Agenda
Minnetonka City Council
Regular Meeting, Monday, February 9, 2015
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Allendorf-Acomb-Wiersum-Bergstedt-Wagner-Ellingson-Schneider
4. Approval of Agenda
5. Approval of Minutes: January 5, 2015 regular meeting
6. Special Matters:
   A. Recognition of Laurie McKendry
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Resolution prioritizing a bridge replacement program
    B. Agreement with Intermediate School District #287 for police liaison services for 2015
    C. Items regarding Snow and Ice Control
       1) Ordinance amending sections 1130.05 and 1130.10 of the Minnetonka Code, regarding snow removal restrictions
       2) Resolution adopting council policy 11.16 regarding snow and ice control of streets, trails and sidewalks
11. Consent Agenda - Items Requiring Five Votes: None

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12. Introduction of Ordinances:
   A. Ordinance rezoning portions of properties generally located at the southeast corner of the County Road 101/Excelsior Boulevard intersection from R-1 to R-1A

   Recommendation: Introduce the ordinance and refer it to the planning commission (4 Votes)

13. Public Hearings:
   A. Resolution vacating portions of public right-of-way adjacent to 18521 and 18540 Beaverwood Road

   Recommendation: Hold the public hearing and adopt the resolution (4 Votes)

14. Other Business:
   A. Items concerning Villas at Groveland, 17113 Minnetonka Blvd.
      1) Major amendment to the master development plan;
      2) Preliminary plat to subdivide four parcels into 14 lots and one outlot for construction of detached villa homes;
      3) Final plat

   Recommendation: Adopt the ordinance and resolution approving the request (4 Votes)

   B. Appeal of the planning commission’s denial of a front yard setback variance at 1503 Linner Road

   Recommendation: Adopt the resolution upholding the planning commission denial (4 to uphold, 5 to overturn)

   C. Agreements related to the Green Line Extension (Southwest LRT)

   Recommendation: Approve the agreements and amend the CIP (5 Votes)

   D. Professional services agreement for the Shady Oak Station area development strategy

   Recommendation: Approve the agreement (4 Votes)

15. Appointments and Reappointments: None

16. Adjournment
Minutes
Minnetonka City Council
Regular Meeting, Monday, January 5, 2015

1. Call to Order
   Acting Mayor Tony Wagner 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 Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt, and Tony Wagner were present. Bob Ellingson and Terry Schneider were excused.

4. Approval of Agenda
   Wiersum moved, Allendorf seconded a motion to accept the agenda with an addendum to item 14A. All voted “yes.” Motion carried.

5. Approval of Minutes:
   A. September 29, 2014 special meeting
      Allendorf moved, Wiersum seconded a motion to approve the September 29, 2014 special meeting minutes. Allendorf, Acomb, Wiersum, and Wagner voted “yes.” Bergstedt abstained. Motion carried.

   B. November 10, 2014 regular meeting
      Allendorf moved, Wiersum seconded a motion to approve the November 10, 2014 regular meeting minutes. All voted “yes.” Motion carried.

   C. November 24, 2014 special meeting
      Allendorf moved, Wiersum seconded a motion to approve the November 24, 2014 special meeting minutes. All voted “yes.” Motion carried.

   D. December 1, 2014 regular meeting
      Allendorf moved, Wiersum seconded a motion to approve the December 1, 2014 regular meeting minutes. All voted “yes.” Motion carried.

6. Special Matters:
A. Retirement recognition of Wendy Turgeon

Wagner read the recognition and presented Turgeon with a plaque.

Turgeon said it had been great to work for and live in the city. She thanked her co-workers.

7. Reports from City Manager & Council Members

Barone welcomed acting city attorney Mary Tietjen of Kennedy & Graven and reported on the schedule for upcoming council meetings.

8. Citizens Wishing to Discuss Matters not on the Agenda

Alex Bakkum, one of the co-owners of the Play & Learn Café, said he was appearing before the council to ask that Resolution No. 2014-124 approving the conditional use permit for café be clarified. The resolution contained a provision that the parking agreement, which was a condition in the 1988 conditional use permit for the former Lone Spur restaurant, be recorded with Hennepin County before the building permit could be issued. Bakkum asked that either the council clarify that the Play and Learn Café had substantially complied so the permit could be issued or the resolution be amended to still require the recording of the parking agreement but separate the conditional use and building permits from the requirement. He said the hope was to open up the restaurant that would be an asset to the city. He agreed the recording of the agreement had to happen for the landlord, but he was concerned the burden was falling on his business.

Wagner said that at a previous meeting the conditional use permit for the Play & Learn Café was reviewed and approved by the council. There were concerns raised about the 1988 cross parking agreement. He asked staff to provide an update. Community Development Director Julie Wischnack said the condition in the resolution was clearly stated and city staff could not issue the building permit unless given different direction by the council. Wagner noted he was the one who included the condition in his motion. His intent was the condition from 1988 indicated that if the sale of the properties occurred, the city did not want to run into a situation similar to what occurred with Jimmy’s. Wischnack said there was a parking agreement drafted that was circulated and in a form acceptable to staff. The western property owner had not signed the agreement. She said the property owner indicated he would not sign the form unless one of two things occurred- a parking study was completed or 50 spaces were built on the south and north proof of parking areas that had been discussed. There was a six month deadline for the condition to be met.
Allendorf noted that under the "citizens wishing to discuss matters not on the agenda" portion of the meeting agenda, the council does not take action on any item brought before it but refers those matters to staff.

Barone said the options were for the council to do nothing and leave the conditions as approved and wait for the agreement to get signed; refer the matter to staff to come back with a recommended amendment to the condition allowing the building permit to be issued; or wait until the traffic study was completed. This was expected to be sometime in February. Separate from that was the issue of the cross easement. Wagner said the only other option to gain compliance with the 1988 approval was for the council to review Lone Spur’s conditional use permit.

Acomb said the intent of the condition was not to penalize a business owner from starting the business. She asked if there were any options to encourage Lone Spur to comply with the condition. Barone said the option would be to review Lone Spur’s conditional use permit.

Allendorf said he supported waiting for the traffic study to see if there was or wasn’t a problem. He said the issue seemed to be more a competitor tenant/landlord issue than an issue for the council. The traffic study would allow the council to make a reasoned judgment about whether or not parking would be an issue.

Bakkum said there was a proof of parking plan in place so if parking became an issue there was a plan to address the issue.

Wischnack said the intention of the parking study was to remove any question about if parking was an issue and how parking was used on both sites.

Acomb asked if the parking study could be completed sooner. Wischnack said staff asked for the study to be completed over the holidays but that was not done. She indicated the study might be available by the council’s first meeting in February.

Wiersum said the circumstances were unfortunate. There was an expectation the agreement would be reached but there was a competition issue between the two businesses and one property owner was using the six months provided to delay the agreement. This was unanticipated. He asked if there were any other way to expedite the matter. Wagner said as he reflected on his reason for pushing for the condition, he didn’t want get into a situation where regardless of the tenant in the future, there was a landlocked parcel and have customers of the businesses of either mall not being able to park where they wanted to park because no one knows about the property line. He didn’t think the condition would be something that would hold up the process. As the one who made the motion to include the condition he would like to give staff the guidance to have some specific
conversations with the property owners and with Lone Spur to set an expectation the issue would be resolved by the January 26 council meeting. He viewed parking and the cross parking easement as two separate issues. The city set an expectation back in the 1980’s that should be dealt with by the property owners and the business. Wiersum said that made good sense because there was an unanticipated wrinkle causing the Play & Learn Café some difficulty. The reasons for the condition were appropriate. He said he wanted to see an expedited parking study to be included in the January 26 decision. Wischnack said the traffic observations needed for the study would occur through January 18. This would cause issues in including the study in the January 26 council packet.

Allendorf said he supported the process being discussed but would also like a recommendation about how the city could encourage the business owner to be amenable to sign the agreement for the good of both parties. Wischnack indicated that the incentive for the business owner to sign the agreement was he would have to appear before the council if he did not sign. Revocation of a conditional use permit was serious but this could be discussed so that the property owner understood this was being considered.

Wiersum said he would be open to consider reducing the six month period that was included in the conditional use permit to provide an incentive to the property owner to take action on a timelier basis.

Bergstedt said he was glad Bakkum brought the matter to the council’s attention. He would not be comfortable with taking no action and letting the landowners continue to disagree. He said he was comfortable with the options being looked at.

Chris Grote said he represented the owner of the eastern portion of the shopping center. He said when he first read the condition being discussed he thought it would be something simple to complete. Now it turned out things weren’t so simple. He said after the item was approved by the council, his firm immediately drafted the proposed cross parking easement. This was given to the city and got the approval of staff. The owner of Lone Spur has not signed off instead he asked that certain demands be met. Grote said he was thrilled to hear the council indicate the delay was not meant to happen and the perceived unfairness was not meant to fall on Play & Learn. Play & Learn really can’t do anything to push the two landlords into getting the cross parking easement done. He said he hoped the council would separate the two issues and allow Play & Learn to get the building permit needed to open the business. The cross parking easement was unambiguously an element of the 1988 conditional use permit for Lone Spur.

9. **Bids and Purchases:** None

10. **Consent Agenda - Items Requiring a Majority Vote:**
A. **Resolution designating the Acting Mayor and Alternate Acting Mayor**

Wiersum moved, Acomb seconded a motion to adopt Resolution No. 2015-001 designating Council Member Bergstedt as the Acting Mayor and Council Member Allendorf as the Alternate Acting Mayor. All voted “yes.” Motion carried.

B. **Resolution and agreements with the Minnetonka School District for the CSAH 101 project, TH 62 to Hutchins Drive**

Allendorf moved, Bergstedt seconded a motion to adopt Resolution No. 2015-002 and approve agreements with the Minnetonka School District for the CSAH 101 Project from TH 62 to Hutchins Drive, County Project No. 9917. All voted “yes.” Motion carried.

C. **Proposed orders for tobacco license violations for Boulevard Sinclair and Walgreens**

Allendorf moved, Bergstedt seconded a motion to approve issuing the enclosed Finding of Fact, Conclusion, and Orders All voted “yes.” Motion carried.

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

12. **Introduction of Ordinances:**

A. **Major amendment to the master development plan for Villas at Groveland, located at 17113 Minnetonka Boulevard**

City Planner Loren Gordon gave the staff report.

Wiersum said he was excited about the plan. He thought the previous plan had a lot of merit but the amended plan had even more merit.

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

Allendorf noted it was the first time he could recall a proposal going from a higher density to a lower density.

13. **Public Hearings:**

A. **Application for the transfer of the cable franchise system**
Brian Grogan, the attorney for the Southwest Cable Commission, gave the report.

Wiersum asked why the current subscribers did not simply become Charter customers. Grogan said the analysts seem to believe that if Charter was financially capable of taking all 4 million customers it would have done so. There did not seem to be the financial wherewithal to do this immediately. The idea is over a three or four year period Charter will be in a position to acquire the remaining subscribers.

Acomb said when the franchise agreement was approved by the council two years ago there was a lot of discussion about customer service. She said she appreciated the provisions in the agreement that target customer service given the issues over the years. Grogan credited the commissioners on the commission for those provisions.

Allendorf asked what would happen if the council voted to not approve the transfer. Grogan noted the transfer was dependent on FCC approval. He said the $50 billion nationwide deal was a game changing transaction. There had already been consensus approval from enough cities needed under the purchase agreement to close. He said what would likely occur if the council did not approve the transfer would be to operate under Comcast on paper until the issues were resolved and a side agreement would occur with Greatland and Charter. Once the deal was closed Comcast would not have any employees in Minnesota.

Bergstedt noted Grogan had said although nothing was definitive yet the email changes could occur during the first year. Bergstedt said that information had been provided indicating there may be a sunset provision where current email addresses would be valid during the changeover. Grogan said that was correct. The described transition was not precise but the change would occur during the first year because Comcast's transition agreement with Greatland was for one year. Multiple notices in a variety of forms would be sent to customers in advance letting them know how to accomplish the transition. Once the transition was accomplished there would be an undefined period of time, likely months, where emails sent to the old address would automatically be forwarded to the new address. He said it was important to note that two thirds of Greatland would be owned by Comcast shareholders. Comcast would have every motivation to protect its shareholders invested in Greatland by ensuring a smooth and easy transition. Charter and Greatland would have an equal motivation to maintain customer loyalty because they won't want to lose customers.

Wagner said there were some performance measures in the existing franchise agreement that will transfer. He asked what remedies the cable commission or the city would have if there was a degradation of service.
Grogan said one of the ways the city was in a beneficial position was that two years ago the council adopted the new franchise agreement. Many cities in the metro area were in the middle of franchise renewals or coming up on renewal. He said the existing franchise agreement was very strong and included specific customer service standards. If the metrics are not met by the company there are liquidated damages that the city could enforce. Wagner said the ability to enforce damages would be helpful for the city’s residents.

Wiersum said it would be helpful to know what the new email suffix would be as soon as possible. It would be helpful if the suffix was “charter.net” rather than “greatland.net”. If the future transfer occurs this would prevent a situation of people having to change their email addresses twice. Grogan said the nonbinding domain name being floated was “charter.com.” In terms of timing of the transition it was vague because it is not known when the FCC might approve the acquisition. Most expectations are the approval might be in March or April. There would be a further lag as the subsequent transactions occur. Wiersum said the commission was doing a great job but his frustration was the impact to residents and the city had so little real authority. Grogan noted there was another company, CenturyLink looking for a cable franchise in the metro area. The competition would be beneficial for city residents.

Wagner continued the public hearing from December 15, 2014 at 7:44 p.m. No one spoke.

Wagner closed the public hearing at 7:45 p.m.

Acomb moved, Allendorf seconded a motion to adopt Resolution No. 2015-003 approving the transfer of the cable franchise and change of control of the grantee and exhibit “A.” Allendorf, Acomb, Bergstedt, and Wagner voted “yes.” Wiersum voted “no.” Motion carried.

B. Resolution approving vacation of drainage and utility easements at 9900 Bren Road East

Gordon gave the staff report.

Wagner opened the public hearing at 7:48 p.m. No one spoke.

Wagner closed the public hearing at 7:48 p.m.

Bergstedt moved, Wiersum seconded a motion to adopt Resolution No. 2015-004 which vacates the drainage and utility easements. All voted “yes.” Motion carried.
14. Other Business:

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

Gordon gave the staff report.

Kristin Myhre, the manager of Williston Ridge, the owner of six of the 13 buildings in the industrial park, said St. Jude Medical occupied 315,000 square feet of the space with Cargill occupying the remainder. She introduced Patrick Lensing, from Steiner Development. Lensing said Steiner Development had been integral to the industrial park for the past 40-50 years. During that time the park has primarily housed medical technology or research type of businesses. Any time there was a use that was less desirable from a noise standpoint, his company has worked with the city and the neighbors to be forthright about the activities. He encouraged the council to do the same with this conditional use permit.

John Scholz, part of the ownership group that purchased the six buildings in 2014, said the group was attracted to the building because of their great location. The focus was on the aesthetics despite the term “industrial” with the high tech use and talented workforce. The plan, which has already begun, is to update the landscaping, the signage, the aesthetics, and the exterior of the building. The concern was adding the dog kennel detracts from the park. There would be more traffic than from a typical office warehouse user. The noise was also a concern. He noted a deal in Chanhassen did not happen because of the proximity to a dog park. He said his group really wanted to focus on reinvigorating the industrial park and the dog kennel would slow down those efforts.

Myhre noted the application was for around 180 dogs. The type of building typically has about 82 employees coming and going per day. Information from the Adogo conditional use permit indicted on average there were about 100 trips on an average day and 170 trips during peak times. This meant there would be additional trips compared to another type of tenant. Another concern was the proposed location would be in the center of the park. There was only one path in and one path out to service the entire park. She disagreed with the staff finding that the 8,000 square foot outdoor area was equal to an enclosed area. She said the ordinance states commercial kennels were an approved use in a residential zoning. When the application was contemplated it was cited that all the dogs were to be kept in an enclosed area except for the supervised walks.

Myhre said one way of keeping the use in compliance was to keep all the dogs inside the facility. To the extent dogs are in the outside area, the number and times should be limited. This has been done at other
locations. Another way to keep the application in compliance would be to reduce the size of the outdoor area. The Adogo locations outdoor areas were limited to 30-35 percent of the indoor area. This location was looking to have an outdoor area around 45 percent of the indoor area. She disagreed with the staff’s determination that the setbacks did not apply because it was in an I1 district. For the other locations there was an eight foot opaque fence with soundproofing. If this was the standard, she asked it be applied to this location as well. Trees were added to screen the fence and provide a more natural feel. She indicated the issue of noise violation was discussed at the planning commission. The applicant wanted the time period to be ten minutes before a violation occurred. It was agreed that a five minute time period was more appropriate because it was consistent with the city code. The applicant indicated that they would make efforts to control noise. Over time she hoped the complaint time period would be further reduced from five minutes.

Myhre said the only way to reduce the amount of traffic was to limit the number of dogs. Because it was unknown how much traffic would be added to the park, she suggested a traffic impact study be done to understand if there should be stop lights, modifications to signage, traffic patterns, turn lanes and how issues during drop off and pickup times could be mitigated.

Rob Stanek with CarVal, asked the council to reconsider the recommendation to approve the permit or consider the suggestions Myhre had listed. He said another scenario was for provisional use with a reduced scale. After a defined period of time the situation could be assessed.

Schneider arrived at 7:54 p.m.

Wagner asked staff to comment on the concerns that were raised. Gordon indicated at a meeting with the applicant the idea of looking at the fencing was discussed to determine if there was a better design that would address concerns. From a traffic standpoint he said staff did not have concerns about traffic because this particular use would generate a similar amount of trips as any other use in the park. There probably would not be associated peak hours like an office use. He said the number of dogs wasn’t considered to be an issue during the staff review primarily because of the lack of proximity to residential properties.

Wagner said he sensed the concerns that were raised were based on the feeling that workers and tenants were being treated differently than R1 residential would be treated. He said staff was indicating an industrial property was more appropriate for the use than an R1 district even though
commercial kennels were allowed in R1 districts. He said he had some concern about the outdoor noise.

Schneider said he expected to see concern about the industrial park location but it was the coming thing for people who were looking for a different type of environment for their dogs. He did agree that a person working in an industrial park in a corporate office environment would be impacted by the unique noise from a dog park. He didn't see traffic as being an issue in this situation. He noted the shape and size of the proposal would limit parking on the south end. If the outdoor area was limited to the western part it would make overflow or staff parking available. Reducing the size of the outdoor space would also make it easier to screen. He suggested the applicant work with staff to determine the number of dogs to allow outside during a given period of time for exercise and other activity.

Wagner asked staff’s opinion on provisionally doing some of the things in the outdoor area that were being done at the other locations. Over time the provisions could be removed based on performance. Gordon said that could be considered for the site. He was not sure what the proper number of dogs might be to start with. There was more square footage per dog at this location than for Adogo.

Allendorf said he agreed with Schneider that traffic was not an issue. The use was appropriate for the park. The issue was managing what times the dogs are allowed outside and how many are allowed out at one time. He said it might make sense to require the applicant to keep a log of how many dogs are out and what period of time they are out for. This would provide documentation if a problem arose as opposed to just having someone complain and not knowing the circumstances.

Wiersum said the outdoor aspect had the greatest potential for disruption to neighboring properties. The building was large but 180 dogs was a large number of dogs. The suggestions about managing the outdoor area made a lot of sense. He said part of him would like to start smaller rather than approve 180 dogs because of the size of the building. He also understood that limiting the number of dogs too much would be problematic for the business. During his time on the council the city did better at allowing an expansion rather than granting something and later revoking it.

Ellingson arrived at 8:31 p.m.

Wagner asked how to provide flexibility in the CUP where something similar to a construction management plan would be developed for the outdoor use without prescribing the specific standards. Wischnack
suggested amending the resolution to include language regarding opaque wood fencing. If issues arose there would be a process of putting sound material on the wood fence. The council could also approve a smaller outdoor area and require a report back in six months to get an update on how things were operating. She said staff would work with the city’s animal officers to monitor any noise issues. The CUP was written in a manner where the approval could be reduced based on unforeseen problems. She noted there had only been one complaint at the larger Adogo facility. Gordon said staff had discussed limiting the outdoor area to the south with parking along the western side of the building. The arrangement of interior space drove the western flank of the outdoor area.

Business partners Chad Miller, 3568 Bailey Ridge Alcove, Woodbury, and Darren Alick, 2441 Ponds Way, Shakopee provided information about their application. Miller said the 180 dogs was the maximum occupancy number. This equates to one dog per 100 square feet. For day to day business the number of dogs would be a third of the maximum. The only time there would be anywhere near 180 dogs was during holidays and spring breaks. He said those are the last times a business would want to turn a dog away because the owner would then find somewhere else to go and chances are they would not come back. The employee count would flex during these times as well. He provided information about the correlation between the indoor and outdoor areas. Alick said he understood the concerns about noise. The way the building space was planned was by giving dogs more room, the less noise there would be. The bigger space would also help alleviate behavioral issues amongst the dogs. He said there were several pages in the employee handbook about how to deal with barking dogs. He noted the fencing would not be chain link but would be six to eight foot privacy fencing. The fence would help bounce sound back into the building. Miller said privacy fencing would be installed between each of the four zones.

Schneider said the information about only receiving one complaint related to Adogo was useful. He would be cautious about how the outdoor space was managed. He agreed conceptually about not confining dogs in a tight space but managing how the dogs are allowed outside was important. He liked Allendorf’s idea about staff working with the applicant to come up with a plan for documenting and managing the outdoor activities.

Wiersum said the applicant clearly had a lot of experience with dogs. He said having the applicant work with staff to develop a plan to ensure accountability helped make the proposal reasonable. He understood the industrial park included high tech, light industrial businesses but with good management this seemed to be a reasonable, legitimate use. He liked the idea of doing a check in after six months to see how things were working.
Acomb said she also liked the idea of checking back after six months to make sure things were working and there weren’t unintended consequences for the neighbors. She appreciated the neighboring businesses offering ideas to make it a workable situation. Many of the ideas were valid and sound.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2015-005 approving a conditional use permit for a dog daycare and boarding facility at 14901 Minnetonka Industrial Road and specifying a wood fence along with a management plan for the outside area and a six month review.

Wischnack clarified that the review would only be brought back to the council if issues were identified with the conditional use. Wagner indicated this was correct. He said it would be useful if staff would send the council a note about the progress on the use as well as how things were going with the Wayzata Boulevard facility.

All voted “yes.” Motion carried.

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

Barone gave the staff report.

Bergstedt moved, Wagner seconded a motion to adopt Ordinance No. 2015-01. All voted “yes.” Motion carried.

C. Third amendment to purchase agreement for 4312-4342B Shady Oak Rd and 4292 Oak Drive Lane

Barone gave the staff report.

Wiersum said earlier in the day he asked Barone if there was an opportunity to have the seller participate more in the environmental costs. He asked if staff had since had a conversation with the seller. Barone said staff had not had the conversation with the seller.

Wagner noted the staff report indicated there were not major risk factors on the property. There were some risks as there are on other properties given the long term use. He said the city had the opportunity to get some compensation through the reduced purchase price. As the property is redeveloped there would be options on how to deal with any issues that arise.
Bergstedt said when the council initially approved the purchase it was not an easy decision but there was a definite benefit for the city and the surrounding area. It was well known there were likely going to be environmental issues. The staff report indicated what some of the issues were. For some, a future cost was reasonably able to be determined. For other issues, the costs would have to wait before they are determined when excavation and other activities begin. He said he was a little uneasy about what would be discovered. He would have liked to see more participation from the seller. The seller also benefits from a hold harmless agreement moving forward. He was concerned with the potential exposure to the city.

Schneider said the list of issues didn’t seem to be extraordinary. His concern was the potential that the future reuse or redevelopment might be limited depending on what was found. It might limit the ability to attract a high quality development. He was supportive but had some reservations about how the city managed the exposure moving forward.

Wiersum said he was satisfied that staff did what it could to get a price reduction. The rationale for the original decision was largely unchanged. The alternative to the purchase would be going through the condemnation process. That process would be more expensive and a less controllable route. The pollution situation bothered him but not enough to not approve the item.

Acomb noted the soil samples where Applewood Pointe was going in were similarly contaminated and the cleanup costs did not prevent that development from moving forward.

Wagner moved, Wiersum seconded a motion to approve the third amendment to purchase agreement. Wagner, Ellingson, Acomb, Wiersum, and Schneider voted “yes.” Allendorf and Bergstedt voted “no.” Motion carried.

D. Liquor licenses for Pairings Food & Wine Market, LLC

Barone gave the staff report.

Brandt Erwin, an attorney with Madigan, Dahl & Harlan, 222 South Ninth Street, Minneapolis, said the letter submitted on behalf of Pairings addressed what they considered procedural irregularities especially since the revocation was originally proposed and voted on and passed. As part of the revocation the item was supposed to go to the Office of Administrative Hearings. The revocation never occurred. The proper documentation was not submitted to the Office of Administrative Hearings. Rather than reschedule the hearing nothing was done. He said the key
point to the city attorney’s memorandum was that the actions of Holly Damiani had not been addressed. He noted Bernie Tompkins had addressed that issue at the December meeting and that Damiani was not involved at all with Pairings. The personal relationship between Damiani and Tompkins had no bearing on the matter. He said the request was for a conditional license to be issued.

Wiersum asked if Damiani ever went to the restaurant. Erwin said Damiani went to the restaurant with Tompkins. She frequently eats at the restaurant. He said he didn’t think it was uncommon for a former owner of a restaurant to return to eat there. Wiersum said the organization chart listed an individual with the last name Damiani. He asked who that individual was. Erwin said he believed it was Holly’s sister. Wiersum asked what her involvement with the restaurant was. Erwin said it was his understanding that she had been involved with the restaurant from when Holly first owned it. Wiersum asked if Damiani would ever speak to Tompkins or her sister about the operation of the restaurant. Erwin said it was possible. Spouses talk to each other about their days.

Schneider said at the December meeting Tompkins did not speak about how he would structure the business to ensure Damiani would not be involved. Schneider said he was caught off guard with Tompkins statement that his major contribution to the business was installing a restroom door lock. This made him question if Tompkins was seriously involved in running the day to day business. Combining that weak presentation with all the history that had been determined raised the question if someone that was not qualified to have a liquor license was helping or directing the business. The determination was the likelihood existed and was grounds enough not to renew the license.

Allendorf said he didn’t recall during Tompkins presentation any mention of Damiani. He said the letter that was submitted made a lot about the relationship between Tompkins and Damiani. This wasn’t something he weighed when he made his decision to support not renewing the license. Instead what he looked at was Tompkins residence in South Carolina and his comments about stopping by the restaurant when he came to Minnesota to visit his other businesses. This did not speak to day to day issues at the restaurant. He said the only person to his knowledge who had a reason to be active day to day in the business was Damiani because of her financial investment remaining in the business. City staff had informed Damiani she could not have any day to day activity in the business and yet Tompkins and Damiani had come to city hall a number of times together to talk to staff about the business. He said it gave him pause that the business would be affected on an ongoing basis but he didn’t know how he could approve a license based on the history. He questioned how it would be proved that Damiani would not be involved in
the business. He didn't see anything in the letter or Erwin's comments that would lead him to change his decision.

Bergstedt said everyone agreed Pairings had been a nice addition to the city. The city had never taken the revocation, or non-renewal of a liquor license lightly. It was a rare action that had been taken. He said the only thing since day one that had been a concern was Damiani's role in the restaurant. She was told she could have absolutely no ongoing role. This issue had never been addressed. When a liquor license was so vital whether or not there were procedural irregularities, he couldn't believe the owner or his attorney was not at city hall every single day starting last spring making sure what needed to be done was done to avoid any chance of things progressing this far. The main issue remained unaddressed. Even though he didn't like the thought of not renewing the license, and the business potentially shutting down, he thought the city had done everything possible to settle the matter.

Acomb said she voted to not renew the license. In reading the information for this agenda item she was disappointed information had not been provided earlier about the settlement offer that was made which would remove Damiani from pursuing ownership in the future. This made a difference because it made it feel as though ties were truly being cut. She didn't feel as if she was an expert at judging the validity of what was being presented. The original staff recommendation was to send the item to the Office of Administrative Hearings because they were trained to make that determination. She said Pairings had been a good business in the community and it would be unfortunate for it to close. She favored trying to do something to maintain the business if given assurances that Damiani was not involved in any way.

Wagner said he voted against not renewing the license. He agreed with the comments that the city had required proof that Damiani was not involved with the business and Tompkins comments did not include what he was going to do to ensure Damiani was not going to be involved. He said he still believed after reading all the factual documentation there was enough reasonable doubt. He would support asking Tompkins to specifically respond before the decision to not renew would be reconsidered. He said he thought there had been some due process issues. He felt the city should specifically state its expectations, which was an operating plan that proved Damiani was not involved. He agreed with Bergstedt that the city took revocation or non-renewal of a liquor license seriously. Given the level of seriousness, the level of evidence that was provided was not strong enough for him to support that action.

Wiersum said there clearly had been a change in approach. Initially revocation was looked at because of concerns that Damiani was not
forthcoming in her involvement with the business. The approach then
changed in large part because timing was getting tight and there was no
way revocation would be acted upon prior to when the renewal would
have to be considered. The decision was made that the better approach
was to not renew the license. He said Wagner had talked about
reasonable doubt. Reasonable doubt was very relevant in terms of
revocation because the burden of proof did not lie with the applicant but
instead lies with the revoking party. However it now was non-renewal
being looked at instead of revocation. A liquor license was a privilege. An
issued license had a property right associated with it. The city’s attorney
memo indicated that an applicant for a liquor license, even an applicant for
a liquor license renewal, has no property right in renewal of its license.
The city has broad discretion in reviewing liquor license applications so
long as it has a rational basis for its decision. The court will grant
deference to that decision. Because it was a non-renewal, the burden of
proof was on the applicant to indicate that he/she was an honest and
worthy applicant. He said Tompkins did not achieve that burden of proof
and he hadn’t heard anything that would convince him that Damiani would
not be involved in the restaurant. He would prefer she never visited the
restaurant. He was very comfortable taking no action because the
applicant had not demonstrated to any significant degree that he was a
worthy applicant given the history.

Ellingson said his concern was for the employees of the restaurant. It was
not fair for them to suffer because of the misbehavior of Damiani. The
restaurant was fairly successful and a wonderful place to eat. He didn’t
necessarily want to renew the license but wanted to provide an
opportunity for the business to be sold to someone not connected to
Damiani. He said another issue was Damiani being convicted of tax fraud,
which was a crime of dishonesty. This meant no one believed anything
she said. He suggested giving them a few months to sell the business.

Allendorf asked the city attorney if the city could require the business be
sold. Tietjen said legally she was uncomfortable with the council imposing
a condition requiring an owner to sell a business. She thought this was
overreaching. She said it was important for the council to keep in mind
that if the decision was to issue a limited license for a definite period of
time, the burden was on the applicant to come back with a plan that would
convince the council that Damiani would have no further involvement with
the business. This could include selling the business. Allendorf asked
what it would take for Tompkins to prove to staff that Damiani was not
involved with business on an ongoing basis given her sister working at the
restaurant and Damiani’s relationship with Tompkins. Wischnack said if
she could have thought of how this could be proved she would have
provided that recommendation prior to this meeting. She could not think of
anything that could solve the issue and eliminate the concern about
Damiani’s influence on the business. Wischnack said she was not previously aware of Damiani’s sister being involved and noted her sister listed the same address as Damiani. Having Tompkins also involved suggested to her there was too much togetherness for Damiani not to have influence.

Schneider said he too had thought about Ellingson and Allendorf’s idea of requiring the business to be sold. The challenge had been that it was very difficult to prove that a person was not influencing something when there was a relatively close relationship with key people in the business. He agreed the city should not be setting a condition that was an overreach. He said he would love to figure out a way to keep Pairings open and operating. In his mind the only way was for the business to ultimately be sold to someone outside the broad family. There was probable doubt in his mind that there would be some influence given how much Damiani had invested in the business. He said there was disconnect with the idea of allowing the applicant to develop a plan while not jeopardizing the city’s standards for issuing a liquor license. He recalled another situation in the past where a business contracted with an independent license holder for a period of time until a sale took place. Wischnack said that process is done on occasion. Schneider said he didn’t know if that was viable option in this situation. Allendorf noted that, or an outright sale, could happen even if the council took no action on the item. Schneider said the council would really like a viable liquor license holder so the business could remain open.

Wiersum said there was nothing wrong with the business. The issue was with the closeness of the actual ownership and the perceived ownership and the muddiness of the relationships. If someone else owned the business a liquor license would be a viable option.

Tietjen said taking no action on the item did not foreclose the ability to reconsider the item at a later date.

15. Appointments and Reappointments:

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

Allendorf moved, Wiersum seconded a motion to approve the following appointments:
• Terry Schneider as the Minnetonka City Council Legislative Contact to Metro Cities.
• Terry Schneider as the Minnetonka City Council representative to the Municipal Legislative Commission Board of Directors.
• Dick Allendorf as the Minnetonka City Council representative to the I-494 Joint Powers Organization.
• Dick Allendorf as the Minnetonka City Council representative to the Southwest Suburban Cable Commission and Robert Ellingson as the alternate.
• Corrine Heine as the Minnetonka City Council's appointed representative to the Suburban Rate Authority and Perry Vetter as the alternate.
• Perry Vetter as the Minnetonka City Council’s appointed representative to the Bennett Family Park Board.
• Sara Woeste as the Minnetonka City Council’s appointed representative to the Minnetonka School District Community Education Advisory Council.
• Dave Johnson as the Minnetonka City Council’s appointed representative to the Music Association of Minnetonka.
• Terry Schneider as the Minnetonka City Council representative to the West Hennepin Affordable Housing Land Trust (Homes Within Reach).
• Elise Durbin as the Minnetonka City Council’s appointed representative to the Wayzata Schools Community Collaboration Council.

All voted “yes.” Motion carried.

16. Adjournment

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:40 p.m.
All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #6A
Meeting of February 9, 2015

Brief Description  Recognition of Laurie McKendry

Recommendation  Recognize her service on the economic development advisory commission

Background

Laurie McKendry has served on the EDAC since January 30, 2013. During Commissioner McKendry’s term, the EDAC reviewed a range of projects from affordable housing to economic development, including:

- Developing the annual Economic Improvement Program
- Reviewing non-profit funding applications
- Tonka on the Creek
- Review of the HRA levy and annual budgets for the Livable Communities and Development Accounts

Commissioner McKendry also served on one of the EDAC’s subcommittee to make a recommendation on the city’s future commitment for Homes Within Reach. This was an extensive subcommittee and involved a lot of education, asking questions and time outside of the regular EDAC meetings.

Laurie, on behalf of the city council, fellow EDAC members and the Minnetonka residents you represented over the years, thank you for your outstanding service to the city of Minnetonka.

Recommendation

Recognize Laurie McKendry for her service on the EDAC.

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

Originated by:
  Elise Durbin, AICP, Community Development Supervisor
Brief Description: Resolution prioritizing a bridge replacement program

Recommended Action: Adopt the resolution

Background

The 2015 – 2019 Capital Improvements Program (CIP) includes a 2016 project to replace 10 trail bridges within the Opus area. One of the proposed funding mechanisms for the project is to obtain state bridge bond money. The state legislature typically allocates approximately $30 million every two years towards bridge replacement throughout the state, and MnDOT is the state agency that distributes the money. One of the first requirements for obtaining bridge bond money is for the local agency to adopt a resolution prioritizing bridge replacement within their jurisdiction, and to formally request MnDOT for financial assistance. The attached resolution meets this first requirement.

There are 22 trail bridges within the Opus area, and the 2016 project proposes to replace 10 of them. These bridges have sufficiency ratings of 80 or below which qualifies them for bridge bond money. These bridges are still very safe to use. However, staff feels it would make sense to replace them now prior to light rail being constructed in this area, and prior to major street rehabilitation taking place. The remaining bridges will likely be replaced approximately 10 years from now.

The CIP currently calls for the bridges to be funded in 2016 with $3,000,000 in bridge bond money and $400,000 from the Street Improvement Fund. The 2017 CIP includes $3,200,000 ($3,000,000 streets, $200,000 storm) for the Red Circle Drive reversal, and to replace the two bridges on Red Circle Drive. Staff feels that the combination of these funds is adequate to complete both projects. Staff is however hoping MnDOT will fund a higher amount than what is listed in the CIP.

Recommendation

Adopt the attached resolution prioritizing bridge replacement in Minnetonka, and requesting financial assistance from MnDOT.

Submitted through:
   Geralyn Barone, City Manager

Originated by:
   Lee Gustafson, P.E., Director of Engineering
Resolution No. 2015-
Resolution prioritizing a bridge replacement program

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

Section 1.  Background.

1.01.  The city of Minnetonka has reviewed pertinent data on city bridges requiring replacement, rehabilitation, or removal.

1.02.  The city of Minnetonka has identified those bridges that are high priority and that require replacement, rehabilitation, or removal within the next five years.

Section 2.  Council Action.

2.01.  The following deficient bridges are high priority and the city council of the city of Minnetonka intends to replace, rehabilitate, or remove these bridges as soon as possible when funds are available.

<table>
<thead>
<tr>
<th>Const. Priority</th>
<th>Old Bridge Number</th>
<th>Road Number or Name</th>
<th>Suff. Rating</th>
<th>Total Project Cost</th>
<th>State Bridge Funds</th>
<th>Federal Funds</th>
<th>Local or State Aid Funds</th>
<th>Proposed Construction Year</th>
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<tbody>
<tr>
<td>1</td>
<td>L9610</td>
<td>Red Circle</td>
<td>80.0</td>
<td>$647,200</td>
<td>$517,800</td>
<td>$0</td>
<td>$129,400</td>
<td>2016</td>
</tr>
<tr>
<td>2</td>
<td>L9609</td>
<td>Red Circle</td>
<td>79.8</td>
<td>$647,200</td>
<td>$517,800</td>
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<td>2016</td>
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<tr>
<td>4</td>
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<td>$682,900</td>
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</tr>
<tr>
<td>5</td>
<td>L9619</td>
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<td>6</td>
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<td>Bren East</td>
<td>78.4</td>
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<td>$0</td>
<td>$111,300</td>
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<tr>
<td>7</td>
<td>L9713</td>
<td>Green Oak</td>
<td>79.9</td>
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<td>$119,700</td>
<td>2016</td>
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<td>Blue Circle</td>
<td>78.6</td>
<td>$605,100</td>
<td>$484,100</td>
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<td>2016</td>
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<tr>
<td>9</td>
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<td>Green Cir.</td>
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<td>$0</td>
<td>$103,200</td>
<td>2016</td>
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<tr>
<td>10</td>
<td>L9608</td>
<td>Yellow Cir.</td>
<td>67.6</td>
<td>$624,500</td>
<td>$499,600</td>
<td>$0</td>
<td>$124,900</td>
<td>2016</td>
</tr>
</tbody>
</table>

2.02.  The city of Minnetonka does hereby request authorization to replace, rehabilitate, or remove such bridges.

2.03.  The city of Minnetonka does hereby request financial assistance with eligible approach grading and engineering costs as provided by law.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 9, 2015.

Terry Schneider, Mayor
Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on February 9, 2015.

________________________________________________________________________

David E. Maeda, City Clerk
City Council Agenda Item #10B  
Meeting of February 9, 2015

**Brief Description**  
Agreement with Intermediate School District #287 for police liaison services for 2015

**Recommended Action:**  
Approve agreement

**Background:**

Since September 2005, Intermediate School District #287 had been operating the Explore program at 11140 Bren Road, Minnetonka, MN. In 2012 the name of the program was changed to West High School. The school supports students from twelve different school districts receiving emotional behavior disorder (EBD) services.

In 2005, the city council entered into a service agreement to provide one officer for police liaison services. At that time, approximately 60 students were enrolled at the school. Since then, the student population has expanded to approximately 200 students at any given time. Given the increase in students, a second full-time officer was added for safety purposes at the start of the 2007-2008 school year.

The school district, which takes advantage of the Safe Schools Levy authorized by MN Statute 126C.44, has agreed to pay for ten months of salary and fringe benefits for the two police officers. The school district has also agreed to annually adjust the base cost of the officers’ salaries by the amount equal to the yearly percentage increase awarded to police officers pursuant to their union contact. The city is responsible for the officer’s wages during the non-school year months. All costs and revenues required by and under the contract are included within the city’s adopted 2015 general fund budget.

**Recommendation**

Staff recommends City Council approval of the agreement and authorization for the mayor and city manager to enter into an agreement with Intermediate School District #287 for police liaison services.

Submitted through:  
Geralyn Barone, City Manager

Originated by:  
Jeffrey J. Sebenaler, Chief of Police
LIAISON OFFICER SERVICES AGREEMENT
FOR DISTRICT #287

THIS AGREEMENT is made between the CITY OF MINNETONKA (“Minnetonka”), 14600 Minnetonka Blvd., Minnetonka, MN 55345, and INTERMEDIATE DISTRICT NO. 287 (“School District”), 1820 Xenium Lane North, Plymouth, MN 55441.

The City and the School District believe that the Liaison Officer Program (“the Program”), by which the City provides specialized security services within the school, is needed to improve understanding and promote mutual respect between police, school, staff, counselors, parents and students. This agreement is made under authority of Minn. Stat. Sec. 471.59.

Therefore, in return for the mutual agreement set forth below, the parties agree as follows:

1. **TERM**

   The term of this agreement will commence on January 1, 2015 and will terminate at the end of the day on December 31, 2015.

2. **SERVICES**

   Minnetonka will provide the services of two police officers and related support services and supplies to provide the Intermediate School District 287 with a Liaison Officer Program for the district’s West Education Center facility located at 11140 Bren Road West, Minnetonka, MN. The officers will have primary responsibility in serving as resource people to faculty, classroom members and school administrators in the prevention and diversion of juvenile delinquency behavior. Minnetonka agrees to provide vehicle, fuel, maintenance and other equipment as deemed necessary by the Chief of Police for this program. The School District agrees to provide adequate office space, copier, telephone and other reasonable office support services.

3. **TRAINING**

   As deemed appropriate by the Chief of Police, Minnetonka will provide the Liaison Officers with training according to the needs of the Program described in this agreement. The School District may also provide training, as conditions require. Minnetonka agrees to provide this training without charge unless otherwise mutually agreed upon.
4. **PAYMENT**

The cost of services provided by the City set forth in Section 2 are; $169,337.00. The City shall provide billing to the School District for services and materials provided by this agreement on May 1 and September 1 of 2015.

5. **SUPERVISION**

Minnetonka agrees to provide supervision for the Liaison Officers, who will remain employees of the City of Minnetonka. The Liaison Officers may respond to requests for assistance from building principals and assistant principals.

6. **RECORDS**

Minnetonka agrees to maintain such records as are necessary to document that the services are provided as represented by Minnetonka. The Liaison Officers will only have access to student records to the extent permitted by the Family Education Rights and Privacy Act (FERPA) and the Minnesota Government Data Practices Act. Minnetonka agrees to ensure that its actions, and the actions of its employees, comply with the Minnesota Government Data Practices Act. The school liaison officers may, in the course of the liaison officers’ law enforcement duties, have occasion to create law enforcement records relating to students at the District’s facility. Such records shall be maintained by the liaison officers and/or Minnetonka, in a separate location from student records.

7. **SCHEDULING**

The duty hours of the Liaison Officers are flexible and will be primarily coordinated with school activities. The officers will make daily contact with the police department for the purpose of keeping abreast of incident reports and other Minnetonka-wide activity. During non-school periods, the officers’ duty hours and duties will be determined by Minnetonka.

8. **DISCRIMINATION**

Minnetonka agrees not to discriminate in providing services under this agreement on the basis of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability.

9. **INSURANCE**

Minnetonka agrees that it will, at all times during the terms of this agreement, have and keep in force, worker’s compensation benefits and other insurance coverage for the Liaison Officers as provided to other Minnetonka police officer employees.
10. **ENTIRE AGREEMENT**

   The entire agreement of the parties is contained in this document. The agreement supersedes the Prior Agreement and all oral agreements and negotiations between parties relating to the Liaison Officer Program and the subject matter of this agreement. Any alterations, amendments, deletions, or waivers of any provisions of this agreement are valid only when placed in writing and signed by the City and School District representatives.

11. **TERMINATION**

   This agreement may be terminated with or without cause, by any party. To be effective, the notice of termination must be given in writing at least 30 days in advance.

12. **INDEPENDENT CONTRACTOR**

   Nothing in this agreement is intended, nor may be construed to create the relationship of partners or employer/employee relationships between Minnetonka and the School District.

13. **INDEMNIFICATION**

   The city and School District agree that each is responsible for its own acts and the result thereof to the extent authorized by law and is not responsible for the acts of the other party and results thereof. Each party’s liability is governed by the provisions established in Minnesota Statute, Chapter 466.

Dated: ___________________________  Dated: ___________________________

**CITY OF MINNETONKA**  
By: ___________________________  
   Mayor  
By: ___________________________  
   City Manager

**INDEPENDENT SCHOOL DISTRICT NO. 287**  
By: ___________________________  
   Board President  
And: ___________________________  
   Superintendent
City Council Agenda Item #10C  
Meeting of February 9, 2015

**Brief Description:** Items regarding Snow and Ice Control

1. Ordinance amending sections 1130.05 and 1130.10 of the Minnetonka Code, regarding snow removal restrictions
2. Resolution adopting council policy 11.17 regarding snow and ice control of streets, trails and sidewalks

**Recommended Action:** Adopt ordinance and resolution

**Background**

At the January 26, 2015, regular council meeting, an ordinance amending sections 1130.05 and 1130.10 was introduced which clarified winter maintenance responsibilities and restrictions regarding sidewalks. The current ordinance is vague regarding the street/sidewalk relationship. This amendment more clearly defines the rules that apply to boulevard snow storage by stating that snow cannot be piled on sidewalks and must be piled on the property where the snow has fallen. It also makes the property owner, business operator and snowplow operator all equally responsible for the lawful storage of the snow that is plowed on the property. This last requirement makes it much easier to deal with violators of the ordinance.

In addition to the ordinance amendment introduction, staff also presented a proposed city Snow and Ice Control Policy for informational purposes because it contains provisions that deal with sidewalk and trail snow removal. The ordinance amendment and the snow and ice control policy were presented to address immediate city concerns in commercial areas that have sidewalks. The snow and ice control policy, although operationally prescriptive, is recommended by the League of Minnesota Cities because it provides immunity for municipal decisions that reflect the council’s balancing of social, political, and financial interests at a policy-making level. It does not prescribe anything new operationally.

The ordinance amendment will assist the city when dealing with commercial areas that are piling snow on sidewalks. At the January 26th meeting, there were a number of council observations and thoughts that were discussed that will warrant further discussion at a future time. With regard to the snow policy, the council generally agreed that a $200.00 reimbursable limit on mailbox damage was acceptable based on the policies of four neighboring cities. Other topics that will need additional discussion included: sidewalk snow removal responsibilities in commercial versus residential areas, differentiation between recreational and pedestrian maintenance, the potential use of service districts in commercial zones and time limits for residential and commercial snow removal.
Recommendation

Adopt the following:

1.) Ordinance amending sections 1130.05 and 1130.10 of the Minnetonka Code, regarding snow removal restrictions

2.) Resolution adopting council policy 11.17 regarding snow and ice control of streets, trails and sidewalks

Submitted through:
Geralyn Barone, City Manager

Originated by:
Brian Wagstrom, Public Works Director
Corrine Heine, City Attorney
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.
Adopted by the city council of the City of Minnetonka, Minnesota, on

__________________________
Terry Schneider, Mayor

Attest:

__________________________
David E. Maeda, City Clerk

**Action on this Ordinance:**

Date of introduction: January 26, 2015
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
Resolution No. 2015-
Resolution adopting council policy 11.17 regarding snow and ice control of streets, trails and sidewalks

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

Section 1. Background.

1.01. The city desires to provide safe and reasonable passage of city streets, trails and sidewalks during the snow and ice season, operating within budget constraints and with appropriate regard for environmental concerns and the expectations of residents and local businesses.

1.02. Snow removal decisions have impacts on public safety, local commerce, the environment, and city finances.

1.03. The city council has reviewed the snow removal policy prepared by the director of public works and finds that the policy appropriately prioritizes and balances competing public interests.

Section 2. Council Action.

2.01. The city council hereby adopts council policy 11.17 on snow and ice control of streets, trails and sidewalks.

Adopted by the City Council of the City of Minnetonka, Minnesota, on .

______________________________________________
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:
Absrent:
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on .

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

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.

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:

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

How Snow will be Plowed
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.
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.

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.

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.

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.

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.

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.

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.
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.

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:

- 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.

- 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.

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.

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.

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.

**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.

**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. 2015-
Council Meeting of February 9, 2015
Brief Description  
Ordinance rezoning portions of properties generally located at the southeast corner of the County Road 101/Excelsior Boulevard intersection from R-1 to R-1A

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

Background  
In 2014 the city council adopted the R-1A ordinance. The intent of the ordinance is to allow single-family residential development on lots less than 22,000 square feet in size. By ordinance, R-1A zoning will be considered only when:

1. The proposed R-1A development will be appropriately integrated into existing and proposed surrounding development; AND

2. Either:
   • At least 60 percent of existing lots within 400 feet of the proposed R-1A development, and along 1000 feet on both sides of street on which the proposed development is located, have lot areas less than the R-1 standards as outlined in city code section 400; OR
   • All lots within the R-1A development will be served by a new street.

Under the R-1A ordinance requests for rezoning and subdivision will not be considered simultaneously. Instead, the city must evaluate the appropriateness of a R-1A rezoning request first. Though this evaluation will include review of a conceptual plat, a formal plat application will be accepted and considered only after approval of a rezoning. (See pages A1–A12.)

Proposal  
Lakewest Development is requesting that a portion of the properties generally located at the southeast corner of the County Road 101/Excelsior Boulevard intersection be rezoned from R-1 to R-1A. Under the provided conceptual plat, seven new R-1A lots could be developed off a new cul-de-sac. The lots would range in size from 15,000 to 27,000 square feet. Five lots would access Spring Lane. These lots – ranging in size from 22,000 to 36,000 square feet – would not require a rezoning as they would meet minimum R-1 standards. (See page A16.)
Policy Decision

As with any rezoning, the decision to rezone a property to R-1A is a policy decision that the city council may choose to make in its legislative capacity. In evaluating a proposal to rezone a property to R-1A, the council must consider whether:

1. The proposed R-1A development will be appropriately integrated into existing and proposed surrounding development; AND

2. Either:
   - At least 60 percent of existing lots within 400 feet of the proposed R-1A development, and along 1000 feet on both sides of street on which the proposed development is located, have lot areas less than the R-1 standards as outlined in city code section 400; or
   - All lots within the R-1A development will be served by a new street.

City staff will evaluate the integration of the proposed R-1A area into the existing development and present an opinion at future planning commission and city council meetings. As noted, the R-1A lots would be served off a new street.

Staff recommendation

The purpose of introducing an ordinance is to give the city council the opportunity to review the requested rezoning before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission review of the proposal is tentatively set for February 19, 2015.

At this time staff recommends the council:

1. Approve the notification area or direct staff as to its enlargement or retraction. (See page A17.)

2. Introduce the rezoning ordinance and refer it to the planning commission. (See page A13–A16.)

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

Originated by:
   Susan Thomas, AICP, Principal Planner
SUPPORTING INFORMATION

Concept Plan Review

In April 2014, the city council reviewed a concept plan for subdivision of the site. As presented the area would have been divided into 22 lots ranging in size from just over 6,100 square feet to roughly 16,660 square feet. The council generally expressed concerns for the following reasons: (1) the size of the proposed lots and the resulting density; and (2) the perceived lack of regard for natural resources on the site. (See page A13.)

Neighborhood Meeting

In December 2014, the applicant held a neighborhood meeting to present the current 12-lot concept. Approximately 20 people were in attendance. The attendees generally agreed that the 12-lot conceptual subdivision was a significant improvement over the previously presented concept. They particularly noted that the size of proposed properties – whether the proposed R-1A lots or the R-1 lots -- were appropriately located given the sizes of existing lots in the area. Smaller lots would be located “near” smaller lots on Tracy Lynn Terrance and larger lots across from larger lots on Spring Lane.
Location Map

Project: Saville Subdivision
Applicant: Lake West Development
Address: Co Rd No 101 & Excelsior (14002.15a)
SAVILLE SUBDIVISION

Minnetonka, MN

APPLICATION FOR
REZONING AND CONCEPT PLAN

January 12, 2014
INTRODUCTION
On behalf of Lake West Development Co., LLC, Landform is pleased to submit this application for rezoning and concept plan to create seven R-1A lots and four R-1 lots from seven lots at County Road No. 101 and Excelsior Boulevard. We are excited about this environmentally sensitive design and anticipate that it will be a great addition to the neighborhood.

REZONING AND CONCEPT PLAN
Lake West Development is requesting approval of rezoning seven proposed lots from R1 to R-1A and to subdivide an additional four lots in the existing R-1 zoning district (PID #s 29-117-22-33-0026, 30-117-22-44-0044, 30-117-22-44-0043, 30-117-22-44-0062, 30-117-22-44-0015, 30-117-22-44-0005, 30-117-22-44-0052). The subject properties are locating in the R-1 Zoning District and are guided low density residential in the Comprehensive Plan. Lake West plans to replat the lots for future construction of single-family detached residential dwelling units. There are four homes on the existing parcels. Lake West intends to retain two of the homes which are located at the corner of Excelsior Boulevard and County Road No. 101.

Ordinance 2014-22 requires that applicant submit a concept plan with a rezoning application to the R1-A District. The concept plan responds to the conditions on site with careful consideration to slopes, tree preservation and concerns of the neighborhood. The design team has worked to ensure that the concept is consistent with all of the City’s standards zoning standards. The concept plan will help the City achieve its goals of preserving existing neighborhoods while broadening housing choices and increasing the diversity of housing options.

Ordinance 2014-22 allows applicants to rezone to R-1A when the following conditions are met:

a) The proposed R-1A development will be appropriately integrated into existing and proposed surrounding development. This does not mean the R-1A development must reflect the specific standards of the surrounding area such as lot size, density, setbacks, or design. While integration may be achieved through such standards, it may also be achieved through continuation of existing land use types, architectural transitions, landscape buffering, or other means.

The proposed development will be appropriately integrated into the existing and proposed surrounding development. The attention to lot size and preservation of natural features will result in a minimal impact on the appearance or character of the neighborhood. The exterior boundaries of the lots will remain intact and new houses will be screened by the existing trees on site.
b) Either of the following is met:

1) At least 60 percent of existing lots within 400 feet of the proposed R-1A development, and along 1000 feet on both sides of street on which the proposed development is located, have lot areas less than the R-1 standards as outlined in city code section 400; or

2) All lots within the R-1A development will be served by a new street.

All proposed lots within R-1A development will be served by a new street. Lake West is proposing to extend a new street from Tracy Lynn Terrace terminating in a cul-de-sac.

Neighborhood Support:
The applicant met with area residents on December 17, 2014 to discuss plans for the subject properties. Residents were generally supportive of the proposed lot layout and concept. Residents said that they preferred the road extension from Tracy Lynn Terrace as shown in the plans over a road extending from Spring Lane. They appreciated the context sensitive design, the preservation of buffers and screening. A copy of the exhibits presented at the meeting have been included in the submittal package for your review.

Tree preservation:
Section 300.28, Subdivision 19 of the City Code requires that a tree preservation plan and survey be submitted with preliminary plats. Because trees are an important aspect of delivering a high-quality design, the concept plan was developed with respect to the location significant and high quality trees. The building areas, road placement, and lots are designed to remove the fewest number of trees possible. As proposed, the development is well under the allowable percentage of trees to be removed.

Steep Slopes
The site was analyzed to determine if there were any steep slopes on site, as defined by code. While there were none found on site, there are slopes over 20% on site. The concept plan was developed to minimize impact on the site’s slopes with a grade over 20%. Placement of lots, building areas, and the proposed road avoids slopes and integrates new residential properties into the landscape.

SUMMARY
We respectfully request approval of a rezoning from R-1 to R-1A as shown on the proposed concept plan at Excelsior Boulevard and County Road 101. We look forward to receiving feedback on the concept plan, and presenting plans to the Planning Commission on February 19, 2015 and City Council on March 2, 2015.
CONTACT INFORMATION
This document was prepared by:
Mary Matze, Planner
Landform
105 South Fifth Street, Suite 513
Minneapolis, MN 55330

Any additional questions regarding this application can be directed to Reid Schulz at rschulz@landform.net or 612.638.0245.
SAVILLE PROPERTY
MINNETONKA, MINNESOTA
DECEMBER 17, 2014

NEIGHBORHOOD ANALYSIS

Existing Area Summary
- 45 number of residential lots within 450-feet of project site
- 0.34 to 1.54 acre range of lot sizes
- 0.59 acre average lot size
Natural Context
The site has rolling topography with many of the existing high points currently occupied by single family homes. The tree canopy includes a variety of large evergreens and deciduous specimen. The wetland in the northeast corner is heavily wooded and requires buffers.

Man-made Context
Single family residential uses generally surround the site. While a node of institutional and office/services uses anchor the intersection of County Road 101 and Excelsior Boulevard. A high voltage utility and easement bisect the eastern side, which has vegetative implications as the utility corridor is maintained without tree cover.
Proposed Development Summary
- 12 number of residential lots
- Gross density 1.95 units/acre
- Net density 2.07 units/acre
- 0.49 acre average lot size

Proposed Lot Summary
- Lot 1 = 22,060 SF
- Lot 2 = 22,056 SF
- Lot 3 = 24,175 SF
- Lot 4 = 15,001 SF
- Lot 5 = 15,001 SF
- Lot 6 = 27,001 SF
- Lot 7 = 25,256 SF
- Lot 8 = 15,534 SF
- Lot 9 = 15,000 SF
- Lot 10 = 15,128 SF
- Lot 11 = 22,008 SF
- Lot 12 = 36,408 SF
Ordinance No. 2015-

An ordinance rezoning portions of existing properties generally located in the southeast corner of the County Road 101/Excelsior Boulevard intersection

The City Of Minnetonka Ordains:

Section 1.

1.01 Portions of the properties at 5290 and 5300 Spring Lane, 5325 Co Rd 101, 5301 and 5311 Tracy Lynn Terrace, and two properties with unassigned addresses are requested to be rezoned from R-1 to R-1A.

Section 2.

2.01 The area rezoned from R-1 to R-1A is legally described on Exhibit A of this ordinance.

2.02 The described area is depicted on Exhibit B of this ordinance.

Section 3.

3.01 Rezoning of these properties is appropriate. This action is based on the following findings:

1. The R-1A area will be appropriately integrated into existing development.

2. All lots within the R-1A area will be served by a new street.

3. The rezoning is consistent with the city’s comprehensive plan.

Section 4.

4.01 This ordinance is effective upon approval the final development plan and final plat.
Adopted by the city council of the City of Minnetonka, Minnesota, on March 2, 2015.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

**Action on this ordinance:**

Date of introduction: February 9, 2015
Date of adoption: 
Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Ordinance adopted.

Date of publication: 

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on March 2, 2015.

David E. Maeda, City Clerk
Exhibit A

Legal Description to be Inserted Prior to Planning Commission Public Hearing
Exhibit B
City Council Agenda Item #13A
Meeting of February 9, 2015

**Brief Description**
Resolution vacating portions of public right-of-way adjacent to 18521 and 18540 Beaverwood Road.

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

**Introduction**
Timothy and Jennifer Hawley and Thomas and Lynn Noll are requesting vacation of existing undeveloped right-of-way located between their properties and west of the developed Beaverwood Road cul-de-sac. (See pages A1–A2.) The undeveloped right-of-way was platted in 1977 as part of the Beaverwood subdivision to provide future access to the property to the west. (See pages A3.)

**Staff Comments**
The requested right-of-way vacation is reasonable as:

1. The area in no longer needed to provide access to the adjacent property. The parcel was developed in 2008 via a private street to the north. (See page A4.)

2. The applicants dedicated additional right-of-way along the paved portion of Beaverwood Road during the recent city road project. The vacation of the undeveloped right-of-way is considered a “land swap,” compensating the applicants for this dedication.

**Staff Recommendation**
Hold the public hearing and adopt the resolution vacating the right-of-way. (See page A5–A7.)

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

Beaverwood Road
right-of-way vacation

This map is for illustrative purposes only.
LOT 1, BLOCK 1
THOMAS J. NOLL & LYNN R. NOLL
PIN: 3011722240025
EXISTING ROADWAY EASEMENT

PROPOSED BEAVERWOOD ROAD VACATION
4162 SQ. FT.

LOT 1, BLOCK 1

THOMAS J. NOLL & LYNN R. NOLL
PIN: 3011722240025

EXISTING ROADWAY EASEMENT

LOT 1, BLOCK 2

TIMOTHY J. & JENNIFER V. HAWLEY
PID: 3011722240034

BEAVERWOOD ROAD

City of Minnetonka, Minnesota
Beaverwood Road
right-of-way vacation
R-O-W to be vacated

BEAVERWOOD -- PLATTED 1977

Beaverwood Road
right-of-way vacation
WOOLMAN WOODS -- PLATTED 2008

Beaverwood Road
right-of-way vacation

R-O-W to be vacated
Resolution No. 2015-

Resolution vacating undeveloped public right-of-way adjacent to the properties at 18521 and 18540 Beaverwood Road

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

Section 1. Background.

1.01 Timothy and Jennifer Hawley and Thomas and Lynn Noll have petitioned the Minnetonka City Council to vacate public right-of-way located adjacent to the properties at 18521 and 18540 Beaverwood Road.

1.02 The right-of-way to be vacated is legally described as follows, to wit:

Vacating that part of Beaverwood Road, dedicated in the Plat of Beaverwood, as is on file and of record in the Office of the County Recorder, Hennepin County, Minnesota, which lies westerly of the circumference of a circle having a radius of 50.00 feet. The center of said circle is the point of termination of the following described line:

Commencing at the Southwest Corner of Lot 1, Block 2, of said Beaverwood; thence North 00 degrees 14 minutes 01 seconds West, assumed bearing along the west line thereof and its northerly extension, 275.42 feet to the point of beginning of said line to be hereinafter described; thence South 71 degrees 13 minutes 41 seconds East, 130.96 and said line there terminating.

Reserving unto the City of Minnetonka a perpetual easement for drainage and utility purposes over, under, across and upon all that part of said vacated right-of-way described above.

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 February 9, 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. There is no anticipated public need for the right-of-way.
2. The vacation is not counter to the public interest.


4.01 The City Council vacates the above-described right-of-way with the following conditions:

1. The city reserves a perpetual easement for drainage and utility purposes over, under, across and upon the vacated right-of-way.
2. This resolution must be recorded with Hennepin County.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 9, 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 February 9, 2015.

________________________________
David E. Maeda, City Clerk
City Council Agenda Item #14A  
Meeting of February 9, 2015

**Brief Description**
Items concerning Villas at Groveland at 17113 Minnetonka Boulevard:

1) Major amendment to the master development plan;

2) Preliminary plat to subdivide four parcels into 14 lots and one outlot for construction of detached villa homes;

3) Final plat

**Recommendation**
Adopt the ordinance and resolution approving the request

**Proposal**
The property owner, Woodland Office Partnership, is requesting an amendment to the previous plans for the Groveland Pond development at 17113 Minnetonka Boulevard. The revised project, Villas at Groveland, would also consist of detached townhomes, and would still be within the medium density residential land use designation. The revised project would also maintain the same street layout. The proposed amendment would reduce the number of townhouse units from 17 to 14. The reduction in units allows for larger lots and buildable areas within each of the lots to accommodate a house prototype developed by Gonyea Homes. (See pages A1-A16.)

**Planning Commission Hearing**
The planning commission considered the request on January 22, 2015. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1-A27. At that meeting, a public hearing was opened to take comment. No one appeared at the public hearing. Following the public hearing, the commission asked questions and discussed the following items:

- **On street parking and snow removal:** During the previous review of the Groveland Pond project, there was discussion about on-street parking and snow removal, given the density of the project. As a condition of approval for the Groveland Pond project, the townhomes along the cul-de-sac were required to have shared driveways to reduce the number of curb cuts. The revised plan for Villas at Groveland would continue to have shared driveways along the cul-de-sac, and the reduction in units results in three fewer driveways along the street. This allows for additional on-street parking and snow storage than would have been provided in the previous Groveland Pond project.
• **Floor area ratio and hard surface coverage:** The planning commission asked about the floor area ratio (FAR) and hard surface coverage. Based on the preliminary site and building designs, the FAR would be 0.43 and the hard surface coverage would be 45%. The proposed FAR and hard surface coverage are comparable to the previous Groveland Pond project and better than the previous office building and parking lot.

• **Construction traffic:** The planning commission commented that traffic on Minnetonka Boulevard has increased due to the County Road 101 construction, and that the construction management plan for the project should address construction vehicle access and scheduling considering this construction activity.

• **Trail Construction:** The city has placed a condition on the plat to dedicate and construct the trail in the plat area. The city is also designing the trail connection to the west of Rainbow Drive, which is anticipated to be constructed this summer.

**Planning Commission Recommendation**

On a 7-0 vote, the commission recommended that the city council approve the proposal, as recommended by city staff. Meeting minutes may be found on pages A45-A46.

**Since Planning Commission Hearing**

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

**Staff Recommendation**

Recommend the city council adopt the ordinance and resolution on pages A28-A44 approving the request, as recommended by the planning commission.

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

Originator: Jeff Thomson, Associate Planner
Brief Description

Items concerning Villas at Groveland at 17113 Minnetonka Boulevard:

1) Major amendment to the master development plan;

2) Preliminary plat to subdivide four parcels into 14 lots and one outlot for construction of detached villa homes;

3) Final plat

Recommendation

Recommend the city council approve the proposal.

Background Information

The property has been subject to several development proposals over the past two years. In March 2014, the city approved the Groveland Pond project on the subject properties. Groveland Pond consisted of 17 detached townhomes served by a new public street from Minnetonka Boulevard. The previous applicant is no longer involved in the development. The previous approvals included an amendment to the land use designation in the comprehensive plan to medium density residential, rezoning to PUD/Planned Unit Development, preliminary plat, and floodplain alteration permit. (See pages A17-A27.)

Proposal

The property owner is working with Gonyea Homes on a revised plan for the development. The revised project, Villas at Groveland, would also consist of detached townhomes, and would still be within the medium density residential land use designation. The revised project would also maintain the same street layout. The proposed amendment would reduce the number of townhouse units from 17 to 14. The reduction in units allows for larger lots and buildable areas within each of the lots to accommodate a house prototype developed by Gonyea Homes. (See pages A1-A16.) The following summarizes the proposal:

- **Housing Type:** The revised plans would increase the size of the lots in order to allow for larger buildable areas on each of the lots. The change to the lots would allow for a different housing type than was originally proposed with the Groveland Pond project, which included two story townhouse units on each of the lots. The revised plans would include a mix of one story villa homes with walk-out or look-out basements, and two story units. Each of the homes would be custom designed, so the individual house plans would vary. The applicant would establish a
homeowners association which would provide private design guidelines to ensure consistent design and materials throughout the development.

- **Public Street and Utilities:** The street and utility plans have not changed from the previous Groveland Pond project. A new public street would be constructed from Minnetonka Boulevard, and each of the homes would have access from the new street. The proposed street is designed to meet the city’s public street requirements. A public water main would be extended from Minnetonka Boulevard, and would be looped to Rainbow Drive to the west. The sanitary sewer connection would be provided from Larchwood drive to the east of the site. The sanitary sewer line would be directionally bored from Larchwood Drive to avoid impacting the wetland, floodplain, and trees on the southeast corner of the site. All of the homes would obtain utility connections from the new water and sanitary sewer improvements.

- **Stormwater:** The stormwater design is also the same as the previous Groveland Pond project. Stormwater treatment would be provided by an underground stormwater chamber which would be constructed on the northeast corner of the site, behind Lots 13 and 14. Runoff would be directed to the underground chamber via catch basins along the street edge. Individual stormwater management would be required for Lots 7 and 8 since the runoff from these properties would not be captured by the proposed stormwater design. The individual stormwater management plan would be reviewed with each of the respective building permit applications.

- **Grading and Tree Preservation:** The grading limit for construction of the street, utilities, and townhomes is similar to the previous grading limit for the Groveland Pond project. Due to the increase in size of the homes on Lots 1 through 4, the grading limit would extend closer to the west property line than the previous plans. However, the revised grading limit would not result in the removal of any additional trees. Final grading plans would be reviewed with each of the building permits for these lots to ensure the impact to the critical root zone of the trees would not result in removal of the trees. The proposed development continues to comply with the tree preservation ordinance, as it would remove less than 35 percent of the high priority trees on the site.

**Staff Analysis**

Staff finds that the applicant’s proposal is consistent with the previous master development plans. The revised plans would result in a reduction in the number of residential units, and would still be consistent with the previously approved medium density land use designation. Although the house footprints would be larger than the previous plans, there would be no additional site impacts. The grading, drainage, tree removal, and floodplain alteration would be consistent with the previous development plans. There are no additional impacts associated with the revisions to the master development plans. As such, staff recommends approval of the revised project.
Staff Recommendation

1) Recommend the city council adopt the ordinance on pages A28-A31, which amends the master development plan for Villas at Groveland at 17113 Minnetonka Boulevard.

2) Recommend the city council adopt the resolution on pages A32-A44, which grants preliminary and final plat approval to Villas at Groveland, a 14 lot subdivision at 17113 Minnetonka Boulevard.

Originator: Jeff Thomson, Associate Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Applicant: Woodland Office Partnership

Project No.: 93020.14b

Property Address: The development site is comprised of four separate parcels. The addresses are 17107 and 17113 Minnetonka Boulevard, and two unaddressed parcels on Minnetonka Boulevard.

Proposal Requirements: The revised development application requires the following:

- Major amendment to the master development plan: An amendment to a previously approved PUD that increases or decreases the number of residential dwelling units by more than 5 percent requires a major amendment.

- Preliminary plat: The proposed subdivision of the property requires preliminary plat review.

- Final plat: The applicant is requesting concurrent review of the final plat with the preliminary plat application.

Surrounding Land Uses: Northerly: Groveland School, Groveland Cemetery, and Gro-Tonka Park, all zoned R-1 with different comprehensive plan designations, including institutional, park, and low density residential.

Easterly: Single-family homes zoned R-1 and guided for low density residential uses

Southerly: Single-family homes zoned R-1 and guided for low density residential uses

Westerly: Single-family homes zoned R-1 and guided for low density residential uses

Planning: Guide Plan designation: The city council previously approved an amendment to the comprehensive guide plan as part of the previous Groveland Pond project. The comprehensive plan amendment changes the land use designation for the properties from office to medium density residential. The land use designation change is effective upon filing of the plat. Since the plat has not been filed, the property remains guided for office uses, but would be changed to medium density residential upon filing of the revised plan for Villas at Groveland.
Zoning: The city council previously approved a rezoning of the site from B-1/Office and R-1/Low density residential to PUD/Planned unit development, which is also effective upon filing of the final plat.

**Existing Site Features**

The site is located near the Minnetonka Boulevard and County Road 101 village center. The overall site is comprised of four separate parcels with a total area of 5.5 acres and an upland area of 2.9 acres. The site was improved with a 2½-story office building that was demolished in the fall of 2014. The site has the following natural features:

**Topography**
The site topography slopes from west to east. The highest part of the lot is located at the west property line along Rainbow Drive. From this point, the site slopes down 20 feet towards the floodplain basin which encumbers the east side of the site.

**Trees**
There are 114 trees on the property, west of the wetland. The trees are classified as high priority and significant under the city’s tree preservation ordinance. The site is not encumbered by a woodland preservation area.

**Wetland and Floodplain**
There is an existing manage two wetland which completely encumbers the east side of the site. The wetland has an associated floodplain, which is established at the 930.3 elevation.

**Development Standards**
The following table outlines the development standards outlined in the Planned Unit Development ordinance:

<table>
<thead>
<tr>
<th>Land Use Density</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.9 units/acre</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Exterior Setbacks</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>• North (Minnetonka Blvd.)</td>
<td>35 ft.</td>
</tr>
<tr>
<td>• East (Larchwood Dr.)</td>
<td>100+ ft.</td>
</tr>
<tr>
<td>• South</td>
<td>30 ft.</td>
</tr>
<tr>
<td>• West (Rainbow Dr.)</td>
<td>35 ft.</td>
</tr>
<tr>
<td>• West (residential)</td>
<td>20 ft.</td>
</tr>
</tbody>
</table>
Landscaping
The applicant has submitted a preliminary landscape plan for the development. The proposed plan would provide a uniform landscape plan along the new street and front yards of each of the townhouses. Additional trees would be planted on the west side of Lots 1 through 4 to provide buffering from the single family homes to the west. City ordinances do not require screening or buffering between single-family homes. However, there is a provision of the ordinance that allows the city to require buffering between medium density residential developments and single-family residential neighborhoods. As a condition of approval, additional landscaping would need to be provided behind Lots 5 through 8 to provide additional buffering from the neighborhood. The additional plantings behind Lots 5 and 6 would need to consist of shrubs that are no taller than 10 feet due to existing power lines along the west side of the site. Since the landscaping on Lots 5 and 6 would be located in the utility easement, plantings would be subject to pruning or removal by the electric utility company. If this happens, the city would not require replacement or replanting. Deciduous trees would be most appropriate behind Lots 7 and 8 due to the existing site conditions.

Tree Preservation
The proposed development would remove 9 high priority trees for construction of the street, utilities, townhomes, and associated grading. There are more than 26 high priority trees on the property when including the trees located on the east side of the wetland near Larchwood Drive. The proposed development would remove less than 35 percent of the site’s high priority trees, and would comply with the city’s tree preservation ordinance.

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.

Approving Body
The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request.
<table>
<thead>
<tr>
<th>Neighborhood Comments</th>
<th>The city sent notices to 85 area property owners and received no comments.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighborhood Meeting</td>
<td>The applicant held a neighborhood meeting on January 7, 2015. Five neighborhood residents attended and were generally complementary of the proposed development with comments regarding the landscaping along Rainbow Drive and the desire for a crosswalk on Minnetonka Blvd.</td>
</tr>
<tr>
<td>Deadline for Decision</td>
<td>February 17, 2015</td>
</tr>
</tbody>
</table>
LOCATION MAP

Project: Villas at Groveland
Applicant: Woodland Office Partnership
Address: 17113 Minnetonka Blvd. (93020.14b)
December 18, 2014

Re: 17113 Minnetonka Blvd.

Dear Mayor Schneider and Council Members:

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

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

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

Very truly yours,

Woodland Office Partnership

By: _____________________________
James D. MacKinnon
A partner
PROPOSED SUBDIVISION
VILLAS AT GROVELAND
GRADING, DRAINAGE
AND EROSION CONTROL
PROPOSED SUBDIVISION
VILLAS AT GROVELAND
PROPOSED UTILITIES

EXISTING WATER MAIN
EXISTING SANITARY SEWER
EXISTING STORM SEWER

NOTE: EXISTING SANITARY AND WATER SERVICES THAT WILL NOT BE USED MUST BE REMOVED IN THEIR ENTIRETY TO THEIR RESPECTIVE MAINS. ALL NEW STORM SEWER MAINS ARE TO BE CONNECTED TO THE CORROborial AND THE CORPORATION MUST BE TURNED OFF.
KNOW all men by these presents that Villas at Groveland, LLC, a Minnesota limited liability company, has the owner of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

"Territorial:

Lot 1 and 2, Block 26, and Reserve Block "C" together with that part of a tract of Groveland Terraces, described in "Flooring to Wood-Craft, Hennepin County, Minn." lying between the western terminus of the Territorial extension across 3/10 of the South Line of Reserve Block "C" and the following described as follows: Beginning at the point on the Southeast corner of Reserve Block "C"; thence Southwesterly as a right angle to said Southeast corner to the center line of said Groveland Terraces; thence Northwesterly as said center line to a line extending from the Southwest corner of Lot 2, Block 26 in the center of the line of lot 3, Block 26, thence Southeastly as a right angle to said line; thence due East along said line of Lot 3, Block 26, thence due East to the center of the line of Lot 4, Block 26, thence due Southeast to said point of commencement, all in "Flooring to Wood-Craft, Hennepin County, Minn.

Abandoned property:

That part of the Northwest Quarter of the Southwest Quarter of Section 17, Township 117 North, Range 22 West of the 4th Principal Meridian, more particularly described as follows: Beginning at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 17, thence Southward along the North line of said Section, thence Westward along the East line of said Section, thence along the east boundary of the city of Groveland to the point of commencement, thence due West as a right angle to said point of commencement. Has caused the same to be surveyed and plotted as VILLAS AT GROVELAND, and does hereby dedicate to the public for public use forever the Public Ways, and the drainage and utility easements as shown on the plan.

In witness whereof, Villas at Groveland, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this day of __________, 20__.

VILLAS AT GROVELAND, LLC, a Minnesota limited liability company

By ______________________________
Chief Manager

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this day of __________, 20__, by ______________________________, Chief Manager, of Villas at Groveland, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public, County: __________________

My commission expires __________________

I, Mark S. Groveland, hereby certify that this plat was prepared by me under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that the plat is a correct representation of the described property; and that all notes and bearings are correctly depicted on this plat that all measurements depicted on this plat have been, or will be, in accordance with the applicable laws of the State of Minnesota and shall be as defined in Minnesota Statutes, Sections 377A.01 et seq. The Surveyor's Certificate of Completion is executed on the date the certificate is signed and stamped on the plat and all public ways shown and stated on this plat.

Mark S. Groveland, Licensed Land Surveyor and Engineer

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this day of __________, 20__, by ______________________________, Surveyor and Engineer.

Notary Public, County: __________________

My commission expires __________________

Gronberg & Associates, Inc.

Engineers, Land Surveyors, Planners

Sheets 1 OF 2 SHEETS

Villas at Groveland

17113 Minnetonka Blvd.
Previously Approved
Groveland Pond Project
Floodplain Mitigation Area

PROPOSED SUBDIVISION
GROVELAND POND
GRADING, DRAINAGE
AND EROSION CONTROL

Existing Contour Line
 Proposed Contour Line
Tree Protection
Set Back

Floodplain Mitigation Area
Example House Elevations

Design Notes:
1. All houses have full basements.
2. The houses on lots 1 and 18 are 27'-0" wide, all other houses shown are 23'-0" wide.
3. The siding colors and the materials on the houses vary from house to house. The style of the houses will vary.
4. Some garages are stepped back 4'-0" to create visual interest and variety. The garage door style changes from house to house.
5. All houses have a 3rd parking spot in front of the house.
6. All houses must be 3'-0" off the side property line as required by building code. Therefore side yard setbacks are 5'-0" and 7'-0". The front setback is 15'-0".
3-BEDROOM FLOOR PLAN:

A variety of 3-bedroom floor plans are available. The floor plan below shows one example with a Prairie style exterior.

Second floor: 1,200 gross sq. ft.
First floor: 1,000 gross sq. ft.
Basement: unfinished
Total: 2,200 finished gross sq. ft. above grade.

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

4-BEDROOM FLOOR PLAN:

A variety of 4-bedroom floor plans are available. The floor plan below shows one example with a Craftsman style exterior.

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

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

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

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

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

14. Other Business:

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

Wischnack gave the staff report.

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

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

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

All voted “yes.” Motion carried.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

All voted “yes.” Motion carried.

C. 2014 Assessment Report

City Assessor Rebecca Malmquist gave the report.

Allendorf noted contrary to the perception that Minnetonka only has expensive houses the information indicated that over half of the houses that were sold were in the $200,000 to $350,000 range. This was the range the council had discussed when looking at bringing young families to the city. Schneider said the caveat was that a lot of those homes were
Ordinance No. 2015-

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

The City of Minnetonka Ordains:

Section 1. Background

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

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

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

Section 2. Action

2.01 This ordinance is hereby adopted based on the following findings:

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

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

c. The proposal meets the PUD ordinance standards.

Section 3. Conditions
3.01 This ordinance is subject to the following conditions:

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

- Preliminary plat dated December 15, 2014
- Grading, drainage, and erosion control plan dated December 15, 2014
- Utility plan dated December 15, 2014
- Tree preservation plan dated December 15, 2014
- Landscape plan dated December 15, 2014
- Final plat dated December 15, 2014
- Floor plans dated December 16, 2014
- Front building elevations dated December 16, 2014

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

b. The development must be constructed and maintained only in compliance with City Council Resolution No. 2015-___, which approves the preliminary plat of Villas at Groveland.

Section 4.

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

Adopted by the city council of the City of Minnetonka, Minnesota, on February 9, 2015.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk
Action on this Ordinance:

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

Date of publication:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on February 9, 2015.

__________________________
David E. Maeda, City Clerk
Exhibit A

Torrens portion:

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

Abstract portion:

That part of the Northeast Quarter of the Southwest Quarter of Section 17, Township 117 North, Range 22 West of the 5th Principal Meridian described as follows: Beginning at the Northwest corner of the Northeast Quarter of the Southwest Quarter of said Section; thence running East along the North line of said Northeast Quarter of the Southwest Quarter a distance of 264.00 feet; thence at right angles South 165.00 feet; thence at right angles West 264.00 feet; thence at right angles North 165.00 feet to the point of beginning,
Resolution No. 2015-

Resolution approving the preliminary and final plat of Villas at Groveland located at 17113 Minnetonka Boulevard

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

Section 1. Background.

1.01 Woodland Office Partnership is requesting preliminary and final plat approval for VILLAS AT GROVELAND. (Project No. 93020.14b)

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

1.03 On January 22, 2015, the Planning Commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the Planning Commission. The Planning Commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The Commission recommended that the City Council grant preliminary plat approval.

Section 2. General Standards.

2.01 City Code §400.030 outlines design standards for subdivisions. These standards are incorporated by reference into this resolution.

Section 3. Findings.

3.01 The proposed preliminary and final plat meets the design requirements as outlined in City Code §400.025.
Section 4. City Council Action.

4.01 The above-described preliminary and final plat are hereby approved, subject to the following conditions:

a. Subject to staff approval, VILLAS AT GROVELAND must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

- Preliminary plat dated December 15, 2014
- Grading, drainage, and erosion control plan dated December 15, 2014
- Utility plan dated December 15, 2014
- Tree preservation plan dated December 15, 2014
- Landscape plan dated December 15, 2014
- Final plat dated December 15, 2014
- Floor plans dated December 16, 2014
- Front building elevations dated December 16, 2014

b. The following items must be completed before the city releases the final plat for recording at Hennepin County:

1. Submit revised final plat drawing that provides the following:

   a. Minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way, and minimum 7-foot wide drainage and utility easements along all lot lines around the perimeter of the development.

   b. Utility easements over existing or proposed public utilities, as determined by the city engineer. The utility easements must be a minimum of 20 feet in width over all proposed public underground utilities.

   c. Drainage and utility easements over wetlands, floodplains, and stormwater management facilities, as determined by the city engineer.

2. Submit the following documents for the city attorney's review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
(a) Title evidence that is current within thirty days before release of the final plat.

(b) Conservation easements over the required wetland buffer which must extend a minimum of 16.5 feet upland of the delineated wetland edge, and a drawing of the easement area. The easement may allow removal of hazard, diseased, or invasive species.

(c) Trail easement over the westerly 264 feet of the property line along Minnetonka Boulevard. The trail easement must be a minimum of 6 feet in width.

(d) Snow storage easement extending a minimum of 10 feet along the property lines adjacent to the public right of way for the new street.

(e) Private driveway easements for all lots that have a shared driveway.

(f) Documents establishing a homeowners association. The association must be responsible for construction, maintenance, and replacement of (1) underground stormwater systems, (2) wetland and buffer area, and (3) all landscaping located along the public street and front yards of each townhome. The homeowners association documents must provide specific design standards which regulate architectural style, exterior materials, massing, building orientation, and setbacks. The homeowners association must also provide maintenance standards for each of the townhomes, landscaping, garbage and snow removal.

(g) A Contract for Residential Development (or Developers Agreement) if the applicant or developer is constructing any public improvements. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.

(3) Submit an electronic CAD file of the plat in microstation or DXF.

c. 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.

(1) The following must be submitted for the grading permit to be considered complete.

(a) Final site, grading, drainage, utility, stormwater, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval. The plans must be consistent with the master development plans and must provide the following changes:

(i) The water main connection to Minnetonka Boulevard must be located at the intersection of Minnetonka Boulevard and Groveland Pond Drive.

(ii) The water main connection between Rainbow Drive and the new street should be located between Lot 3 and 4. The water line must be directionally drilled, and the directionally drilled portion should be HDPE. Specify the connection type to the existing water main on Rainbow Drive and provide a plan sheet for the work. During the connection at Rainbow Drive, a detour shall be set up. The road shall be closed and traffic directed either to the north or to the south from the work. Half road closure should be avoided to ensure that properties are not driven across.

(iii) Show water main in the profile on sheet 10 to identify if there are any utility conflicts and insulation needs.

(iv) The sanitary sewer must be directionally drilled from Lot 9 to The Strand. The final utility plan must show all sanitary sewer structures to be installed outside the wetland. No wetland impacts are allowed during installation of the sanitary sewer line. Clarification of the sewer connection at Larchwood needs to be provided.
Information for new manhole to be clarified. Show connection to MCES manhole. Provide plan for utilities that are impacted by excavation for sewer connection at Larchwood. Services from Groveland Terrace must be tied into the directionally drilled main.

(v) Utility services should be located outside of the driveway and proposed driveway bump-out stalls. Consider locating services closer to the right of way.

(vi) Existing sanitary sewer and water services that will not be used must be removed in their entirety to their respective mains. Wyes must be cut out and the main must be sleeved, water services must be removed back to the corporation, and the corp must be turned off.

(vii) No retaining wall or other structures can be located within public easements.

(viii) The proposed curb and gutter must adhere to the city standard, which is type B612.

(ix) The vertical curves must be shown for the street grades. Grades in the profile do not match the grades shown on the plan view. The street centerline grade extending 30-feet from an intersection cannot exceed 3%.

(x) The design of the underground stormwater facility is inconsistent between the project plans and previously submitted shop drawings. The final design must be confirmed and the plans updated to reflect it.

(xi) Once the final stormwater facility is confirmed, a revised stormwater management plan must be submitted for the development indicating conformance with the city's rate control, water quality control, and 1-inch volume retention requirements. The revised management plan
must also contain pre- and post-project subwatershed drainage delineations, soil boring data with a map showing the boring locations, and a narrative describing the stormwater management system.

(xii) A pretreatment structure must be installed at the street to remove sediment prior to discharge into the underground facility. A standard sump catch basin will not be considered adequate for pretreatment purposes. The pretreatment structure shown in the plans as CB4 with a SAFL baffle is not capable of sediment removal and does not meet the city’s requirements for pretreatment. An alternative design is required and design details must be included in the project plans.

(b) Maintenance agreement for the underground stormwater facility. The homeowners’ association must be responsible for the comprehensive maintenance of the system.

(c) Submit evidence of MCES permit for connection to sanitary sewer interceptor.

(d) Final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions. The plans must include landscape templates for individual home sites. The plans must also include additional landscaping along the west and south sides of the development to provide buffering to surrounding single-family residential properties. In the event that power utility company removes plantings in the future, the city will not require them to be replaced. All trees must be planted at least 15 feet from the road edge (20 feet for coniferous/evergreen trees).

(e) 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, 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.

(f) 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.

(g) A copy of the approved MPCA NPDES permit.

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

(i) All required administration and engineering fees.

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

(k) 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.

(2) Prior to issuance of the grading permit:

(a) Submit evidence of filing the final plat at Hennepin County and copies of all recorded easements and documents as required in section 4.01(b)(2) of this resolution.

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

(3) Permits may be required from other outside agencies including, Hennepin County, the Riley Purgatory Bluff Creek Watershed District, MPCA, Metropolitan Council Environmental Services, and Minnesota Department of Health. It is the applicant’s and property owner’s responsibility to obtain any necessary permits.

d. Prior to issuance of a building permit for the first new house within the development, submit the following documents:

(1) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

(2) Proof of subdivision registration and transfer of NPDES permit.

(3) An electronic CAD file of certified as-built drawings for public infrastructure and floodplain alteration in microstation or DXF and PDF format.
e. Prior to issuance of a building permit for any of the lots within the development:

(1) Pay park dedication fee of $5,000 per lot.

(2) Submit the following items for staff review and approval:

(a) Stormwater management plan for Lots 7, 8, and 9. Individual stormwater treatment is required prior to discharge into the wetland.

(b) 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.

(c) Final grading and tree preservation plan for the lot. The plan must:

(i) Be in substantial conformance with grading plan and tree preservation plan dated December 15, 2014. No trees may be removed within the 35-foot setback from Rainbow Drive.

(ii) Show sewer and water services to minimize impact to any significant or high-priority trees. No trees may be removed for installation of services.

(d) A tree mitigation plan. The plan must meet minimum mitigation requirements as outline in ordinance. However, at the sole discretion of staff, mitigation may be decreased.

(e) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

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

If the builder is the same entity doing grading work on the site, the cash escrow submitted at the time of grading permit may fulfill this requirement.

(3) 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.

(4) Install heavy duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.

(5) Submit all required hook-up fees.

f. All lots and structures within the development are subject to the following standards:

(1) Minimum lowest floor elevation is 932.3

(2) All townhomes must comply with the following setback requirements:

<table>
<thead>
<tr>
<th>Lot</th>
<th>North</th>
<th>East</th>
<th>South (a)</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>35 ft.</td>
<td>20 ft.</td>
<td>3 ft.</td>
<td>35 ft.</td>
</tr>
<tr>
<td>2</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
<td>3 ft. (a)</td>
<td>35 ft.</td>
</tr>
<tr>
<td>3</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
<td>3 ft. (a)</td>
<td>35 ft.</td>
</tr>
<tr>
<td>4</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
<td>3 ft. (a)</td>
<td>35 ft.</td>
</tr>
<tr>
<td>5</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
<tr>
<td>6</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
<tr>
<td>7</td>
<td>20 ft.</td>
<td>3 ft. (a)</td>
<td>30 ft.</td>
<td>3 ft. (a)</td>
</tr>
<tr>
<td>8</td>
<td>20 ft.</td>
<td>3 ft. (a)</td>
<td>30 ft.</td>
<td>3 ft. (a)</td>
</tr>
<tr>
<td>9</td>
<td>3 ft. (a)</td>
<td>(b)</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td>10</td>
<td>3 ft. (a)</td>
<td>(b)</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
<tr>
<td>11</td>
<td>3 ft. (a)</td>
<td>(b)</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
<tr>
<td>12</td>
<td>3 ft. (a)</td>
<td>(b)</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
<tr>
<td>13</td>
<td>3 ft. (a)</td>
<td>(b)</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
<tr>
<td>14</td>
<td>35 ft.</td>
<td>(b)</td>
<td>3 ft. (a)</td>
<td>20 ft.</td>
</tr>
</tbody>
</table>

(a) All townhomes must be set back minimum of 3 feet from side property lines and at least 10 feet from adjacent townhouse.
(b) All townhomes must meet floodplain and wetland setback requirements.

(3) All structures must be located outside all public easements.

(4) All lots within the development must meet all minimum access requirements as outlined in Minnesota State Fire Code Section 503. These access requirements include road dimension, surface, and grade standards. If access requirements are not met, townhouses must be protected with a 13D automatic fire sprinkler system or an approved alternative system.

g. All development signs must meet the requirements outlined in the city’s sign ordinance. The signs may not be located in a public easement.

h. The city may require installation and maintenance of signs which delineate the edge of any required conservation easement. This signage is subject to the review and approval of city staff.

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

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

k. The final plat must be filed within one year of final plat approval.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 9, 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 February 9, 2015.

_________________________

David E. Maeda, City Clerk
Exhibit A

Torrens portion:

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

Abstract portion:

That part of the Northeast Quarter of the Southwest Quarter of Section 17, Township 117 North, Range 22 West of the 5th Principal Meridian described as follows: Beginning at the Northwest corner of the Northeast Quarter of the Southwest Quarter of said Section; thence running East along the North line of said Northeast Quarter of the Southwest Quarter a distance of 264.00 feet; thence right angles South 165.00 feet; thence at right angles West 264.00 feet; thence at right angles North 165.00 feet to the point of beginning,
B. Items concerning Villas at Groveland at 17113 Minnetonka Boulevard.

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

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

Rettew asked if there would be enough room to locate plowed snow in the cul-de-sac. Thomson said that one less driveway and residence would help. Shared driveways are an option. There would be a snow storage easement to provide snow storage.

Kirk wanted to make sure there would be the ability to park two vehicles in each driveway. Thomson confirmed that would be the case. The setback was moved back to allow two vehicles to park on each driveway.

O'Connell favored the change. He noticed a traffic increase with the closing of County Road 101 while it is under construction. He asked what could be done to handle the construction traffic, especially at rush hour. Thomson said that the construction management plan would outline the route and hours for construction traffic.

Rettew asked if the proposal would meet ordinance requirements. Thomson explained that the proposal is a planned unit development (PUD) that would meet all medium density ordinance requirements. The proposal was previously approved.

Kirk asked if FAR applies to a PUD. Thomson explained that the units would meet the previous .5 FAR PUD standard.

Kirk confirmed with Thomson that the proposal would contain no housing that would meet affordability standards.

James Mackinnon, applicant, stated that he is working with Gonyea Homes. The number of building pads was reduced from 17 to 14. The beginning price point would be $750,000.

Jeff Martineau, of Coldwell Banker representing Gonyea Homes, stated that he is excited for the project. The housing pads appeared a little tight on the first plan. The proposed sized lots and residences would appeal to the empty-nester market. He illustrated how the houses would fit on the lots. The smaller lots on...
the west side of the street would have houses around 3,400 square feet finished. The houses on the east side of the street would have houses about 2 feet wider and with 3,600 to 3,700 square feet finished. The houses would all be custom. There would be a variety of different fronts.

The public hearing was opened. No testimony was submitted and the hearing was closed.
Kirk appreciated that two lots were removed from the plan. He is not a huge fan of detached townhomes, but appreciates the decrease in density. He supports approval of the proposal. He would like the extra space used to provide more open space.

**Odland moved, second by Kirk, to recommend that the city council adopt the ordinance on pages A28-A31 of the staff report which amends the master development plan for Villas at Groveland at 17113 Minnetonka Boulevard and the resolution on pages A32-A44 of the staff report which grants preliminary and final plat approval to Villas at Groveland, a 14 lot subdivision at 17113 Minnetonka Boulevard.**

**Odland, Rettew, Kirk, Knight, Magney, O’Connell, and Lehman voted yes. Motion carried.**

Chair Lehman stated that the item is tentatively scheduled to be reviewed by the city council at its February 9, 2015 meeting.
City Council Agenda Item #14B
Meeting of February 9, 2015

Brief Description
Appeal of the planning commission’s denial of a front yard setback variance at 1503 Linner Road

Recommendation
Adopt the resolution upholding the planning commission’s denial

Proposal
The applicant, Vitaly Chernikh, is proposing to tear down the existing house and detached garage, and construct a new house on the property. The new house requires a front yard setback variance from 35 feet to 20 feet. The applicant has appealed the planning commission’s denial of the request. (See pages A22-A28.)

Planning Commission Hearing
The planning commission considered the request on December 11, 2014. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1-A14. At that meeting, a public hearing was opened to take comment. Two residents spoke in favor of the proposed variance.

Following the public hearing, the commission asked questions and discussed the proposal. The planning commission discussed whether the size of the house was appropriate for the neighborhood. The planning commission agreed that the size of the house itself was not out of character with other homes in the area. Several planning commissioners thought that the McMansion policy was not sufficient reason to deny the variance, as the McMansion policy is a tool to help make decisions. However, the planning commission did not find that the applicant had met the practical difficulties requirement for granting of a variance. Several planning commissioners noted reasonable opportunities for the applicant to change the plans in order comply with the front yard setback requirement. The planning commission voted 6-0 to deny the request.

Staff Comments
The applicant’s letter outlines the following justifications for the variance:

- **Proximity of the house to the east:** The applicant notes that the house to the east does not comply with the setback requirement from the shared property line with the subject property.

  *Staff Response:* It is correct that the house does not meet the current setback requirement of 40 feet. However, the home met the setback requirement when it was constructed in 1993. It was only after the city changed the setback
requirements for lot-behind-lots that the house became non-conforming. It should be noted that the subject property is not similarly situated because it is not a lot-behind-lot. In addition, there would still be 55 feet between the homes if the new house were pushed all the way to the rear yard setback requirement. This would still provide significant separation between the homes, and a standard backyard area for the subject property.

- **Topography of the lot:** The applicant notes that the topography of the site slopes down from front to back, and that fill would be required in order to accommodate the proposed house design if it was moved to comply with the front yard setback.

  **Staff Response:** Staff does not find that the topography of the site is unmanageable for constructing a new house. In fact, fill would be required for both the conforming setback plan and the applicant’s requested plan.

- **Previous variance:** The applicant notes that the proposed setback would be similar to the variance that was granted for the existing detached garage.

  **Staff Response:** The previous variance, granted in 1992 for the garage, was based on the desire to preserve trees on the east side of the garage, which would have been removed if the garage met the setback requirement. These trees would be removed by the applicant’s proposed plan. In addition, there would be additional construction impacts to a 24-inch oak tree along the front property line as a result of the proposed house location. The current variance request is therefore not consistent with the previous variance.

- **Width of the right-of-way:** The applicant notes that the unusually large right-of-way width from Linner Road to the front property is a circumstance unique to the property line.

  **Staff Response:** The distance from the curb of the road to the existing property line is 27 feet. Staff does not find that the right-of-way width is unusual. In fact, all of the properties on the east side of Linner Road have the same right-of-way width as the subject property. Therefore, this is not a circumstance unique to this property.

**Planning Commission Recommendation**

On a 6-0 vote, the commission adopted the resolution denying the front yard setback variance. See resolution on pages A15-A17 and minutes on pages A18-A21.
Since Planning Commission Hearing

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

Staff Recommendation

Recommend the city council adopt the resolution on pages A29-A31 upholding the planning commission’s denial of the request.

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

Originator: Jeff Thomson, Associate Planner
# MINNETONKA PLANNING COMMISSION  
## December 11, 2014

<table>
<thead>
<tr>
<th>Brief Description</th>
<th>Front yard setback variance for a new house at 1503 Linner Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>Adopt the resolution denying the request</td>
</tr>
<tr>
<td>Project No.</td>
<td>92033.14a</td>
</tr>
<tr>
<td>Property</td>
<td>1503 Linner Road</td>
</tr>
<tr>
<td>Applicant</td>
<td>Vitaly Chernikh, Construction AS Investment, LLC</td>
</tr>
<tr>
<td>Proposal</td>
<td>The applicant is proposing to tear down the existing house and detached garage on the property, and construct a new house. (See narrative and plans on pages A1-A11.)</td>
</tr>
</tbody>
</table>

**Proposal Requirements**  
The proposal requires:

- Front yard setback variance: The zoning ordinance requires a minimum front yard setback of 35 feet from Linner Road. The applicant is proposing a front yard setback of 20 feet, which requires a variance.

**Approving Body**  
The planning commission has final authority to approve or deny the request. (City Code §300.07 Subd.4)

**Site Features**  
The site is 22,200 square feet in size and is improved with a single family home and detached garage. The house is 2,080 square feet in size and was built in 1955. The city council approved a front yard setback variance on November 9, 1992 from 35 feet to 20 feet for the detached garage. The justification for the variance was due to the site topography and ability to preserve additional trees with this lesser setback. (See pages A12-A13.)

**Proposed**  
The applicant is proposing to construct a new house. The new house would be two stories with a walk-out basement. The house would also include a four car attached garage with bonus room above. The plans do not include floor area information, but the proposed house would be approximately 10,000 gross square feet in size. The house would be set back 20 feet from the front.
property line, but would comply with all other setback requirements.

Staff Analysis

City staff does not find any practical difficulties that justify granting a variance:

- **Unique Circumstances:** There are no circumstances unique to the property which justify the granting of a variance. The property meets all lot and zoning requirements, and has more than 10,000 square feet of buildable area. There is ample room to push the proposed house closer to the rear property line to meet the front yard setback requirement, without violating the rear yard setback requirement. This would not require any changes to the design of the house. The applicant states that this is not desirable because they prefer a larger back yard. This is not a circumstance unique to the property. It is a self-created circumstance due to the design, layout, and orientation of the proposed house. Reasonable changes could be made to the house layout in order to provide a larger open space for the back yard, without needing any variances.

- **Neighborhood Character:** The proposed front yard setback would not be consistent with the neighborhood character. All of the other nearby homes meet the setback requirement from Linner Road. The applicant states that the home would be consistent with other homes in the area in terms of size and values. Neighborhood character does not just include houses being of the same size and value, but necessarily takes into account other characteristics, including the location of other houses. The proposed house would be the closest home to Linner Road if a 20-foot front yard setback was approved.

- **Reasonable Use:** Denial of the variance would not deny reasonable use of the property. The lot has over 10,000 square feet of buildable area, and the proposed house could be constructed without any design changes by pushing the house closer to the rear property line. There is more than enough area on the property to construct a single-family home without the need for a variance.

- **McMansion Policy:** The city's McMansion policy applies to any house requiring a variance. The McMansion policy would establish a maximum floor area ratio (FAR) based
on the maximum floor area ratio of surrounding properties. The McMansion policy would establish a maximum FAR of 0.22 based on the other properties along Linner Road. This would allow for house size of 4,884 square feet, which includes all above-grade floor area, attached garage, and half the floor area of the walk-out basement. The proposed house would have a floor area greater than 10,000 square feet, or an FAR of 0.45. The proposed house would, therefore, greatly exceed the city’s McMansion policy. If the house met all setback requirements, as is possible, the FAR requirement would not apply. (See page A14.)

**Staff Recommendation**

Adopt the resolution on pages A15-A17 which denies a front yard setback variance from 35 feet to 20 feet for a new house at 1503 Linner Road.

Originator: Jeff Thomson, Associate Planner
Through: Loren Gordon, AICP, City Planner
## Supporting Information

### Surrounding Land Uses
All surrounding properties are single-family homes, zoned R-1 and guided for low density residential uses.

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

### Expansion Permit vs. Variance
A property owner can apply for an expansion permit, rather than a variance, to maintain an existing non-conforming setback. An example of a non-conforming setback would be a structure that was built in compliance with the setback, but a subsequent change in ordinance made the setback non-compliant. In this case, the city granted a setback variance in 1992 for the existing garage. A variance does not create a non-conforming structure. Therefore, the proposed house, although it maintains the same front yard setback of the existing detached garage, is not eligible for an expansion permit.

### Variance Standard
A variance may be granted from the requirements of the zoning ordinance when: (1) it is in harmony with the general purposes and intent of the ordinance; (2) it is consistent with the comprehensive plan; and (3) when an applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean that the applicant proposes to use a property in a reasonable manner not permitted by the ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and, the variance if granted, would not alter the essential character of the locality. (City Code §300.07)

### Appeals
Any person aggrieved by the planning commission’s decision about 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 16 area property owners and received no comments.

### Deadline for Decision
March 13, 2015
Location Map

Project: Chernikh, Vitaly
Address: 1503 Linner Rd
(92033.14a)
PRACTICAL DIFFICULTIES:

Vadim Nevelskiy has purchased the subject property in order to demolish and build a new home in September 2014. The home was purchased for $285,100. Vadim immediately met with builder Vitaly Chernikh-applicant and architect who has designed Vadim’s DREAM home. Having seen current location of the home, it was no brainer that the new home would perfectly fit on newly purchased property, however immediately after survey was done we ran into major issue.

The surveyor has indicated that with confirming to city setbacks the new home would have to be located about 50ft from the neighbor behind. This also creates a very long (about 90ft) driveway to home because of how the garages are being positioned. After further review, the owner noticed that he would have very little usable backyard space as the home would be positioned in the middle of existing 0.6 acre lot, which was originally thought of as an acceptable large lot. The issue is that the existing garage is located in the spot that does not confirm to existing frontyard setback.

1. **Future Property Value adheres to neighborhood.** The home owner is really upset as his intention to build $1.5M dollar home has been shuttered due to small amount of backyard usable space.

   Attached is a printout showing prices of homes in immediate neighborhood of homes with similar square footage. The property was purchased as a buildable lot at about 1/5 of build-out final price. The home owner does not want to reduce the size of a home to build on subject property as he specifically sold his last home, so he can build his dream home with pre-determined size.

2. **Potential Water Drainage issues.** By allowing us to build a new home with proposed frontyard setback, we will have more land area coverage for water drainage saturation into backyard. Given that the home roof coverage area is significantly large the drainage would have to be directed further out from the house and if the home too close to neighbor in the back the water might drain towards neighbor’s property.

3. **Current non-confirming usages-considered HARDSHIP to owner.** The surveyor has further pointed out the following: “There are driveway setback violations on 3 sides of the property. The lot behind is in violation of the 40 foot setback. Lots behind lots are supposed to have a 7 foot driveway setback per the zoning code. The driveways along the south, north, and east side all are much less than that. That is why I dimensioned them on the survey”

4. **Grading issues-Huge expense of fill.** If the new home is placed towards the middle of the lot to meet existing frontyard setback the home is located on the
grade that is sloping down and after close to 100 trucks of fill, the backyard will not be flat, again causing water drainage issues for the neighbor behind, and not so much usable backyard for home owner.

5. **Benefit for the city.** Current Property Taxes are $3,490.86. With new home build the property taxes would be about $15,000-$17,000 or higher which is about 5 fold increase in revenue.

6. Other facts that can help:

   a) The neighboring home on the right is positioned far away from proposed garage/home location, so that there is no effect to the neighbor on the right.
   b) There is also another home in less than 400ft away from subject property that does not meet current frontyard setback located at: 1715 Linner Rd.

Sincerely,

Vitaly Chemikh
Builder

Submitted by Applicant
LEGAL DESCRIPTION:
THE NORTH 120 FEET OF THE WEST 185 FEET
OF LOT 9, SUPERIOR BOULEVARD GARDENS,
HENNEPIN COUNTY, MINNESOTA

PREPARED FOR:
VITALY CHERNIKH
CONSTRUCTION AS INVESTMENT, LLC
14214 TRACE RIDGE ROAD
WAYZATA, MN 55391

NOTES:
1) THIS SURVEY WAS PERFORMED WITHOUT THE
   BENEFIT OF A TITLE INSURANCE COMMITMENT.
2) ADDRESS OF THE SUBJECT PROPERTY: 1503
   LINNERT ROAD, MINNETONKA, MN
   P.I.D.: 04-117-22-42-0023
3) PARCEL AREA: 22,200 SQ. FT.
4) B&BING BASIS IS ASSUMED.
5) ELEVATION DATUM: NGVD 1929

LEGEND:
- FOUND 1/2 INCH
- IRON PIPE
- SET 40 W/ NAIL
- #44109
- SET 1/2" REBAR
- #44109
- POWER POLE
- COMMUNICATIONS POSTERIAL
- GAS SERVICE ENTRANCE
- SANITARY SEWER MANHOLE
- DECIDUOUS TREE (SIZE IN INCHES)
- CONIFEROUS TREE (SIZE IN INCHES)
- OVERHEAD UTILITY LINE
- WATERMAIN
- SANITARY SEWER LINE
- BITUMINOUS SURFACE
- CONCRETE SURFACE

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

TRADE: W. VONGNEST
LICENSE: 36557B
MINNESOTA PROFESSIONAL SURVEYOR
PROFESSIONAL SURVEYING SERVICES
55 WILDHURST ROAD, EXCELSIOR, MN 55331
PHONE: (952) 546-3055 TOLL-FREE: (866) 473-0120
WWW.VANNESTESURVEYING.COM

Receive
NOV 13 2014
Submitted by Applicant
Proposed Garage
Existing Garage
• Existing Grade
Existing House
Set Back Line
Proposed House

Submitted by Applicant

NOV 13 2014
Existing House

proposed
new location
for new house

land
to fill =
greater issues
with settling
at house.

new house
existing house

large lot = no water drainage issue.

water runoff
issues
to close
to neighbor.

vs.

the neighbor's property
Certificate Of Survey

Survey For:      Jay Thompson
                 201 Sixth Avenue North
                 Hopkins, Minnesota 55343
                 Phone: 945-0087

Scale: 1"=50' Described from non-reconnaissance survey provided by Owner:

LINNER ROAD

DESCRIPTION OF PARCEL TO BE DIVIDED LOCATED AT 323 LINNER ROAD, CITY OF MINNEAPOLIS, MINNESOTA:
The North 130 feet of the West 185 feet of Loc. 9, Superior Boulevard Gardens.

The survey was prepared by John S. Smith, Surveyor in the State of Minnesota, duly licensed and registered in said State.

Frank & Chandler, Suite 1010

JUN 8 1982

Received: 1982

By: Planning Dept.

Drawn by:

Scale: 1"=50'
11. ITEMS REQUIRING A MAJORITY VOTE (CONTINUED):

E. REQUEST FROM IMMACULATE HEART OF MARY CHURCH FOR A LAWFUL GAMBLING EXEMPTION TO CONDUCT A BINGO EVENT ON JANUARY 16, 1993

Anderson moved. Schneider seconded a motion that an application by Immaculate Heart of Mary Church for a lawful gambling exemption to conduct a bingo event on January 16, 1993 is hereby allowed. Anderson, Hanus, Schneider, Hise, Allendorf, Burke and Bergstedt voted "aye." Motion carried.

12. ITEMS REQUIRING 5 VOTES:

A. REQUEST FROM JAY THOMPSON APPEALING THE OCTOBER 15, 1992 DECISION OF THE PLANNING COMMISSION TO REDUCE FRONT YARD SETBACK FROM 35' TO 20' TO CONSTRUCT A DETACHED GARAGE AT 1503 LINNER ROAD

Hanus moved. Schneider seconded a motion that a front yard setback variance from 35' to 20' to construct a detached garage for Jay Thompson at 1503 Linner Road is hereby approved, subject to the following stipulation:

1. The petitioner submit a grading plan which may include a retaining wall to ensure tree preservation, subject to staff review and approval prior to issuance of a building permit.

Schneider said that based on the location the impacts of this variance on the surrounding properties were virtually negligible.

Anderson said she had a problem with this variance because she felt it was self-created. She thought the applicant should have made prior arrangements to give himself an easement for using a new driveway. She indicated that the trees were impacted and the garage was sited in a strange place; that the applicant did not allow himself his own use so he could put the garage in a normal place. Anderson said that for those reasons, she could not support the variance.

On the motion, Hanus, Schneider, Hise, Allendorf, Burke and Bergstedt voted "aye." Anderson voted "no." Motion carried.
Planning Commission Resolution No. 2014-20

Resolution denying a front yard setback variance for a new house at 1503 Linner Road

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

Section 1. Background.

1.01 Vitaly Chernikh has requested a front yard setback variance from the city code for a new house. (Project #92034.14a)

1.02 The property is located at 1503 Linner Road. It is legally described as:

   The North 120 feet of the West 185 feet of Lot 9, Superior Boulevard Gardens, Hennepin County, Minnesota

1.03 City Code §300.10 Subd. 5(b) requires a minimum front yard setback of 35 feet. The applicant is proposing a front yard setback of 20 feet, which requires a variance.

1.04 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorize the Planning Commission to grant variances.

Section 2. Standards.

2.01 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 does not meet the variance standard outlined in City Code §300.07 Subd. 1(a):

1. There are no practical difficulties that justify granting a variance:
   a) UNIQUE CIRCUMSTANCE: There are no circumstances unique to the property which justify the granting of a variance. The property meets all lot and zoning requirements, and has more than 10,000 square feet of buildable area. There is ample room to push the proposed house closer to the rear property line to meet the front yard setback requirement, and without violating the rear yard setback requirement. This would not require any changes to the design of the house.
   b) CHARACTER OF LOCALITY: The proposed front yard setback would not be consistent with the neighborhood character. All of the other nearby homes meet the setback requirement from Linner Road. The proposed house would be closest home to Linner Road if a 20-foot front yard setback was approved.
   c) REASONABLENESS: Denial of the variance would not deny reasonable use of the property. The lot has over 10,000 square feet of buildable area, and the proposed house could be constructed without any design changes by pushing the house closer to the rear property line. There is more than enough area on the property to construct a single-family home without the need for a variance.

2. The proposed house would not comply with the city’s McMansion policy, which establishes a maximum floor area ratio for homes that require a variance. The proposed would have a floor area more than twice the size allowed by the McMansion policy.

Section 4. Planning Commission Action.

4.01 The Planning Commission denies the above-described variance based on the findings outlined in section 3 of this resolution.
Adopted by the Planning Commission of the City of Minnetonka, Minnesota, on December 11, 2014.

________________________
Paul Lehman, Chairperson

Attest:

________________________
Kathy Leervig, Deputy City Clerk

Action on this resolution:

Motion for adoption: Kirk
Seconded by: Odland
Voted in favor of: Magney, Odland, Rettew, Kirk, Knight, Lehman
Voted against:
Abstained:
Absent: O’Connell
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Planning Commission of the City of Minnetonka, Minnesota, at a duly authorized meeting held on December 11, 2014.

________________________
Kathy Leervig, Deputy City Clerk
8. Public Hearings

A. Front yard setback variance for a new house at 1503 Linner Road.

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

Thomson reported. He recommended denial of the application based on the findings listed in the staff report.

In response to Chair Lehman’s question, Thomson explained the similarities and differences between variances, expansion permits, and conditional use permits.

Chair Lehman clarified that distinguishing the buildable area for a principle structure does not guarantee anything.

Kirk asked if the mcmansion policy would apply in this case. Thomson answered affirmatively. It would apply because the application would require a variance. If the house would be constructed within the buildable area, then the mcmansion policy would not apply.

Rettew noted that the applicant states that the driveway would need a variance for the other three sides and there may be drainage issues if the house would be moved back. Thomson explained that there is no setback requirement from driveways to property lines. Any house built on the lot would require stormwater management. The side yards and rear yard would have ample room to direct drainage to the stormwater treatment facility.

Rettew asked if the steep topography would be considered an extenuating circumstance. Thomson said that the proposed plan would require a substantial amount of fill. The elevation of the proposed house could be lowered.

Viktor Shimilevich, 14214 Trace Ridge Road, the builder representing the applicant, stated that:

- There are several houses on Linner Road that do not meet current front-yard setback requirements. There is a variance at 1715 Linner Road that has a setback of 16 feet instead of 35 feet. The house at 1898 Linner Road has a 26-foot front yard setback.
- In 1992, the garage was positioned to provide easy access to the front yard.
- He requested the site be grandfathered because people are used to seeing the garage where it is now.
• The front of the house would be set 90 feet away from the street. There is a long driveway to the house behind the property.
• There is no other house setback as far as the ordinance would require the proposed house.
• Water damage can be caused by water draining towards a house due to a long driveway.
• The less fill used would decrease the chance of the house settling incorrectly. Compacting land would be risky.
• The walkout grade level would be higher than the neighboring property.
• The property is at the end of a cul-de-sac. The house and garage would not block anything.
• The neighbor’s garage is 16 feet from the property line. The setback for that is 25 feet. It is nonconforming. The proposed house would have lots of windows. The neighbors do not want to look at each other.
• The variance is being requested to make the neighborhood beautiful. The proposed house would not be the largest one in the neighborhood. There is one house that is 7,500 square feet in area. He wants the house to match the neighborhood.
• He wants to build a beautiful piece of art.

Rettew noted that the proposal’s floor area ratio (FAR) would be double the area’s FAR. He asked the applicant why he would not build a smaller house. Mr. Shimilevich stated that the FAR was based on a 10,000 square-foot house which is slightly larger than the proposal. The lot is a little smaller. The proposal would fit into the neighborhood. Right now, the existing house is the ugliest one in the neighborhood. He wants to build something that would match everyone else in the neighborhood. The neighbor has a 9,500 square-foot house. The neighborhood would not be adversely impacted.

Chair Lehman asked the applicant if building within the slope and buildable area to match the topography had been looked at. Mr. Shimilevich answered that a four-level split home or something with a lot of ceiling height in the basement would work. The proposal would have a curved stair case. It would be difficult to build the house that the buyer desires with the required setback.

The public hearing was opened.
Carey Smallwood, 1509 Linner Road, stated that he built his house in 1992. He is concerned that the house would have to be pushed back toward his house if the variance would be denied. It would diminish the curb appeal of his house.

Pat Wenning spoke on behalf of the applicant, Vadim Nevelskiy. Mr. Wenning pointed out that the existing house is on the end of a cul-de-sac near Interstate 394 and Carlson Parkway. The proposed house would come to the tip of the existing garage. There is one driveway located passed the site. He read from the staff report which states that the city is allowed to waive or modify the mcmansion policy if the house would be relatively isolated from the rest of the neighborhood. This is a neighborhood of mansions and extremely nice houses. He did not see a lot of harm. Nobody would drive by and see the house.

Mr. Nevelskiy said that he loves the area.

Mr. Wenning added that the surrounding lots are larger, but most are part wetland. The proposed lot is square with no wetland. The FAR of buildable area comparison of the surrounding lots would not be too much out of character with the proposal.

No additional testimony was submitted and the hearing was closed.

Chair Lehman confirmed with Thomson that the footprint of the proposed house within the setback would be smaller than the footprint of the existing garage.

Chair Lehman listed the issues brought up during the public hearing. Thomson explained that the city uses floor area ratio because it is related to lot area. House size alone is not an equal comparison. The ratio of the house to the lot itself is taken into consideration. It would be difficult to determine buildable area for every property. The city council approved the variance for the existing garage based on topography and tree preservation of two trees. The proposal would remove those two trees.

Odland confirmed with staff that neighbors do not have a legal right to a view over someone else’s property.

Kirk read the packet and visited the site. The area has a lot of large houses on large lots. Even though the proposed house would be larger than some of the houses in the area, the proposed house would probably fit in with the character of the neighborhood. He struggled with approving the variance because the mcmansion policy seems to work and he did not see this case having a compelling enough reason. The small lot in the area is unique.
Rettew felt that the setback is not as big of a deal as the FAR. The FAR is disturbing. It would be way beyond what has been allowed previously. The FAR is too big.

Kirk noted that there are houses located on the lake with floor area ratios of .45. In those areas, the .45 FAR is large for the property, but not the neighborhood. Chair Lehman liked that observation. The FAR should be considered a tool.

Magney walked the site. If the proposed house would be moved 15 feet to the east, then a lot of grading would have to be done. The house is big. The fourth garage stall could be removed and the house moved 5 feet to meet setback requirements. He leaned toward waiving the FAR requirement.

Chair Lehman stated that the property has a large buildable area. The design of the house does not rise to the level of hardship necessary to allow an exception from the city’s standards. Commissioners have seen sites with steeper grades in the front and back than the proposed site. Property owners have found a way to work within the topography. Without the need for the variance, he would be comfortable with the FAR because of the surrounding properties. The only reason for the variance is because the applicant has chosen to design a house that would not fit completely within the buildable area.

Kirk moved, second by Odland, to adopt the resolution on pages A15-A17 of the staff report which denies a front yard setback variance from 35 feet to 20 feet for a new house at 1503 Linner Road.

Magney, Odland, Rettew, Kirk, Knight, and Lehman voted yes. O’Connell was absent. Motion carried.

Chair Lehman stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.
December 19, 2014

By U.S. Mail and Messenger
Minnetonka Zoning Administrator
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Jeff Thomson
Associate Planner
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Re: Appeal from Planning Commission denial of variance for 1503 Linner Road, Project No. 92033.14a

To Whom It May Concern:

I have been retained to represent Vadim Nevelskiy and Vitaly Chernikh in this appeal from the Minnetonka Planning Commission’s December 11, 2014 denial of their request for a front yard set-back variance for the construction of a new home at 1503 Linner Road, Minnetonka, Minnesota (the “Property”). Mr. Nevelskiy is the property owner and Mr. Chernikh is his builder and the original applicant.

Background

The applicant intends to tear down the existing small home and detached garage on the property and build a new home. The new home will be two stories with a walk-out basement. The house will include a four-car garage with a bonus room above. The new home will be approximately 10,000 gross square feet in size.

Applicant does not require a variance to build a home of this size on the Property. The site is 22,200 square feet in size. The city’s staff report and recommendation acknowledges that the city’s zoning ordinances permits this house to be built on the lot without any design changes. The staff report confirms that “The property meets all lot and zoning requirements, and has more than 10,000 square feet of buildable area.” Therefore, the only question raised by the application is whether a small portion of the planned attached garage may be closer to Linner Road than would otherwise be permitted by the existing set-back requirement.

I. The Proposed Variance Is In Harmony With the General Intent of The Zoning Ordinance

The Planning Commission did not find that the proposed variance was out of step with the general intent of the zoning ordinance. In fact, as explained in greater detail below, the proposed variance would result in the attached garage being placed approximately 45 feet from Linner Road, consistent with the existing 35-foot set-back requirement. This is so because the Property is abutted by an unusually-wide right-of-way which serves as an additional buffer between the lot line and Linner Road.

II. The Proposed Variance Is Consistent With The Comprehensive Plan

There is nothing about the proposed variance request that is inconsistent with the city’s comprehensive plan. The Planning Commission made no findings with respect to the comprehensive plan and adherence to the comprehensive plan was not the basis for the Planning Commission’s denial.
III. Practical Difficulties Exist Warranting The Variance

The Planning Commission erred when it found that no practical difficulties exist warranting approval of the variance.

A. Circumstances Unique To The Property, And Not Created By The Landowner, Warrant Granting The Variance

The Planning Commission failed to consider factors unique to the Property that warrant granting the proposed variance. The Planning Commission concluded that no unique circumstances existed merely because a variance would not be needed if the home was built elsewhere on the lot. The Planning Commission failed to consider that the proximity of the neighboring home to the rear lot line and the topography of the property create practical difficulties necessitating a variance.

First, the proximity of the home at 1509 Linner Road (the “Rear Neighbor”) to the Property’s boundary line creates practical difficulties in building the new home in compliance with the 35-foot set-back requirement. The home on the Rear Neighbor’s property is not compliant with the 40-foot set-back required for lots behind lots. Rather, the attached garage is 16.4 feet from the Property’s rear boundary line. The Rear Neighbor’s driveway is not compliant with the 7 foot driveway setback. Rather, the driveway surface is within 5.6 feet of the lot line.

Applicant seeks to build his home forward on his lot in order to compensate for the unusually-close proximity of the Rear Neighbor’s home. One goal is to preserve a sense of privacy for both lots. Another goal is to minimize shadowing and the loss of natural light that will occur if the new home were built closer to the rear lot line.

The Property’s topography also makes compliance with the 35-foot set-back requirement burdensome, both in terms of build-ability and drainage issues. The front section of the Property is relatively flat and perfect for building, while the rear of the property is sloped. Compliance with the existing 35-foot set-back requirement would necessitate the addition of a substantial amount of fill and the steepening of the finished grade. Fill, even after compaction, is less stable than building on existing land, and increases the risk that the new home will suffer from problems upon settling. The need to steepen the grade will also alter the topography of the land and may increase the water runoff burden of the downhill neighbors, including the Rear Neighbor in particular.

B. Granting The Variance Would Not Alter The Character Of The Locality

The Planning Commission erred when it found that granting the variance would be inconsistent with the character of the locality. In considering the character of the locality, the Planning Commission considered only whether or not other neighboring homes satisfy the front set-back requirement. However, whether or not other neighboring properties have been granted a variance is not the standard for determining whether the proposed variance would alter the character of the neighborhood.

The proposed reduced set-back would result in the placement of the new attached garage farther back from the right-of-way than the existing detached garage on the Property. It would also result in the placement of the primary residence farther back than the existing house on the lot. Therefore, granting the variance will not alter the character of the neighborhood. In fact, the sight lines down Linner Road will be improved because the proposed attached garage and primary residence will be set-back farther from Linner Road than the existing garage and house.
In 1992, the city granted a variance to allow for the construction of a detached garage on the Property within 20 feet of the right-of-way (rather than 35-feet back, as would have been the required set-back). The survey prepared for the applicant and submitted with the variance request shows that the detached garage, as constructed, is set back only 17.5 feet from the right-of-way. Applicant’s proposed set-back variance would be entirely consistent with the 1992 variance and the current use of the Property. Under applicant’s proposal, only a small portion of the attached garage would be forward of the 35-foot set-back. In fact, Applicant’s proposed attached garage and home will be set back even farther from Linner Road than the existing detached garage and home.

In addition, the unusually large width of the city’s right-of-way at this particular location on Linner Road mitigates any visual impact of granting the variance. Linner Road has a 66 foot right of way, which is off center. Most city right-of-ways are between 40-50 feet wide. A right-of-way of this width is particularly unusual for a small residential street, and exceedingly large for a cul-de-sac. As a result, there is a 25- foot right-of-way between Linner Road and the Property lot line. This would effectively mean that, even after granting the variance, the attached garage will still be 45 feet back from Linner Road.
Many other homes in the neighborhood are as close or closer to Linner Road, without the need for a variance, simply because their properties are abutted by a narrower portion of the right-of-way. For instance, the right-of-way on the west side of Linner Road nearest to the Property is only about 12-feet-wide, meaning that those homes could be built 47 feet from Linner Road, as a matter of right. Further south on Linner Road, the right-of-way substantially narrows further. For instance, 1901 Linner Road has a right-of-way of only approximately seven feet, meaning that that home could be located 42 feet from Linner Road. The point here is that, even after granting the variance, the placement of applicant’s home on the lot would be entirely in keeping with the distance of other homes in the neighborhood from the road.

C. Granting The Variance Would Support The Reasonable Use Of The Property

The Planning Commission found that “Denial of the variance would not deny reasonable use of the property.” However, that is not the applicable standard. Pursuant to Minnetonka Ordinance § 300.07(1)(a), the question is whether the proposed use is reasonable, not whether denial would deprive the owner of any reasonable use of the property. Here, applicant’s proposed use is reasonable. The proposed use is to build a residence, which is consistent with the existing and surrounding uses. The proposed house is not bigger than would be allowed on the property without a variance. And, the proposed use would ameliorate several problems associated with the property, including protecting the privacy of a neighboring property and avoiding problems associated with settlement and run-off.

IV. The City’s McMansion Policy Does Not Apply To This Variance Request.

The Planning Commission erroneously applied Minnetonka’s McMansion Policy as a basis for denying applicant’s variance request.

First, the McMansion Policy does not apply to this variance request because applicant is not seeking a variance to allow the construction of a home larger than would otherwise be permitted under the existing
zoning ordinance. Minnetonka Policy 3.2, otherwise known as the McMansion Policy, applies to
requests for variances to build homes larger than would otherwise be permitted under the existing zoning
restrictions. However, as conceded by city staff, applicant may build the proposed home on the Property
regardless of whether or not the variance is granted. Applicant intends to build the home on the Property
even if the variance is denied. Therefore, the only impact of denial of the variance request would be to
require that the home be built closer to the Rear Neighbor’s home, limiting both neighbors’ privacy and
exposing the Rear Neighbor to potential run-off issues that could be mitigated by granting the variance
request.

Second, even if the McMansion Policy was applicable, the City should exercise its discretion to waive the
floor area requirement pursuant to policy exception (b) which provides:

   The city may waive or modify the floor area requirement where:

   b. The applicant submits a specific house design and site plan and the city determines that
      the proposed house or addition would not adversely impact the neighborhood character
      because of the specific setbacks, building orientation, building height, or massing. In this
      case, the city will condition approval of the variance on the specific site and building
      plan. The architectural design of the home will not be considered in making this
determination.

Applicant has submitted a specific house design and site plan. The site plan and house design are both
consistent with the types and sizes of homes in the neighborhood and particularly on the cul-de-sac
section of Linner Road.

The applicant appreciates your thoughtful consideration.

Regards,

[Signature]

Rob Shainess
Attorney at Law
rob@capstonelaw.com

cc: Vadim Nevelskiy (by email)
    Vitaly Chernikh (by email)

[1] Applicant also contends that the McMansion Policy is unenforceable. The policy was not passed as an ordinance
and does not constitute part of the city’s comprehensive plan.
Resolution No. 2015-
Resolution upholding the planning commission’s denial of a front yard setback variance for a new house at 1503 Linner Road

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

Section 1. Background.

1.01 Vitaly Chernikh has requested a front yard setback variance from the city code for a new house. (Project No. 92034.14a)

1.02 The property is located at 1503 Linner Road. It is legally described as:

The North 120 feet of the West 185 feet of Lot 9, Superior Boulevard Gardens, Hennepin County, Minnesota

1.03 City Code §300.10 Subd. 5(b) requires a minimum front yard setback of 35 feet. The applicant is proposing a front yard setback of 20 feet, which requires a variance.

1.04 On December 11, 2014, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the planning commission. The planning commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The planning commission adopted a resolution denying the request.

Section 2. Standards.

2.01 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 does not meet the variance standard outlined in City Code §300.07 Subd. 1(a):

1. There are no practical difficulties that justify granting a variance:

   a) UNIQUE CIRCUMSTANCE: There are no circumstances unique to the property which justify the granting of a variance. The property meets all lot and zoning requirements, and has more than 10,000 square feet of buildable area. There is ample room to push the proposed house closer to the rear property line to meet the front yard setback requirement, and without violating the rear yard setback requirement. This would not require any changes to the design of the house.

   b) CHARACTER OF LOCALITY: The proposed front yard setback would not be consistent with the neighborhood character. All of the other nearby homes meet the setback requirement from Linner Road. The proposed house would be closest home to Linner Road if a 20-foot front yard setback was approved.

   c) REASONABLENESS: Denial of the variance would not deny reasonable use of the property. The lot has over 10,000 square feet of buildable area, and the proposed house could be constructed without any design changes by pushing the house closer to the rear property line. There is more than enough area on the property to construct a single-family home without the need for a variance.

2. The proposed house would not comply with the city’s McMansion policy, which establishes a maximum floor area ratio for homes that require a variance. The proposed would have a floor area more than twice the size allowed by the McMansion policy.

4.01 The City Council denies the above-described variance based on the findings outlined in section 3 of this resolution.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 9, 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 meeting held on February 9, 2015.

David E. Maeda, City Clerk
Brief Description  Agreements related to the Green Line Extension (Southwest LRT)

Recommendation  Approve the agreements and amend the CIP

Background

In June 2014, the council provided municipal consent for the Green Line extension project. As a part of this approval, three locally requested capital improvements (LRCIs) were identified: the 17th Avenue extension at the Shady Oak station, a trail from Smetana Road to the Shady Oak station, and prep work to not preclude a future infill station at Smetana Road and Feltl Road sometime in the future. Additionally, that evening the council approved the Southwest Corridor Investment Framework, which was a process led by Hennepin County to determine what infrastructure improvements were needed at each station area prior to opening day.

Metropolitan Council Agreements

LRCIs are projects identified by each city to be above and beyond the baseline Green Line extension project; however, they are meant to improve such things as connectivity, ridership and safety or to save the project money. The LRCIs are designed by the consultants who are working on the LRT project, included in the project as a bid-alternate, and can be constructed at the same time the LRT is being constructed, which ensures that they are coordinated with the baseline project. Because the projects are above and beyond, the design, environmental review, and construction costs are the responsibility of the city.

During fall 2014, staff worked with the Southwest Project Office to further refine these LRCIs and receive initial cost estimates for design and construction. Based upon that review, staff feels it is appropriate to move two of the three LRCIs forward: 17th Avenue extension and the infill Smetana station. After reviewing the information from the Southwest Project Office regarding the trail connection between Smetana Road and the Shady Oak station, staff received feedback from the council that the trail project is not viable at this time.

To move forward with the design of the two remaining LRCIs, the city must enter into agreements with the Metropolitan Council. The first is a Master Funding Agreement, which outlines how the LRCI projects will be paid for, the compliance with federal and state laws, and the fee structures for both design and construction of the project. The second agreement is a Subordinate Funding Agreement for the design of each LRCI, which for Minnetonka there are two agreements—one each for the 17th Avenue extension and for the Smetana station. In each Subordinate Funding Agreement the
actual design costs are included as not-to-exceed amounts. For the 17th Avenue Extension this is $63,006 and for the Smetana Station this is $115,847.

Design costs for the 17th Avenue extension will be paid out of the city’s Street Improvement Fund and the Smetana Station will be paid out of the Development Fund. Since the approved 2015-2019 CIP shows costs related to SWLRT as unfunded, the CIP must be amended by the city council at this time to fund the design costs as noted.

If the city council chooses to have the Metropolitan Council construct these projects with the baseline LRT project, separate agreements will be brought back at a future meeting. Construction cost estimates could be included in the CIP, which would be discussed during the approval of the 2016 – 2020 CIP later this year.

The Master Funding Agreement and Subordinate Funding Agreements are the same form as the city of Eden Prairie has approved. There are still some pending discussions between the city attorneys and the Southwest Project Office on details to both agreements, including the inclusion of environmental costs in the Subordinate Funding Agreements.

Hennepin County Agreement

The Corridor Investment Framework identified a number of infrastructure projects needed at each station area in order to promote future transit oriented development and improve connectivity. While funding sources have not yet been identified, and projects have not yet been prioritized for implementation, a cooperative agreement has been drafted that would enable the county to fund and/or participate in one of these projects within the city. When projects to be funded by Hennepin County are identified, the agreement will be amended.

Recommendation

Staff recommends the city council approve the following agreements and authorize the mayor and city manager to execute the agreements, including subsequent non-material changes as approved by the city manager and community development director in a form acceptable to the city attorney:

1) Master Funding Agreement with the Metropolitan Council (pages A1 to A19).

2) Subordinate Funding Agreement with the Metropolitan Council for the 17th Avenue extension design and environmental work (pages A20 to A24)

3) Subordinate Funding Agreement with the Metropolitan Council for the Smetana station design and environmental work (pages A25 to A29).
4) Cooperative Agreement with the Hennepin County Housing and Redevelopment Authority for future projects related to the goals of the Corridor Investment Framework (pages A30 to A33).

Staff also recommends that the 2015-2019 CIP be amended to reflect the design costs related to the 17th Avenue Extension and the Smetana station for costs which will be incurred in 2015.

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

Originated by:
   Elise Durbin, AICP, Community Development Supervisor
This Master Funding Agreement ("Agreement") is entered into by and between the Metropolitan Council ("Council"), a public corporation and political subdivision of the State of Minnesota, and the City of Minnetonka ("City"), a Minnesota municipal corporation, herein collectively referred to as the "Parties" and individually as a "Party". This Agreement pertains to the Council’s proposed Southwest Light Rail Transit ("SWLRT") Project, referred to hereafter as the "Project".

WHEREAS:

1. The Council, metropolitan area cities, public agencies, and transit funders are engaged in activities to develop the Project, an approximately 16 mile proposed extension of the METRO Green Line which will operate from downtown Minneapolis through the cities of St. Louis Park, Hopkins, Minnetonka, and Eden Prairie.

2. The Council has received appropriations from the State of Minnesota for the purpose of conducting environmental studies, completing project development, and designing the Project. The Council also expects to receive future appropriations from the State of Minnesota for engineering and construction of the Project.

3. The Council anticipates receiving grants from the Federal Transit Administration ("FTA") for engineering and construction of the Project under a Full Funding Grant Agreement ("FFGA") with the FTA.

4. The Council has received a grant from the Counties Transit Improvement Board ("CTIB") for project development for the Project. The Council also expects to receive future grants from the CTIB for engineering and construction of the Project.

5. The Council is a party to a Cooperative Funding Agreement for project development with the Hennepin County Regional Railroad Authority ("HCRRRA") for the Project. The Council expects to enter into future Cooperative Funding Agreement(s) with HCRRRA for engineering and construction of the Project.

6. The City may be involved in certain activities or possibly provide materials in connection with and in support of the Project, and the Council may desire to pass through federal, state, CTIB or other local funds to the City for costs associated with such Project activities and/or materials.
7. The City may provide funding for certain non-FFGA components, including Locally Requested Capital Investments, through the transfer of City funds to the Council.

8. This Agreement is entered into between the Parties to provide a mechanism for the transfer of Project funds from the Council to the City for activities undertaken by the City for the Project (Part One), and for the transfer of City funds to the Council for components related to, but not currently part of, the Project (Part Two). In addition, this Agreement establishes general provisions applicable to transfers from either Party to the other (Part Three).

NOW, THEREFORE, the Parties hereby agree as follows:

PART ONE

ARTICLE 1. PURPOSE

The purpose of Part One of this Agreement is to provide:

a. A method for the transfer of funds from the Council to the City for activities performed or materials supplied by the City in connection with and in support of the Project; and

b. Contractual provisions that address compliance with federal and state laws and regulations as well as Council procedures including, without limitation, federal requirements for the monitoring of the City's Project activities using federal grant funds.

ARTICLE 2. SUBORDINATE FUNDING AGREEMENTS TRANSFERRING FUNDS FROM COUNCIL TO CITY

2.01 Transfer of Funds from Council to City. The Council will transfer Project funds to the City for the Project activities performed by the City. The transfer of funds from the Council to the City shall be in accordance with Subordinate Funding Agreements executed pursuant to this Article 2, each of which shall state the specific purpose for the funds, the City’s responsibility with respect to those funds, and establish who will own any assets constructed or remaining upon completion of the work. Each such Subordinate Funding Agreement, in conjunction with this Agreement, shall be determined by the Council to constitute a subrecipient or vendor agreement with the Council for the purposes of any federal grant funds transferred to the City. The Council shall bear no responsibility for any costs incurred by the City for the Project that exceeds the amounts committed by Subordinate Funding Agreements as such agreements may from time to time be amended.

2.02 Subordinate Funding Agreements. In accordance with Section 2.01, the Parties shall enter into Subordinate Funding Agreements in order to facilitate the funding by the Council of Project activities to be performed by the City. The Parties anticipate there may be multiple such Subordinate Funding Agreements between them in connection with the Project. Each Subordinate Funding Agreement shall be in a form substantially similar to that attached as Exhibit A and shall follow and be subject to the terms of Part One and Part Three of this Agreement, unless expressly agreed to in writing otherwise. Notwithstanding any other provisions of this Agreement, this Agreement itself is not intended to create a specific financial agreement.
obligation for either Party or to require either Party to enter into any specific Subordinate Funding Agreements, and no liability shall attach to either Party under this Agreement for refusing to enter into one or more subsequent Subordinate Funding Agreements.

2.03 Implementation of Subordinate Funding Agreements. The Council will only reimburse the City for Project activities that are the subject of a Subordinate Funding Agreement. Prior to entering into a contract with any third party (including for the acquisition of property rights) to accomplish the City’s reimbursable activities, or prior to authorizing any City employees to proceed with any reimbursable activities, the City shall present a work scope (including a work schedule), staffing plan, and detailed budget for such services or expenditures to the Council for review and approval.

2.04 Council Determination of Vendor or Subrecipient Relationship. The Council shall determine whether each Subordinate Funding Agreement is a subrecipient or vendor agreement. The Council shall state its determination in the Subordinate Funding Agreement. For subrecipient agreements, the City will be responsible to FTA for compliance with applicable federal laws, regulations, and deliverables. For vendor agreements, the Council will be responsible for compliance with applicable federal laws, regulations, and deliverables.

2.05 Modifications of Subordinate Funding Agreements. The following provisions apply to modifications of any Subordinate Funding Agreement:

a. Rebudgeting within an approved budget is allowable as long as the budget is within the maximum amount of authorized funding.

b. Modifications in work scope, if within the approved budget, are authorized when approved in writing by the Project Directors.

c. Any other modifications to a Subordinate Funding Agreement shall require a written amendment of the Subordinate Funding Agreement executed by the Parties.

d. Modification requests should be sent to the Project Directors.

2.06 Transfer of Project Funds to the City Under Subordinate Funding Agreements. The Council shall pay the City under Subordinate Funding Agreements as follows:

a. Unless specifically agreed to by the Parties in and for a particular Subordinate Funding Agreement, payment to the City for Project costs under each Subordinate Funding Agreement shall be on a reimbursement basis based upon the submittal of invoices evidencing the expenditure of funds by the City for the Project.

b. Unless specifically agreed to otherwise by the Parties in and for a particular Subordinate Funding Agreement, the City shall submit separate monthly invoices for each outstanding Subordinate Funding Agreement to the following address:

Attn: Accounts Payable
Southwest LRT Project Office
6465 Wayzata Blvd, Suite 500
St. Louis Park, MN 55426

or to such other address or person as the Council may designate by notice in writing.
c. Each invoice shall reference the sequential number of the Subordinate Funding Agreement under which the invoice is to be paid.

d. Each invoice shall include the following if the corresponding Subordinate Funding Agreement was determined by the Council to create a subrecipient relationship:
   i. Subrecipient Payment Request Form (Form C-22A-SPO) as shown in Exhibit B,
   ii. Subrecipient Monthly Progress Report (Form SPO P1) as shown in Exhibit B, and
   iii. Itemization of the expenditures for which payment is requested using the Subrecipient Invoice Detail (Form SPO F1) as shown in Exhibit B, along with supporting documentation.

e. Each invoice shall include the following if the corresponding Subordinate Funding Agreement was determined by the Council to create a vendor relationship:
   i. SPO Payment Request Form (either Engineering-Consultant or Construction)
      1) Engineering-Consultant Payment Request Form (Form C22A) as shown in Exhibit B for engineering related expenses, or
      2) Construction Payment Request Form (Form C21A) as shown in Exhibit B for construction related expenses,
   ii. A description of activities undertaken in accordance with the Subordinate Funding Agreement, and
   iii. An itemized list of the expenditures for which payment is requested, along with any supporting documentation.

f. If a Disadvantaged Business Enterprise (“DBE”) goal applies to the work performed under a Subordinate Funding Agreement, invoices shall include a DBE Reporting Form as shown in Exhibit B, or such other format as may be prescribed by the Council, and shall include the information required by Section 4.06(e) of this Agreement.

g. After receipt of an invoice, the Council may request additional information from the City regarding the invoice in order to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested or as required by the FTA for reporting purposes.

h. Upon receipt of an invoice, the Council will make prompt payment of undisputed amounts as required by Minnesota Statutes, Section 471.425. Under either 49 C.F.R. § 18.22 or Minnesota State Statutes Section 471.425, the Council may dispute or deny part or all of any invoice payment request if it reasonably believes that the requested payment does not conform to the terms of this Agreement and the applicable Subordinate Funding Agreement. The Parties will promptly meet to review and discuss any disputed or denied payment requests and the dispute resolution process outlined in Section 6.11 of this Agreement will ensue if the Parties cannot agree. If the Council does not pay the invoiced amount within 35 days of its receipt, the Council shall pay interest on the non-disputed amount at the rate of 1-1/2 percent per month.

i. No invoice payment shall be made by the Council without prior amendment to the applicable Subordinate Funding Agreement, which would cause distribution of
Project funds to exceed, cumulatively through such payment, the maximum amount of authorized funding under the applicable Subordinate Funding Agreement.

j. Distribution of any funds to the City pursuant to an invoice, or approval of any report, shall not be construed as a Council waiver of any City noncompliance with this Agreement or the applicable Subordinate Funding Agreement.

2.07 Repayment of Unauthorized Use of Project Funds. Upon a finding by the Council that the City has made an unauthorized or undocumented use of Project funds, and upon a demand for repayment issued by the Council and supported by the reason for the finding, if the City agrees, the City shall promptly repay such amounts to the Council. If the City disagrees, the Parties will promptly meet to review and discuss any challenged use of funds already paid and the dispute resolution process outlined in Section 6.11 will ensue if the Parties cannot agree. Neither Party shall be deemed to have waived any rights or remedies available under state law, federal law, common law, or otherwise.

2.08 Prompt Payment to Subcontractors. Consistent with Minnesota Statutes, Section 473.142(f), if the City subcontracts any portion of the work under this Agreement or Subordinate Funding Agreements, the City shall pay such subcontractor within 10 Days of City's receipt of payment from the Council for undisputed services provided by the subcontractor. The City shall not, by reason of said payments, be relieved from responsibility for work done by the subcontractor and shall be responsible for the entire work under this Agreement or Subordinate Funding Agreement until the same is finally accepted by Council.

ARTICLE 3. REQUIREMENTS FOR PROJECT FUNDED WORK

3.01 Allowable Costs; Unspent Funds. The City is authorized to use funds provided by the Council under this Agreement and per the terms of the Subordinate Funding Agreements only for allowable costs directly incurred for the Project. Allowable costs will be determined in accordance with the documents referenced in Section 4.05. Funds provided by the Council in Subordinate Funding Agreements may only be used for costs directly incurred:

a. within the authorized work scope,

b. during the project activity period, and

c. in accordance with the approved budget for the funds.

Any funds provided to the City under this Agreement and applicable Subordinate Funding Agreements which remain unspent after completion of the relevant Project activity shall be promptly repaid to the Council.

3.02 Documentation of Project Costs. All costs charged to the Project by the City must be supported by proper documentation, including properly executed payrolls, time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges per the requirements of Section 4.02 of this Agreement.

3.03 Establishment of Capital Assets. If Capital Assets, as defined by FTA and determined by the Council in a Subordinate Funding Agreement, are procured by or provided to the City under a Subordinate Funding Agreement, invoices shall include an Asset Tracking Log as shown in Exhibit B, or such other format as may be prescribed by the Council.
3.04 **Establishment and Maintenance of Project Information.** The City agrees to establish and maintain accurate, detailed, complete, and separate books, accounts, financial records, documentation, and inspection and quality assurance reports produced by City staff and/or contractors, and other evidence relating to the receipt and expenditure of all Project funds. All such Project information shall be established and maintained in accordance with generally accepted government accounting principles and practices and shall be retained intact by the City until the latest of:

a. complete performance of this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;
b. six years following the term of this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;
c. six years following the close out of the Project by the Council and the FTA; or
d. if any litigation, claim, or audit is commenced during any such periods, when all such litigation, claims or audits have been resolved.

If the City engages any contractors to perform any part of the Project activities, the City agrees that the contract for such services shall include provisions requiring the contractor to establish and maintain Project information in accordance with the provisions of this Article and to allow audit of such information in the same manner provided with respect to the City in Section 3.05.

The provisions of this Section 3.04 shall survive termination of this Agreement.

3.05 **Reimbursed Costs Audit.** The accounts and records of the City relating to the reimbursable costs for the Project shall be audited in the same manner as all other accounts and records of the City are audited. During the time of maintenance of information under section 3.04, authorized representatives of the Council, the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, Section 16C.05, subdivision 5, the United States Secretary of Transportation, the FTA Administrator, and the United States Comptroller General in accordance with 49 U.S.C. Section 5325(g) will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. Proper facilities for such access and inspection shall be provided by the City.

The provisions of this Section 3.05 shall survive termination of this Agreement.

3.06 **Contract Information.** The City shall, in connection with any contract entered into for the Project:

a. Keep the Council informed as to the progress of such contract;
b. Allow authorized representatives of the Council access to all meetings and documentation related to such contract; and

c. Upon request, promptly provide the Council with copies of correspondence between the City and the contractor related to such contract.
ARTICLE 4. FEDERAL REQUIREMENTS

4.01 Federal Requirements. Monies that may be provided to the City by the Council pursuant to this Agreement may be funded in whole or in part by the FTA. The requirements in this Article 4 are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Agreement. If any requirement in this article is inconsistent with a provision found elsewhere in this Agreement and is irreconcilable with such provision, the requirement in this Article 4 shall prevail.

4.02 Incorporation of Federal Grant. As the Council receives federal grants, including a potential Full Funding Grant Agreement, with respect to the Project, the Council will provide the City with a copy of each grant. The terms of each grant and any amendments shall be automatically incorporated by reference into this Agreement without further action by the Parties. These grants are collectively referred to in this Agreement as the “Federal Grants.” When performing work or expending funds for Project activities, the City agrees to comply with all applicable terms and conditions of the Federal Grants received by the Council with respect to the Project.

4.03 Incorporation of Specific Federal Requirements. Specifically, and without limitation, the City agrees to comply with the federal requirements set forth in Exhibit C and agrees to require, unless specifically exempted, third party contractors at every tier to comply with the same.

4.04 Federal Certifications and Assurances; Execution and Incorporation. The City agrees to comply with and to certify compliance with the most recent version of the federal Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements if determined by the Council to be a subrecipient in a Subordinate Funding Agreement. The City must certify compliance with the applicable provisions by signing the appropriate certification(s) and returning the signed certification(s) as part of the execution of an applicable Subordinate Funding Agreement. During the term of the applicable Subordinate Funding Agreement, the Council shall provide to the City the annual Federal Certifications and Assurances document, which the City shall execute and return to the Council.

4.05 Compliance with Federal Requirements; Incorporation of Specific Documents by Reference. The City agrees to comply with all federal statutes, rules, FTA Circulars, and Executive Orders which may be applicable to the Federal Grants. In particular, the City agrees to comply with the terms and conditions of the current version of the following documents when performing work or expending funds for Project activities under this Agreement or any Subordinate Funding Agreement:

a. FTA Master Agreement
b. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 C.F.R. Part 18
c. Grant Management Requirements, FTA Circular 5010.1D
d. Full-Funding Grant Agreements Guidance, FTA Circular 5200.1A
e. Third Party Contracting Requirements, FTA Circular 4220.1F
f. Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87
g. **Audits of States, Local Governments, and Non-Profit Organizations**, OMB Circular A-133

as such statutes, rules, circulars, and executive orders may hereafter be amended or modified. The listed documents are incorporated by reference into this Agreement. Copies of these documents are available on the FTA website or, upon request by the City, from the Council.

### 4.06 Third Party Contracts

If the City decides to fulfill any of its obligations or duties under a Subordinate Funding Agreement through a third party contract to be paid for by funds received under this Agreement, the City agrees to the following provisions. These requirements are in addition to other requirements for such contracts set forth in this Agreement.

a. **Compliance with Federal Procurement Requirements.** The City will comply with all applicable federal law, rules, and guidance relating to such procurement including, without limitation, the provisions of the most current version of the *Third Party Contracting Requirements*, FTA Circular 4220.1F, which document is incorporated by reference into this Agreement. A copy of this document is available on the FTA website or, upon request by the City, from the Council.

b. **Certification of City’s Procurement System.** The City certifies that its procurement system complies with the standards described in the previous paragraph.

c. **Council Approval of Contracts.** The City shall not execute any third party contract or otherwise enter into a binding agreement until it has first received written approval from the Council. The Council’s approval of any such third party contract is solely for the benefit of the Council and shall not relieve the City of the responsibility to ensure that such contracts are in the proper form and include all state and federal requirements. Additionally, a Subrecipient Contract Initiation Memo, as shown in Exhibit B, is required to be executed prior to any procurement over $50,000. Requests to enter into agreements should be sent to the Project Director.

d. **Inclusion of Provisions in Lower Tier Contracts.** The City agrees to include adequate provisions to ensure compliance with applicable federal requirements in each lower tier subcontract financed in whole or in part with monies from the Project provided under this Agreement including all applicable provisions of this Agreement. Provisions to be included in such subcontracts include the provisions in Exhibit C.

e. **Disadvantaged Business Enterprise Requirements.** For all work performed under Part One of this Agreement, the City will comply with the Council's DBE Program. In particular, the City agrees to comply with the requirements of the Council's "Disadvantaged Business Enterprise Pass Through Agreement and Program" document which is attached to and made a part of this Agreement as Exhibit D. For the purpose of Exhibit D, the following provisions apply:

   i. The Metropolitan Council DBE Liaison Officer, or designated staff, shall act as the City DBE Liaison Officer for the purposes of work under Part One of this funding Agreement.

   ii. The City agrees to submit to the Council for review, approval, and establishment of the appropriate DBE goal a Subrecipient Contract Initiation Memo, as shown in Exhibit B, for all procurements in excess of $50,000.
Noncompliance with DBE requirements may result in sanctions, including ineligibility for reimbursement pursuant to 49 C.F.R. § 18.22.

iii. The City will provide reports to the Council reflecting all invoices paid on procurements for which a DBE goal has been established and identifying all DBE activity on such procurements.

iv. The City will report DBE activity, on the Disadvantage Business Enterprise Reporting Form, to the Council on other purchase orders and invoices not included above with each Request for Payment.

v. DBE eligibility will be based on the most recent DBE Directory from the Minnesota Unified Certification Program.

f. Federal Procurement Basics. The City remains responsible for conforming its procurement processes to all applicable federal requirements for funds received from the Council under this Agreement and any Subordinate Funding Agreement.

4.07 Provisions Subject to Change. The City acknowledges that federal requirements in this Article 4 are subject to change and agrees that the most recent of these requirements shall govern this Agreement at any particular time.

4.08 No Federal Obligation. Monies provided under this Agreement may be financed in whole or in part by federal funds. However, payments to the City will be made by the Council. Pursuant to the Federal Transit Administration Master Agreement Section 2(f), the United States is not a party to this Agreement and no reference in this Agreement to the United States, the United States Department of Transportation, the FTA, or any representatives of the federal government makes the United States a party to this Agreement. The City shall include this clause in any contracts or Agreements entered into pursuant to this Agreement.

4.09 Special Reporting Requirements. The Council is required to report to the FTA regarding the Project activities. Accordingly, the City agrees to provide the Council with any additional or follow-up information reasonably requested by the Council, in order to meet the Council’s FTA reporting requirements.

PART TWO

ARTICLE 5. SUBORDINATE FUNDING AGREEMENT TRANSFERRING FUNDS FROM CITY TO COUNCIL

5.01 Purpose. The purpose of Part Two of this Agreement is to provide a method for the transfer of City funds to the Council for components related to but currently not part of the Project, should any such payment be authorized by the City.

5.02 Transfer of Funds Requires Subordinate Funding Agreement. The City may provide funding for components related to but not part of the Project through the transfer of funds to the Council. Each such transfer of funds to the Council from the City shall be in accordance with one or more duly executed Subordinate Funding Agreements, each of which shall define the amount of funds committed by the City to the Council, specify the purpose for
the funds, and establish who will own the asset constructed or remaining upon completion of the work.

5.03 **Subordinate Funding Agreements.** To facilitate funding by the City in accordance with Section 5.01, the Parties shall enter into Subordinate Funding Agreements. Subordinate Funding Agreements shall be in a form similar to Exhibit A and shall follow and be subject to the terms of Parts Two and Three of this Agreement, unless expressly agreed to in writing otherwise. Notwithstanding any other provisions of this Agreement, this Agreement itself is not intended to create a specific financial obligation for either Party or to require either Party to enter into any specific Subordinate Funding Agreements, and no liability shall attach to either Party under this Agreement for refusing to enter into one or more subsequent Subordinate Funding Agreements.

5.04 **Implementation of Subordinate Funding Agreements.** The City will only reimburse the Council for components related to the Project that are the subject of a Subordinate Funding Agreement. Prior to entering into a contractual obligation with any third party (including for the acquisition of property rights) to accomplish the Council’s obligations reimbursable by the City, or prior to authorizing any Council employees to proceed with any reimbursable actions, the Council shall present a work scope (including a work schedule), staffing plan, and detailed budget for such services or expenditures to the City for review and approval.

5.05 **Modifications of Subordinate Funding Agreements.** The following provisions apply to any modifications in a particular Subordinate Funding Agreement:

a. Rebudgeting within an approved budget is allowable as long as the budget is within the maximum amount of authorized funding.

b. Modifications in work scope, if within the approved budget, are authorized when approved in writing by the City’s Community Development Director, or such other person as the City may designate by notice to the Council.

c. Any other modifications in a particular Subordinate Funding Agreement, including any increase in the maximum amount of authorized funding or changes in the applicable activity period, shall require a formal amendment of the Subordinate Funding Agreement executed by the Parties.

5.06 **Transfer of Funds to the Council Under Subordinate Funding Agreements.** The City shall pay the Council under Subordinate Funding Agreements as follows:

a. Unless specifically agreed to otherwise by the Parties in and for a particular Subordinate Funding Agreement, payment to the Council for costs under each Subordinate Funding Agreement shall be on a reimbursement basis after the submittal of invoices evidencing the expenditure of funds by the Council.

b. The Council shall submit separate monthly invoices for each outstanding Subordinate Funding Agreement to the following address:

   Julie Wischnack
   Community Development Director
   City of Minnetonka
   14600 Minnetonka Boulevard
   Minnetonka, MN 55345
or to such other City address or person as the City may designate in writing.

c. Unless the Parties otherwise agree, the Council shall submit each invoice to the City in the standard Council format and shall reference the sequential number of the Subordinate Funding Agreement under which the invoice is to be funded.

d. Each invoice must include:
   i. A description of activities undertaken in accordance with the Subordinate Funding Agreement;
   ii. An itemized list of the expenditures for which payment is requested; and
   iii. Any supporting documentation.

e. The Council shall add an administrative fee to each invoice to be paid by the City. For design and environmental professional services the fee shall be up to 3% of the actual professional service cost. If the City requests the Council to construct locally funded components related to, but currently not part of the Project, the City shall pay the following fees, which is a percentage of actual construction costs, for each professional service provided:
   i. Contract Administration 3%
   ii. Construction inspection 2%
   iii. Survey and staking 2%
   iv. Materials inspection 1%

The above applicable fees and costs for professional services will be specified in Subordinate Funding Agreements. The Council reserves the right to adjust the fee percentages on an annual basis as amended in a Subordinate Funding Agreement. In the event this Agreement or the Subordinate Funding Agreement is terminated, the City shall be entitled to reimbursement of any unused portions of the above fee.

f. After receipt of an invoice, the City may request additional information from the Council regarding the invoice in order to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested.

g. The City shall pay the Council the approved invoice amount within 30 days of its receipt. The City may dispute all of or any part of an invoice if it reasonably believes that the requested payment does not conform to the terms of this Agreement or the applicable Subordinate Funding Agreement. If disputed, the Parties will promptly meet to review and discuss the disputed or denied payment requests and the dispute resolution process outlined in Section 6.11 of this Agreement will ensue if the Parties cannot agree. Unless the City has disputed the payment of an invoice, if the City does not pay the invoiced amount within 30 days of its receipt, the Council shall charge and the City shall pay interest on the non-disputed amount at the rate of 1-1/2 percent per month.

h. No invoice payment shall be made by the City without prior amendment to the applicable Subordinate Funding Agreement, which would cause the distribution of funds to exceed, cumulatively through such payment, the maximum amount of authorized funding under the applicable Subordinate Funding Agreement.
i. The City’s payment of any invoices or approval of any reports shall not constitute a waiver of any Council noncompliance with this Agreement or the applicable Subordinate Funding Agreement.

5.07 Repayment of Unauthorized Use of Funds. Upon a finding by the City that the Council has made an unauthorized or undocumented use of City funds, and upon a demand for repayment issued by the City and supported by the reason for the finding, if the Council agrees, the Council shall promptly repay such amounts to the City. If the Council disagrees, the Parties will promptly meet to review and discuss any challenged use of funds already paid and dispute resolution pursuant to Section 6.11 will ensue if the Parties cannot agree. Neither Party shall be deemed to have waived any rights or remedies available under state law, federal law, common law or otherwise.

5.08 Use of Funds; Allowable Costs. The Council is authorized to use funds provided by the City under this Agreement only for costs directly incurred under a specific Subordinate Funding Agreement. Funds provided by the City under Subordinate Funding Agreements may only be used for costs directly incurred:

a. Within the authorized work scope;
b. During the specified activity period; and
c. In accordance with the approved budget for the funds.

5.09 Documentation of Costs. All reimbursable costs charged to the City by the Council must be supported by proper documentation, including properly executed payrolls, time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges.

5.10 Establishment and Maintenance of Information. The Council agrees to establish and maintain accurate, detailed, complete, and separate books, accounts, financial records, documentation, and other evidence relating to the receipt and expenditure of all funds from the City. All such information shall be established and maintained in accordance with generally accepted government accounting principles and practices and shall be retained intact by the Council until the latest of:

a. Complete performance of this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;
b. Six years following the term of this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;
c. Six years following the close out of the Project by the Council and the FTA; or
d. If any litigation, claim, or audit is commenced during any such periods, when all such litigation, claims or audits have been resolved.

If the Council engages any contractors to perform any part of the activities reimbursable by the City, the Council agrees that the contract for such services shall include provisions requiring the contractor to establish and maintain information in accordance with the provisions of this Article and to allow audit of such information in the same manner provided with respect to the Council in this Section 5.10.
The provisions of this Section 5.10 shall survive termination of this Agreement.

5.11 Audit. The accounts and records of the Council relating to costs reimbursable by the City shall be audited in the same manner as all other accounts and records of the Council are audited. During the time of maintenance of information under Section 5.10, authorized representatives of the City; the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, Section 16C.05, subdivision 5; the United States Secretary of Transportation; the FTA Administrator, and the United States Comptroller General in accordance with 49 U.S.C. Section 5325(g); will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. Proper facilities for such access and inspection shall be provided by the Council.

The provisions of this Section 5.11 shall survive termination of this Agreement.

5.12 Use of Contractors. If the Council engages any contractors to perform any activities reimbursable by the City under Part Two of this Agreement, the Council agrees that the contract for such services shall include all of the following provisions. These requirements are in addition to other requirements for such contracts set forth in this Agreement.

a. The contractor must maintain all records and provide all reporting as required by this Agreement.

b. The contractor must defend, indemnify, and save harmless the City from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted work, caused in whole or in part by any negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable.

c. The contractor must provide and maintain insurance in amounts and types of coverage appropriate to the contracted work and naming the City as an additional insured, and provide to the Council a certificate of insurance evidencing such insurance coverage.

d. The contractor must be an independent contractor for the purposes of completing the contracted work.

e. The contractor must acknowledge that the contract between the Council and the contractor does not create any contractual relationship between the City and the contractor.

f. The contractor shall perform and complete the contracted work in full compliance with this Agreement and all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the contracted work.

5.13 Contract Information. The Council shall, in connection with any contract entered into for reimbursable work under Part Two of this Agreement:

a. Keep the City informed as to the progress of such contract;

b. Allow authorized representatives of the City access to all meetings and documentation related to such contract;
c. Upon request, promptly provide the City with copies of correspondence between the Council and the contractor related to any such contract; and

d. In addition to terms specified in this Agreement, include within the Contract Documents with the contractor appropriate insurance, indemnification, and liability provisions as negotiated and accepted by the Council and the contractor. The City expects the Contract Documents will include the following: the contractor’s insurance will list the City as an additional insured under the contractor’s policy with a minimum 30 day cancellation period; the contractor will defend and indemnify the City; the City will be a beneficiary of the performance and payment bonds; all warranties will extend to the City; and the City will be a third party beneficiary to the contract with the contractor with the authority to enforce the provisions of the contract.

PART THREE

ARTICLE 6. GENERAL PROVISIONS

6.01 Purpose. The purpose of Part Three of this Agreement is to establish the general provisions that apply to this Agreement and each Subordinate Funding Agreement executed by the Parties hereafter.

6.02 Independent Contractors. The Parties agree that any and all persons employed by or on behalf of a Party to perform any work or duties as an agent of a Party under this Agreement shall not be considered employees of the other Party. Any and all claims that may or might arise under the Workers Compensation Act of Minnesota on behalf of said employees or persons while so engaged, and any and all claims made by any third person as a consequence of any act or omission on the part of said employees or persons while so engaged in any of the work contemplated in this Agreement, shall not be the obligation or responsibility of the other Party. This Agreement is not intended to constitute an interchange of government employees within the meaning of Minnesota Statutes, Section 15.51, et seq.

6.03 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all oral agreements and negotiations between the Parties relating to the subject matter of this Agreement. As stated herein, this Agreement depends upon one or more Subordinate Funding Agreements for the actual authorization of work or transfer of any reimbursements and the terms of any subsequent Subordinate Funding Agreements shall be considered together with this Agreement.

6.04 Non-Waiver of Immunity and Limits. Nothing in this Agreement shall be construed to waive the immunities or liability limits provided in Minnesota Statutes, Section 3.736, or Minnesota Statutes, Chapter 466, or other applicable state or federal law. The provisions of Minnesota Statutes, Section 471.59, subdivision 1a, specifically apply to this Agreement.

6.05 Amendments. The terms of this Agreement may be changed only by mutual agreement of the Parties. Such changes shall be effective only upon the execution of written amendments signed by authorized officers of the Parties to this Agreement.
6.06 Non-Waiver. The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.

6.07 Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either Party.

6.08 Assignment Prohibited. Neither Party shall assign their obligations under this Agreement without receiving the express written consent of the other Party.

6.09 Time. The Parties agree that all obligations undertaken under this Agreement, and with respect to any subsequent Subordinate Funding Agreements entered into by the Parties, will be diligently performed in a manner consistent with the proper exercise of professional care and with due consideration to project timelines and constraints.

6.10 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be:

a. Delivered in person;
b. Deposited postage prepaid in the certified mails of the United States, return receipt requested;
c. Delivered by a nationally recognized overnight or same-day courier service that obtains receipts; or
d. Delivered via email attachment.

Such communications shall be directed to the individuals specified below or to such other persons and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance with this Section. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

For the Council:
Project Director
Southwest LRT Project Office
6465 Wayzata Blvd, Suite 500
St. Louis Park, MN 55426
Phone: 612-373-3820

For the City:
Community Development Director
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Phone: 952-939-8200
6.11 **Dispute Resolution.** A dispute resolution process shall be used for any unresolved issue, dispute or controversy between the parties before any legal remedies are exercised. The dispute resolution process contains a three level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. The City is represented from Level 1 to 3 in the following order: Community Development Director, Assistant City Manager, and City Manager. The Council is represented from Level 1 to 3 in the following order: Deputy General Manager, General Manager, and Regional Administrator. At each level, representatives of the Parties shall meet and continue to explore resolution until either party determines, in good faith, that effective resolution is not possible at the current level, and notifies the other party that the process is elevated to the next level. If either or both parties make such a determination at any point during issue resolution at Level 3, then the dispute resolution process has been exhausted.

6.12 **Project Director.** The Council's Project Director for purposes of administration of this Agreement, and any Subordinate Funding Agreements entered into pursuant to this Agreement, is the person whose title is listed in Section 6.11, or such other person designated in writing by the Council's Regional Administrator. The City's Project Director for purposes of administration of this Agreement and any Subordinate Funding Agreements entered into pursuant to this Agreement is the person whose title is listed in Section 6.10, or such other person designated in writing by the City. The City's Project Director shall:

a. Coordinate the carrying out of the City's obligations under this Agreement;

b. Coordinate Subordinate Funding Agreement work scope activities with the Council's Project Director;

c. Attend meetings called by the Council's Project Director for Southwest Light Rail Project staff; and
d. Complete training to be provided by the Council with respect to Council and federal requirements under this Agreement and any Subordinate Funding Agreements entered into pursuant to this Agreement.

6.13 **Applicable Law and Venue.** This Agreement shall be interpreted in accordance with the laws of the State of Minnesota. Venue for all legal proceedings arising out of or relating to this Agreement or any associated Subordinate Funding Agreements, or breach thereof, shall be in the state or federal court with competent jurisdiction in Hennepin County, Minnesota.

6.14 **Effective Date and Termination.** This Agreement shall be effective on January 29, 2015. This Agreement or a Subordinate Funding Agreement shall terminate upon the earliest of:

a. Completion of construction of the Project and reimbursement of all costs provided for in this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;

b. A determination by the Council that the Project or Subordinate Funding Agreement cannot proceed;

c. A determination by the City that a Subordinate Funding Agreement transferring City funds to the Council cannot proceed, however, this Agreement may not be terminated if a Subordinate Funding Agreement is outstanding; or
d. A determination by the Council that sufficient funds do not exist, or are not reasonably projected to exist, in order to complete the Project or a Subordinate Funding Agreement.

The City agrees that Project closeout or termination of this Agreement or any particular Subordinate Funding Agreement does not invalidate continuing obligations imposed on the City by this Agreement or such Subordinate Funding Agreements or any agreements entered into pursuant to the MFA or SFA. Project closeout or termination of this Agreement does not alter the Council's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the City's obligation to return any funds determined to be due to the Council.

The Council agrees that Project closeout or termination of this Agreement or any particular Subordinate Funding Agreement does not invalidate continuing obligations imposed on the Council by this Agreement or such Subordinate Funding Agreements or any agreements entered into pursuant to the MFA or SFA. Project closeout or termination of this Agreement does not alter the City’s authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the Council's obligation to return any funds determined to be due to the City.

6.15 **Exhibits.** All attached exhibits are deemed to be incorporated into this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW.]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates indicated below. Furthermore, this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

CITY OF MINNETONKA

By: ________________________________
   Its Mayor

Date: ______________________________

And by: ______________________________
   Its: City Manager

Date: ______________________________

METROPOLITAN COUNCIL

By: ________________________________

Its: ________________________________

Date: ______________________________

ATTEST:

________________________________

Reviewed by City Attorney’s Office

Date: ______________________________
## LIST OF EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
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<tr>
<td>A</td>
<td>Form of Subordinate Funding Agreement</td>
</tr>
<tr>
<td>B</td>
<td>Sample Forms</td>
</tr>
<tr>
<td>C</td>
<td>Specific Federal Clauses</td>
</tr>
<tr>
<td>D</td>
<td>Disadvantaged Business Enterprise Pass Through Agreement and Program</td>
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SUBORDINATE FUNDING AGREEMENT
City of Minnetonka - SFA 01 (Extension of 17th Avenue)

This Subordinate Funding Agreement (“SFA”) with the City of Minnetonka-01 is entered into by and between the above named Parties.

WHEREAS:

1. The Parties entered into a Southwest Light Rail Transit Project (“Project”) Master Funding Agreement (“MFA”), effective January 29, 2015.
2. The Parties provided in the MFA that certain aspects of funding for the Project or components related to but not part of the Project would be determined in subsequent SFAs.
3. The Parties desire to enter into this SFA to transfer City funds to reimburse the cost for Council activities for professional services and the Council’s administrative fee to produce design plans and a construction cost estimate for proposed components related to, but not part of the Project.
4. The Parties will be required to enter into a subsequent SFA to address environmental documentation for proposed components related to, but not part of the Project.
5. The Parties acknowledge that the planning of the Project will require numerous federal, state and local processes, approvals and funding commitments. The environmental review and other processes for the Project are ongoing and the Project is subject to change to address those processes. The outcomes of those processes may affect whether the components requested in this SFA will ultimately be constructed.

NOW, THEREFORE, in reliance on the statements in these recitals, the Parties hereby agree as follows:

1. Maximum Amount of Authorized Funding. The cost for the Council’s professional services and administration activities authorized by this SFA shall not exceed $63,006 unless authorized in a subsequent agreement or an amendment to this SFA.
2. **SFA Budget.** The budget for the Council’s activities described in this SFA is provided as Exhibit A. City funds provided for this SFA may only be used for reimbursing the Council’s costs for activities directly incurred within the described Description of Activities and as detailed in the MFA.

3. **Description of Activities.** The activities to be performed by the Council and reimbursed by the City include the development of design plans and a construction cost estimate to extend 17th Avenue from the southern roundabout to K-Tel Drive (“Extension”). See Exhibit B for a general depiction and location of the Extension. If authorized by the City, the Extension is anticipated to be constructed by the Project and includes pavement, sidewalks along both sides of the Extension, and installation of a 10-inch water main and an 8-inch sanitary sewer.

The Council will incorporate the Extension design plans as a bid alternate in the proposed Project construction bid documents if: a) the environmental review of the Project and the components described in this SFA allow the construction of the Extension; and b) the Project is permitted to proceed to construction. The Extension construction specifications will be incorporated in the overall specifications within the Project construction bid documents. No separate or stand alone specifications for the Extension design plans will be created.

After the Council selects a Project construction bid and the bid alternate is public, the City will determine whether or not to accept the bid alternate. If the City chooses to accept the bid alternate, the City is required to enter into a subsequent SFA authorizing the Council to construct the bid alternate and reimburse the Council’s costs.

4. **Environmental Documentation.** The Parties will be required to enter into a subsequent SFA that identifies the cost for the Council’s professional services to provide environmental documentation for the Extension. The subsequent SFA will describe terms requiring the City to reimburse the Council’s cost for environmental documentation and administration activities associated with the Extension.

5. **Release of Design Plans.** If the City does not enter into an SFA with the Council to construct the Extension along with the construction of the Project, but requests the Council to release the Extension design plans to the City for the purpose of current or future use of the plans, the Council shall release the design plans provided an amendment to this SFA or subsequent agreement is executed by the Parties to address indemnification, liability, claims, access, copyright, and related issues as a result of the release of the Extension design plans.

6. **Property Acquisition.** It is anticipated that property rights will need to be acquired to construct the proposed Extension. If it is necessary to acquire property rights for the Extension, subsequent agreements must address property access, acquisition, disposition, and other real property matters needed to construct the Extension beyond what is required to construct the Project.

7. **Project Activity Periods.** The term of this SFA shall be effective as of January 29, 2015 and shall terminate on the date all costs under this SFA have been reimbursed, unless terminated earlier consistent with the terms of the MFA.
8. **No Guarantee of Construction.** This SFA describes terms requiring the City to reimburse the Council’s cost for design activities associated with the requested Extension. It does not guarantee that the Extension will satisfy environmental review or be constructed. The City and the Council acknowledge that nothing in this Agreement shall require the Council to take any action or make any decision that will prejudice or compromise any review or decision-making processes required under state and federal environmental review laws, regulations or rules. The Parties intend this Agreement to be interpreted consistent with statutory and other legal authorities, including but not limited to the Minnesota Environmental Policy Act and the National Environmental Policy Act. The Parties agree that this SFA does not limit the alternatives or mitigative measures that the Council may undertake in the development and construction of the Project. The Council retains the right to make decisions and necessary approvals associated with Project requirements.

9. **Incorporation.** The terms, conditions, and definitions of the MFA are expressly incorporated into this SFA.

---

**CITY OF MINNETONKA**

By: ________________________________

Its: ________________________________

Date: ________________________________

---

**METROPOLITAN COUNCIL**

By: ________________________________

Its: ________________________________

Date: ________________________________

---

By: ________________________________

Its: ________________________________

Date: ________________________________
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<thead>
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<th>Item</th>
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Exhibit A
SFA Budget – Extension of 17th Avenue
Exhibit B
Extension of 17th Avenue
PROJECT: SOUTHWEST LIGHT RAIL TRANSIT PROJECT

MASTER AGREEMENT: Master Funding Agreement – City of Minnetonka

PARTIES TO AGREEMENT: 
• Metropolitan Council (“Council”)
• City of Minnetonka (“City”)

SUBORDINATE FUNDING AGREEMENT
City of Minnetonka – 02 (Guideway Profile Adjustment)

This Subordinate Funding Agreement (“SFA”) with the City of Minnetonka is entered into by and between the above named Parties.

WHEREAS:

1. The Parties entered into a Southwest Light Rail Transit Project (“Project”) Master Funding Agreement (“MFA”), effective January 29, 2015.

2. The Parties provided in the MFA that certain aspects of funding for the Project or components related to but not part of the Project would be determined in subsequent SFAs.

3. The Parties desire to enter into this SFA to transfer City funds to reimburse the cost for Council activities for professional services and the Council’s administrative fee to produce design plans and a construction cost estimate for proposed components related to, but not part of the Project.

4. The Parties will be required to enter into a subsequent SFA to address environmental documentation for proposed components related to, but not part of the Project.

5. The Parties acknowledge that the planning of the Project will require numerous federal, state and local processes, approvals and funding commitments. The environmental review and other processes for the Project are ongoing and the Project is subject to change to address those processes. The outcomes of those processes may affect whether the components requested in this SFA will ultimately be constructed.

NOW, THEREFORE, in reliance on the statements in these recitals, the Parties hereby agree as follows:

1. Maximum Amount of Authorized Funding. The cost for the Council’s professional services and administration activities authorized by this SFA shall not exceed $115,847 unless authorized in a subsequent agreement or an amendment to this SFA.
2. **SFA Budget.** The budget for the Council’s activities described in this SFA is provided as Exhibit A. City funds provided for this SFA may only be used for reimbursing the Council’s costs for activities directly incurred within the described Description of Activities and as detailed in the MFA.

3. **Description of Activities.** The activities to be performed by the Council and reimbursed by the City include the development of design plans and a construction cost estimate to adjust the guideway profile to accommodate a future potential infill LRT Station at Smetana Road (“Guideway Profile Adjustment”). The proposed Guideway Profile Adjustment will require additional excavation and retaining walls. See Exhibit B for a general depiction and location of the Guideway Profile Adjustment. If authorized by the City, the Guideway Profile Adjustment is anticipated to be constructed by the Project.

The Council will incorporate the Guideway Profile Adjustment design plans as a bid alternate in the proposed Project construction bid documents if: a) the environmental review of the Project and the components described in this SFA allow the construction of the Guideway Profile Adjustment; and b) the Project is permitted to proceed to construction. The Guideway Profile Adjustment construction specifications will be incorporated in the overall specifications within the Project construction bid documents. No separate or stand alone specifications for the Guideway Profile Adjustment design plans will be created.

After the Council selects a Project construction bid and the bid alternate is public, the City will determine whether or not to accept the bid alternate. If the City chooses to accept the bid alternate, the City is required to enter into a subsequent SFA authorizing the Council to construct the bid alternate and reimburse the Council’s costs.

4. **Environmental Documentation.** The Parties will be required to enter into a subsequent SFA that identifies the Council’s professional services to provide environmental documentation for the Infill Station. The subsequent SFA will describe terms requiring the City to reimburse the Council’s cost for environmental documentation and administration activities associated with the Infill Station.

5. **Release of Design Plans.** If the City does not enter into an SFA with the Council to construct the Guideway Profile Adjustment along with the construction of the Project, but requests the Council to release the Guideway Profile Adjustment design plans to the City for the purpose of current or future use of the plans, the Council shall release the design plans provided an amendment to this SFA or subsequent agreement is executed by the Parties to address indemnification, liability, claims, access, copyright, and related issues as a result of the release of the Guideway Profile Adjustment design plans.

6. **Property Acquisition.** If it is necessary to acquire property rights for the Guideway Profile Adjustment, subsequent agreements must address property access, acquisition, disposition, and other real property matters needed to construct the Guideway Profile Adjustment beyond what is required to construct the Project.

7. **Project Activity Periods.** The term of this SFA shall be effective as of January 29, 2015 and
shall terminate on the date all costs under this SFA have been reimbursed, unless terminated earlier consistent with the terms of the MFA.

8. **No Guarantee of Construction.** This SFA describes terms requiring the City to reimburse the Council’s cost for design activities associated with the requested Guideway Profile Adjustment. It does not guarantee that the Guideway Profile Adjustment will satisfy environmental review or be constructed. The City and the Council acknowledge that nothing in this Agreement shall require the Council to take any action or make any decision that will prejudice or compromise any review or decision-making processes required under state and federal environmental review laws, regulations or rules. The Parties intend this Agreement to be interpreted consistent with statutory and other legal authorities, including but not limited to the Minnesota Environmental Policy Act and the National Environmental Policy Act. The Parties agree that this SFA does not limit the alternatives or mitigative measures that the Council may undertake in the development and construction of the Project. The Council retains the right to make decisions and necessary approvals associated with Project requirements.

9. **Incorporation.** The terms, conditions, and definitions of the MFA are expressly incorporated into this SFA.

**CITY OF MINNETONKA**

By: ____________________________

Its: ____________________________

Date: __________________________

By: ____________________________

Its: ____________________________

Date: __________________________

**METROPOLITAN COUNCIL**

By: ____________________________

Its: ____________________________

Date: __________________________
## Exhibit A
SFA Budget – Guideway Profile Adjustment

<table>
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<tr>
<td>Maximum Amount of Authorized Funding</td>
<td>$115,847</td>
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</tbody>
</table>

SWLRT agreements
February 9, 2015 City Council
Exhibit B
Guideway Profile Adjustment
This Agreement is between the County of Hennepin Housing and Redevelopment Authority, State of Minnesota (“HCHRA”), 701 Fourth Avenue South, Suite 400, Minneapolis, MN 55415, and the City of Minnetonka (“CITY”), 14600 Minnetonka Boulevard, Minnetonka, MN 55345.

WHEREAS, the HCHRA and the CITY have each approved the Southwest Community Investment Framework (“Framework”) dated December 16, 2013, through Hennepin County Resolution 14-0490, and acceptance by the city on June 23, 2014;-

WHEREAS, the HCHRA and the CITY and Other Entity agree that there are financial and strategic benefits of working together to further the goals of the Framework (“Goals”) and wish to document that understanding in a cooperative agreement;

WHEREAS, the HCHRA and the CITY plan to develop one or more projects (“Project or Projects”) to further the Goals;

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

WHEREAS, the HCHRA and the CITY have the authority to participate in a cooperative agreement and Project pursuant to Minnesota Statutes §§383B.79 and 469.001 to 469.047 and other applicable law; and

WHEREAS, the COUNTY and the CITY have the authority to contribute to a Project pursuant to Minnesota Statutes §§383B.79 and 469.041 and other applicable law,

THEREFORE, the parties agree as follows:

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

   a. That the CITY retains its jurisdiction over all issues of local concern relating to zoning, land usage, building code requirements and compliance with all applicable city codes and ordinances.
b. That the full faith and credit of the City [or Other Entity] will not be pledged as a source of payment or repayment of said Project financial obligations owed by Hennepin County and/or the HCHRA.

This agreement shall commence on February 9, 2014.

2. **Future Projects.** The details of any Project or Projects developed pursuant to this Agreement shall be described in an amendment to this Agreement and approved by each of the parties.

3. **Funds from Hennepin County to the HCHRA.** Hennepin County may contribute funds to the HCHRA to be disbursed by the HCHRA for any Project.

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

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

5. **Contract Administration.** In order to coordinate the services of the City with the activities of the HCHRA so as to accomplish the purposes of this Agreement, Catherine Walker, or her successor, shall manage this Agreement on behalf of the HCHRA and serve as liaison between the HCHRA and the City. Julie Wischnack, or her successor, shall manage this Agreement on behalf of the City.

6. **Notices.** Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the HCHRA shall be sent to the Deputy Executive Director at the address stated in the opening paragraph of the Agreement. Notice to the City [and Other Entity] shall be sent to the address stated in the opening paragraph of the Agreement.

THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK
HCHRA BOARD APPROVAL

HENNEPIN COUNTY HOUSING AND REDEVELOPMENT AUTHORITY

Reviewed by the County Attorney's Office

By: __________________________

Date: _________________________

By: __________________________

Date: _________________________

And: __________________________

Date: _________________________

By: __________________________

Chair of its Board

Date: _________________________

And: __________________________

Executive Director

Date: _________________________
CITY

By: ____________________________________
Its: Mayor

By: ____________________________________
Its: City Manager

Approved as to form:

______________________________
City Attorney
Eligibility for Contingent Funding Approved:

- Minnetonka LRCI #13 “Guideway Profile Adjustment” was determined to be eligible for contingency funding by SWLRT in late January 2015.

- SWLRT has continued to move towards studying this area as required with all potential in-fill stations.

- SWLRT Office is eager to hear if the Minnetonka City Council will provide an update on existing agreements.

Why the Smetana Road station is important to this area:

1. **Convenient, improved transit for local residents.** A Smetana Station will provide convenience access to an estimated 8,200 residents and employees located within ½ mile of the station site. Twenty-five existing businesses with more than 220 employees are located within ¼ mile of Smetana Station. Within ½ mile of the proposed Smetana Station, there are 224 businesses with an estimated 2,786 employees.

2. **Improved access to existing businesses.** Smetana Station would provide additional opportunities for persons in low employment areas of the metro to access the job-rich local environment. Potential ridership will come from all 5 SWLRT cities, providing more potential employees for Minnetonka businesses.

3. **Reduce traffic and congestion.** Adding a station at Smetana Road would reduce motor vehicle traffic in a congested area, provide an effective means for connecting bikes with transit, and provide an environmentally sound means of transportation.

We have included an aerial map with the proposed in-fill Station and location of all housing within ¼ mile and ½ mile walk shed.
Smetana Station

- St. Theresa Workers
- Week Night & Weekend Riders
- Rental Units & Affordable Housing
- Serve Walk Shed

Stuart Companies

Stuart Companies
SWLRT
Proposed SWLRT Station with 1/4 Mile & 1/2 Mile Radii

SWLRT agreements
February 9, 2015 City Council
City Council Agenda Item #14D  
Meeting of February 9, 2015

**Brief Description**  Professional Services Agreement for the Shady Oak Station Area Development Strategy

**Recommendation**  Approve the agreement

**Background**

On January 27, during the Joint Study Session with the city of Hopkins, information was provided on an area development strategy for the Shady Oak LRT station area. This collaborative effort with the city of Hopkins is intended to build upon previous planning work and formulate an articulated area vision, zoning, and implementation strategy that can be approved by both cities. The main components of the work will include:

- Review of market feasibility using input from local and national developers;
- Development of vision and land use scenarios based on previous planning work;
- Development of a zoning district that is station-specific, transit oriented and supports sustainable development;
- Identification of public realm elements; and
- Project phasing and entitlement review to ensure coordination across city boundaries.

**Agreement**

In 2014, the cities jointly drafted a request for proposals and received proposals from consultants. The consultants were interviewed last month, and both staffs unanimously agreed on the proposal by Portland-based Crandall Arambula. Local firms, WSB and Maxfield Research assist in the work.

The Minnetonka City Attorney has drafted a professional services agreement (pages A1-A9). In addition to a Metropolitan Council grant that the two cities received for the work, both cities will be funding the project. Minnetonka's contribution will be $50,000, funded by the HRA levy.

**Recommendation**

Staff recommends the council approve the agreement.

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

Originated by:  
Elise Durbin, AICP, Community Development Supervisor
AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made on February 9, 2015, by and among the City of Minnetonka 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345 (“Minnetonka”), the City of Hopkins, 1010 1st Street S., Hopkins, MN 55343 (“Hopkins”) (collectively, Minnetonka and Hopkins are the "Cities") and Crandall Arambula ("Contractor") whose business address is 520 SW Yamhill, Roof Suite 4, Portland, OR 97204.

PRELIMINARY STATEMENT

The Cities have participated with the Metropolitan Council and other cities in planning for the Southwest Light Rail Transit line (the “SWLRT”), proposed for construction beginning in 2016. The current plan for the SWLRT includes 17 station areas, including a proposed station area known as the Shady Oak Station Area. The Cities desire to retain Contractor to assist in creating a development strategy for the Shady Oak Station Area. The purpose of this contract is to set forth terms and conditions for the provision of services by the Contractor to the Cities. This agreement is made pursuant to Minn. Stat. § 471.59.

The Cities and the Contractor agree as follows:

1. Contractor's Services. The Contractor agrees to provide professional design and planning services to the Cities as described in the attached Exhibit A, and the Contractor’s proposal, submitted December 15, 2014, both of which are incorporated into this Agreement by reference. Conflicts in language among the documents will be resolved by in the following priority, listed from highest to lowest priority: this Agreement; Exhibit A; and Contractor’s proposal.

2. Time for Performance of Services. The Contractor must perform the services outlined in the work program by September 30, 2015 or within such other time period as may be agreed by the Cities and the Contractor in writing.

3. Compensation for Services. Cities agree to pay the Contractor for services as described in Exhibit A, attached and made a part of this Agreement, in an amount not to exceed $125,000.00 including time and expenses.

4. Method of Payment. The Contractor must submit itemized bills for services provided to Hopkins on a monthly basis, with a copy to Minnetonka. Hopkins is responsible to process and pay approved bills in the same manner as other claims made to Hopkins and in accordance with the Prompt Payment Act, Minn. Stat. § 471.425.

For work reimbursed on an hourly basis, the Contractor must indicate for each employee, his or her name, a description of the work performed, the applicable task number according to Exhibit A, the number of hours worked, rate of pay for each employee, a computation
of amounts due for each employee, and the total amount due. Contractor must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391.

For reimbursable expenses, if permitted in Exhibit A, the Contractor must provide such documentation as reasonably required by Hopkins.

5. **Allocation and Reimbursement.** The Cities anticipate funding this agreement in the following manner: Minnetonka, $50,000; Hopkins, $25,000; and $50,000 to be reimbursed from an LCDA Demonstration Account grant from the Metropolitan Council upon completion of the work. Minnetonka will deposit $50,000 with Hopkins, to be drawn down to pay 40% of each invoice. Hopkins will pay the balance of each invoice when due, Hopkins will be submit the required documentation to the Metropolitan Council for reimbursement under the grant and will be entitled to all grant funds paid by the Metropolitan Council. If for any reason the sum of all grant funds paid is less than $50,000, Minnetonka will reimburse Hopkins for two thirds of the difference between the grant funds paid and $50,000.

6. **Project Managers.** The following persons are assigned as co-project managers on behalf of the Cities and are authorized to jointly provide direction to Contractor. It is expected that most project direction will be provided to Contractor through a conference call in which both project managers participate with Contractor. However, Contractor may accept direction from either project manager when that manager represents she is providing direction on behalf of both managers. Minnetonka and Hopkins agree that neither project manager will provide direction to Contractor without the knowledge and consent of the other project manager.

   Minnetonka Project Manager: Elise Durbin  
edurbin@eminnetonka.com  
952-939-8285  

   Hopkins Project Manager: Meg Beekman  
mbeekman@hopkinsmn.com  
952-548-6343  

7. **Audit Disclosure.** The Contractor must allow the City or its duly authorized agents reasonable access to the Contractor's books and records that are pertinent to all services provided under this Agreement. Any reports, information, data, etc. given to, or prepared or assembled by, the Contractor under this Agreement which the client requests to be kept confidential must not be made available to any individual or organization without prior written approval of both Cities. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor will become the property of the Cities upon termination of this Agreement, but Contractor may retain copies of such documents as records of the services provided.
8. **Term.** The term of this Agreement is from February 9, 2015 through October 31, 2015, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as stated in this Agreement.

9. **Termination.** This Agreement may be terminated by either party by seven days' written notice delivered to the other party at the address written above. (For purposes of the preceding sentence, the Contractor shall be one party and both Cities shall be deemed one party.) Upon termination under this provision if there is no fault of the Contractor, the Contractor will be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the Cities terminate the Agreement because the Contractor has failed to perform in accordance with this Agreement, no further payment will be made to the Contractor, and the Cities may retain another contractor to undertake or complete the work identified in paragraph 1.

10. **Data Practices.** Contractor is hereby notified of the requirements of Minnesota Statutes, section 13.05, subdivision 11. To the extent that this agreement requires Contractor to perform any of the City’s functions, then: (1) all of the data created, collected, received, stored, used, maintained or disseminated by Contractor is subject to the requirements of Minnesota Statutes chapter 13; (2) Contractor must comply with that chapter’s requirements as if Contractor were a government entity; and (3) Contractor is subject to the penalties and remedies set forth in Minnesota Statutes, section 13.08 for any violation of chapter 13. Contractor agrees to promptly notify City if Contractor receives any request for data related to this agreement or Contractor’s performance of this agreement.

11. **Subcontractor.** The Contractor may not enter into subcontracts for services provided in this Agreement except as noted in the scope of services, without the express written consent of the Cities. WSB & Associates and Maxfield Research are approved subcontractors of Contractor.

12. **Independent Contractor.** At all times and for all purposes hereunder, the Contractor is an independent contractor and not an employee of either Minnetonka or Hopkins. No statement in this Agreement may be construed to find the Contractor or any of its subcontractors an employee of either Minnetonka or Hopkins.

13. **Assignment.** Neither party may assign this Agreement without the written consent of the other party.

14. **Services not Provided For.** No claim for services furnished by the Contractor not specifically provided for in this Agreement will be honored by the Cities.
15. **Severability.** The provisions of this Agreement are severable. If any portion is held by a court of competent jurisdiction to be contrary to law, that decision will not affect the remaining provisions of the Agreement.

16. **Entire Agreement.** The entire agreement of the parties is contained in this Agreement. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter of this Agreement as well as any previous agreements presently in effect between the parties relating to the same subject matter. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and signed by the parties, unless otherwise provided in this Agreement.

17. **Compliance with Laws and Regulations.** In providing services under this Agreement, the Contractor must abide by all statutes, ordinances, rules, and regulations pertaining to the provision of services to be provided. Any violation constitutes a material breach of this Agreement and entitles the Cities to immediately terminate this Agreement.

18. **Equal Opportunity.** During the performance of this contract, the Contractor must not discriminate against any employee or applicant for employment, or participant in a program provided under this Agreement, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The Contractor must post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Contractor must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

19. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.

20. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota, without regard to choice of law provisions

21. **Disputes.** In an effort to resolve any conflicts that arise during or following the completion of the services described in this Agreement, the dispute will first be submitted to non-binding mediation unless all parties mutually agree otherwise. If any party does not agree with the outcome of the mediation, the dispute will then be submitted to arbitration under the rules and the procedures of the American Arbitration Association.
CITY OF MINNETONKA:

By: ________________________________________
   Its City Manager

CITY OF HOPKINS:

By: ________________________________________
   Its City Manager

CRANDALL ARAMBULA:

By: ________________________________________
   Its ________________________________

APPROVED AS TO FORM AND LEGALITY:
Minnetonka City Attorney
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Crandall Arambula with involvement from Hopkins and Minnetonka city staff, will prepare a development strategy for the Shady Oak station area. The development strategy is a unique and collaborative effort with the Cities. It is intended to build upon previous planning work and formulate an articulated area vision, zoning and implementation strategy that can be approved by the Cities.

**Task 1: Review of Previously Completed Work**
The Crandall Arambula team will be provided with relevant studies and plans to understand the previous work completed prior to the kickoff meeting. Additionally, Crandall Arambula will request:

- All base information in GIS or AutoCAD format. We will provide the cities a checklist of specific layers of information required prior to the kickoff meeting
- Any existing traffic analysis or market studies prepared for key streets recently completed within the study area
- Any bicycle or active transportation plans or studies

*Deliverable: A kick-off meeting with the city of Hopkins and city of Minnetonka staffs to discuss previous work, goals and scope of project, schedule and all deliverables will be held with Crandall Arambula and other key team members.*

**Task 2: Vision/Land Use Scenarios**
Crandall Arambula recognizes that the cities of Hopkins and Minnetonka are very different communities, with differing ideas about what the Shady Oak station area may become. We understand that the cities recognize these differences, but realize the importance of having a joint vision that can meet the needs of both communities. We will draw upon previous work, as well as feedback from staff given at the kick-off meeting, to develop and coordinate a vision for the Shady Oak station area, and corresponding land use scenario that is station oriented. At a minimum a successful vision will address:

- a balance of housing, retail, and job growth with consideration of the impact on Hopkins’ Main Street;
- models for sustainable redevelopment and infrastructure
- the neighborhood’s industrial past
- opportunities to get around on foot, bike, transit and car
- opportunities to attract innovative industries and organizations
- market influences; including a range of household types and costs
- ways to increase transit ridership
Deliverable: The Crandall Arambula team will develop a vision and land use scenarios for the Shady Oak station area, first presenting it to city staff. Once the vision and land use scenarios is agreed upon by city staff, the vision will be presented at a joint study session of the Hopkins and Minnetonka city councils.

Task 3: Market Feasibility
Crandall Arambula team member Maxfield Research, working with local and national developers and experts, will evaluate the local market demand and establish a baseline for TOD supportive land uses in the Shady Oak station area. Maxfield Research will work with city staff to identify developers and will conduct developer interviews (either in person or via phone) on the local market demand for the Shady Oak station area as well as seeking feedback on the vision prepared in Task 2. We understand that within the vicinity of the station area, there are several high-tech, medical device companies including Minnetonka Medical Technology and Imris. Crandall Arambula team members will meet with area business owners to describe the station area vision and gauge their interest in an Innovation District, as well as determine regional interest in this development model.

Maxfield Research will prepare a market analysis that evaluates current uses and market trends, land availability and prices, etc. Based on market conditions, land values, developer interviews, etc., they will provide a ‘baseline’ recommendation for real estate product types/land uses for development within a ½-mile of the Shady Oak station. This task will include:

- informational roundtable discussions with real estate professionals
- facilitating up to 10 interviews with residential and commercial brokers and developers, economic development specialists and others to identify opportunities, barriers, strengths and weaknesses of developing/redeveloping within the project area
- evaluate the ability to develop various real estate products on or near the proposed station.
- identify projects currently under construction, marketing, or planned and determine the effect the new development(s) could have on property within the station area
- interview up to eight major employers, and summarize findings related to the demand for various land uses near the station area
- document conclusions and recommendations that identify challenges and constraints to attracting development/redevelopment; determine the highest and best use(s) that could be developed; and examine potential synergies between various land uses that could be potentially incorporated into the station area as well as synergies created between adjacent station areas

Deliverable: Prepare a memorandum summarizing findings and making recommendations which will be used to inform the vision that is prepared during Task 2. Present findings/recommendations at the joint city council study session at the same time as the vision.

Task 4: Public Investment
Crandall Arambula recognizes that there has been some work done previously through the Southwest Corridor Investment Framework pertaining to elements in the public realm; however,
our team will provide more specific ‘complete streets’ details/design elements that support land use proposals and can quickly be incorporated into the LRT engineering plans that are underway. Crandall Arambula will prepare a concept level street design that can be implemented throughout the station area, including sidewalks, landscaping and design components to be integrated into the public/private realm, that give the district a unique feel and convey the vision. WSB & Associates will make recommendations on a variety of elements related to the public realm that are needed in order to implement the Shady Oak station area vision including:

- refining data from the SWLRT project (existing and future volumes, operations and mode split) to reflect the proposed land use scenario and recommendations needed to existing and future streets/intersections
- identifying utility connections needed for redevelopment parcels
- developing stormwater treatment options that include regional stormwater and targeted individual sites (due to potential timing of development) for the station as well as the surrounding redevelopment area
- high-level cost estimates for the needed public realm and stormwater improvements

Deliverable: Develop a GIS map showing locations, size and type of improvements. Prepare cross section and layout for streets in station area. Develop order of magnitude cost estimates for these improvements.

Task 5: Zoning Regulations
Crandall Arambula will provide a new draft zoning ordinance that establishes a new zoning district and regulations for the Shady Oak station area which is station oriented and unified. Components will include sustainability elements, a mix of uses, shared parking, and opportunities to allow for collaborative and innovative spaces.

Deliverable: Develop the new zoning code. The cities will be responsible for putting the code into final legal form.

Task 6: Project Phasing
Due to the large number of parcels and owners in the Shady Oak station area, Crandall Arambula will develop a series of phasing recommendations that can be implemented including street/utility phasing and development phasing. We will also make recommendations on property that will need annexation/detachment to make developable parcels.

Deliverable: Develop a map showing the recommended project phasing, as well as a timeline estimating when the phases may occur.

Task 7: Entitlements
Crandall Arambula will review each city’s entitlement process for redevelopment proposals. Using the new zoning district as a basis, we will develop an entitlement process that may be used by both cities during the review for redevelopment proposals—both when the redevelopment is limited to one city and also when the redevelopment may cross city boundaries.
Deliverable: Develop an entitlement process in a code form that can be integrated into the cities codes.

Task 8: Public Engagement/Feedback
Crandall Arambula will facilitate two public open houses—one at the beginning of the project to solicit feedback on the vision for the station area, and the other open house near the end of the project to present the recommendations and solicit comment on a draft final report. These open houses will coincide with any open houses that are being conducted by the Southwest Project Office. We will facilitate a joint study session of the Hopkins City Council and Minnetonka City Council to receive feedback and direction on the work after Tasks 2 and 3.

Deliverable: Conduct the open houses and work with staff to conduct the joint study session. Provide a summary of the open houses and comments received.

Task 9: Final Report
Using the work completed in tasks one to seven, policymaker feedback, staff feedback, and community input, Crandall Arambula will develop a final report to be adopted by both cities. The final report will be presented two times. The first presentation will be to a joint meeting of the Hopkins Planning, Minnetonka Planning, and Minnetonka Economic Development Advisory Commissions. The intent of this meeting is to provide a Development Strategy that these commissions will make a recommendation to their respective councils. The second presentation will be to a joint meeting of the Hopkins City Council and the Minnetonka City Council. It is planned that the councils will adopt the report at this meeting.

Deliverable: Final report document

Budget: Not to exceed $125,000

Hourly Rates:

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