up to 15 members whose primary responsibility is reviewing and recommending amendments to the City Charter. Their objectives include simplifying language, eliminating outdated provisions, conforming the charter to recent state laws, and analyzing whether there could be improvements to the existing city structure and operation. The charter commission meetings are held when necessary. Members serve four-year terms and are appointed by the chief judge.

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<th>Open Position</th>
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<th>Comments</th>
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**Staff Liaison:** Corrine Heine, City Attorney, Ph# 952-939-8262
**Economic Development Advisory Commission**

*Current Members*

The Economic Development Advisory Commission (EDAC) advises the city council regarding redevelopment, development/finance, housing and transportation. This board is comprised of seven members who reside in the city, work in the city or own a business in the city. Members serve a two-year terms. Meetings are held as needed.

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**Current Members**

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<td>Ken Isaacson</td>
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<td>Brad Wiersum</td>
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<td>Alt. Council Liaison</td>
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**Staff Liaisons:**

Julie Wischnack, Community Development Director, Ph# 952-939-8282
Park Board

This board is comprised of seven members plus one student representative. This board consults with the city council and staff in matters relating to parkland, park facilities, programs, and finances. The board’s functions include long and short range planning related to capital improvement projects, acquisition, development and use of parklands, park facilities, recreational and leisure time facilities, and recreational programs. Park board members also represent the city on a joint recreation board, directing primary attention to recreation programs and activities developed and offered through the joint board; and making recommendations to the city council through the joint board concerning policies on recreational programs and activities. This board meets the first Wednesday of each month at 7:00 p.m. Members serve two-year terms.

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<th>Name</th>
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Staff Liaisons:
Perry Vetter, Assistant City Manager Ph# 952-939-8216
Dave Johnson, Recreation Services Director, Ph# 952-939-8360
Planning Commission

Current Members

The planning commission assists and advises the city council in administration of the City Zoning Ordinance; conducts public hearings on matters as required by provisions of the zoning ordinance, subdivision ordinance, and any other matters referred by the council or by ordinance. Following the required public hearings, the planning commission makes its reports and recommendations to the city council and city manager. This commission is comprised of seven members who serve two-year terms. The meetings are generally held Thursday nights, twice a month at 6:30 p.m.

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<th>Name</th>
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Other Commission Members:

Loren Gordon - City of Minnetonka Staff Liaison Ph# 939-8296