

WAYZATA CITY COUNCIL MEETING AGENDA
Wayzata City Hall Community Room, 600 Rice Street
Tuesday, July 21, 2015

WORKSHOP TOPIC FOR DISCUSSION:

1. Parking Workshop (5:30 PM)

7:00 PM - CITY COUNCIL MEETING

ITEM	DESCRIPTION	PRESENTER	JM	AM	KW	BA	ST	VOTE	PAGE #
1	Roll Call								
2	Approve Agenda								
3	Public Forum - 15 Minutes (3 min/person)								
a.	Dan Baasen - LMCD Chair - LMCD update								
b.	Trudy Richter - Bushaway Update								
4	New Agenda Items (3 min/councilmember) - 1. Councilmember suggest item to add; 2. Must be seconded by another Councilmember; 3. Determine staff resources, scheduling & timeframe; 4. Discuss & vote to add to future agenda								
a.									
b.									
5	Consent Agenda								2
a.	Approval of City Council Workshop Meeting Minutes of July 7, 2015 and City Council Regular Meeting Minutes of July 7, 2015								
b.	Approval of Check Register								
c.	Consider 240 Minnetonka Development Agreement								
d.	Municipal Licenses Which Received Administrative Approval (Informational Only)								
e.	Police Activity Report								
f.	Building Activity Report								
6	New Business								
a.	Consider Second Reading of Ordinance No. 754 Granting a Franchise to Mediacom Minnesota LLC to Construct, Operate and Maintain a Cable System in the City; Setting Conditions; Providing for Regulation and Use of the System; and Prescribing Penalties for the Violation of its Provisions	Nelson							121
b.	Consider First Reading of Ordinance No. 755 Repealing the Cable Television Regulatory Ordinance No. 602A	Nelson							215
c.	Consider Resolution No. 27-2015 250 Bushaway Subdivision and Variance	Gadow							216
d.	Review of Telecommunications Update Report	Dudinsky							269
e.	Consider Updated Strategic Plan	Nelson							307
7	City Manager's Report and Discussion Items								
8	Public Forum (as necessary)								
9	Adjournment								

Meeting Rules of Conduct:

Turn in white card for public forum and blue card for agenda item
Give name and address
Indicate if representing a group
Limit remarks to 3 minutes

Upcoming Meetings:

City Council - WEDNESDAY August 5 & Tuesday, August 18
Planning Commission - August 3 & 17, 2015

Members of the City Council and some staff members may gather at the Wayzata Bar and Grill immediately after the meeting for a purely social event. All members of the public are welcome.

WAYZATA CITY COUNCIL
DRAFT - WORKSHOP MEETING MINUTES
July 7, 2015

5:00 PM DISCUSS LONG LAKE POLICE CONTRACT

Mayor Willcox called the workshop meeting to order at 5:00 pm in the Community Room at Wayzata City Hall. Council Members present: Anderson, McCarthy, Mullin, and Tyacke. Also present: City Manager Nelson, Director of Planning and Building Gadow, Director of Administrative Services Uram, City Attorney Schelzel, Management/Planning Intern Peters, and Police Chief Risvold.

Ms. Nelson stated that in 2010, the City entered into a contract with Long Lake to provide Law Enforcement Services. Two key provisions in the contract include the term of the contract and compensation. Ms. Nelson reviewed the terms of the contract, and the compensation received since 2011. She said the 2015 contract amount is \$311,427.

Ms. Nelson said that recently, staff met with the Long Lake City Administrator Scott Weske to discuss any concerns or needs that Long Lake may have that could be addressed via a contract amendment. According to Mr. Weske, the law enforcement services that Wayzata provides are exceptional but that cost is a concern. Ms. Nelson said that in response, staff did an analysis of Wayzata's costs to provide the service to Long Lake. With five years of contract experience, the Wayzata's cost data indicated that the City could provide this service to Long Lake beginning in 2016 for \$285,000. Ms. Nelson said a contingency has also been established that would allow Wayzata to deal with any changes or a termination of the contract. She said they also discussed Wayzata's offer to assist Long Lake with ordinance preparation and updates including a Crime Free Multi-Family Housing ordinance and with regulations governing massage oriented businesses. This service would be an added value and may help Long Lake manage their code enforcement costs.

Ms. Nelson said that based on the discussion, a term sheet was prepared that proposed a revision to the terms and compensation. In general, the proposal reduces the cost of the contract for Long Lake, increases the length of the contract, freezes the cost for either two or three years (depending on term), and reduces the minimum amount of increase going forward from 3% to 2%. Staff is also proposing to reduce Long Lake's responsibility for the payment of unemployment insurance from 100% currently to 50% with a 6 year contract and to 0% with a ten year contract. The other provision in the contract that staff is recommending be changed is the notice of termination. Staff is recommending a three year notice. A three year notice is preferable because it coincides with equipment purchases.

Mayor Willcox expressed a concern about limiting the maximum increase to 5% with a ten year contract. He indicated that inflation has exceeded that in the past. Councilmember Tyacke expressed the same concern. Staff suggested that language could be included in the contract addressing this issue. Councilmember Anderson asked Chief Risvold if the reduction in the amount of the contract would reduce the amount of funding available for the department. Staff indicated that the funds are part of the overall general fund and not specific to the Police department.

Ms. Nelson and Chief Risvold reviewed the advantages to both communities of an amended contract per the term sheet.

The Council expressed a preference for a six year contract and pending the outcome of the Long Lake Council discussion directed staff to continue to pursue a mutually agreeable contract revision.

5:30 PM DISCUSS S. HIGHWAY 12 FRONTAGE ROAD RIGHT-OF-WAY ISSUES & UUCM OUTLOT SITE

Mayor Willcox called the workshop meeting to order at 5:30 pm in the Community Room at Wayzata City Hall. Council Members present: Anderson, McCarthy, Mullin, and Tyacke. Also present: City Manager Nelson, Director of Planning and Building Gadow, Management/Planning Intern Peters, Director of Administrative Services Uram, and City Attorney Schelzel.

City Attorney Schelzel provided a summary on recent developments related to the property along the Highway 12/I-394 frontage road. He said the City's interests in the property relate to (1) "turn back" obligations of MnDOT under a 1985 Construction Cooperative Agreement; (2) recent discussions about possible new locations for cell towers, including the east end lift station parcel; and (3) the City's litigation settlement obligations to help facilitate the transfer of certain MnDOT-owned property to the Unitarian Universalist Church of Minnetonka (UUCM). He said City staff has had discussions and meetings with key MnDOT personnel, including those working on the turn back and the sale of the property that UUCM is interested in acquiring.

Mr. Schelzel said MnDOT has reaffirmed its obligation under the 1985 Cooperative Construction Agreement to turn back the right of way associated with the frontage road to the City. He explained the process involved and that the turnback probably won't go through until spring 2016 unless there was real need to expedite the process. Mr. Schelzel said MnDOT would also like to cover with this turn back to the City of Wayzata any other areas of "MnDOT roadway" within the City that the City has been maintaining. MnDOT's turn back obligations do not include all of the property that was acquired by MnDOT as part of the original 394 project; it will only include the roadway and whatever right of way is needed to maintain the road going forward.

Regarding the UUCM Settlement parcels, Mr. Schelzel stated an offer from MnDOT to sell the larger east parcel should be received within the next week or so. The offer has been approved as of July 1, 2015, and the formal offer is being put together. He noted that the offer price will likely be the \$212,000 appraisal figure. He explained that MnDOT won't sell just a piece of the property because it would make the remaining parcel unbuildable. He also explained the issues associated with the west parcel that preclude MnDOT from selling that parcel until issues with the title are cleared up via a preceding subsequent that is being handled by the MN Attorney General's Office.

Mr. Schelzel said that regarding the East end lift station parcel, part of the City's lift station falls on the Hwy 12 ROW that will be transferred to the City, and part falls in a larger easement area that MnDOT may transfer to Lake West Development, LLC. MnDOT has told staff that any conveyance to Lake West would be subject to an easement for existing utilities. Mr. Schelzel said that if the City wishes to use part of the property for a cell tower site, the City would need buy any additional, necessary property rights from the current property owner.

The Council had discussion on this item. Mr. Schelzel answered questions from the Council.

6:30 PM LAKE WEST DEVELOPMENT CONCEPT

Mayor Willcox called the workshop meeting to order at 6:30 pm in the Community Room at Wayzata City Hall. Council Members present: Anderson, McCarthy, Mullin, and Tyacke. Also present: City Manager Nelson, Director of Planning and Building Gadow, Management/Planning Intern Peters, Director of Administrative Services Uram, and City Attorney Schelzel. Curt Fretham of Lake West Development Co., LLC and Reid Schulz of Landform were also in attendance.

Mr. Gadow stated that in January of 2014, the City Council approved an application for a three (3) lot subdivision, with conditions, of 1409 Holdridge Terrace by Lakewest Development Co, LLC. Lakewest

1 Development Co, LLC has requested a workshop with the City Council to discuss a potential concept
2 plan for the lots on 1405 and 1407 Holdridge Terrace for a ten (10) unit detached townhome project.
3 These lots face the frontage road and the adjacent MnDOT ROW. Lakewest Development Co, LLC is
4 requesting City Council feedback as they determine whether to pursue a formal application. Mr. Gadow
5 said the area is guided for low density single family in the Comprehensive Plan, and zoned R-2A.
6

7 Mr. Gadow said that if this potential concept were to move forward, the application would need to include
8 a request for amendment to the Comprehensive Plan to Medium Density Multiple Family, a rezoning to
9 the medium density zoning category, approval of a replatting of the lots for the ten townhomes, design
10 review, and site plan review.
11

12 The Council provided feedback to Mr. Fretham and Mr. Schulz that the proposed concept plan had too
13 many units for the site and was out of harmony with the existing zoning of the neighborhood. The
14 Council expressed concern that the proposed level of density would creep to other parts of the single
15 family neighborhood, which would impact neighborhood character. The Council encouraged Mr.
16 Fretham to reconsider single family homes at a lesser density than the concept plan.
17

18 The Workshop meetings were adjourned at 6:55 pm.
19

20 Respectfully submitted,
21

22
23 Becky Malone
24 Deputy City Clerk

WAYZATA CITY COUNCIL
DRAFT - MEETING MINUTES
July 7, 2015

AGENDA ITEM 1. Call to Order and Roll Call.

Mayor Willcox called the meeting to order at 7 p.m. Council Members present: Anderson, McCarthy, Mullin and Tyacke. Also present: City Manager Nelson, City Planner Gadow, City Engineer Kelly, and City Attorney Schelzel.

Mr. Wilcox announced the Council met in Workshop prior to tonight's meeting to discuss renewal of the Long Lake Police Contract, various issues with the Highway 12 frontage road, and a concept for development along the Highway 12 frontage road corridor.

AGENDA ITEM 2. Approve Agenda.

Mr. Gadow requested Item 6c, New Business, Consider Resolution No. 27-2015 250, Bushaway Subdivision and Variances, be removed from the agenda pursuant to the request of the applicant, and postponed to the July 21, 2015, Council meeting.

Mr. Tyacke made a motion, seconded by Mrs. Anderson, to approve the agenda, as amended. The motion carried 5/0.

AGENDA ITEM 3. Public Forum – 15 Minutes (3 minutes per person).

a. Bushaway Project

Polly Pabst, 217 Bushaway Road, expressed concern that the safety rail on retaining wall Z has been eliminated from the plan, resulting in what she believes to be a compromise to public safety. She requested the City look into this matter.

Ms. Nelson stated she is not aware of this issue, but will follow up on it.

b. Wise House Update

KC Chermak, Pillar Homes, 575 Far Hill Road Way, provided an update on the Wise House relocation project and a map showing the route the house will take for relocation and the trees that will be removed to accommodate this move. He is hoping this move will happen in early August.

AGENDA ITEM 4. New Agenda Items.

None.

AGENDA ITEM 5. Consent Agenda.

Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to approve the consent agenda:

- a. Approval of City Council Workshop Minutes of June 16, 2015 and City Council Regular Meeting Minutes of June 2, 2015 and June 16, 2015
- b. Approval of Check Register
- c. Municipal licenses which received administrative approval (informational only)
- d. Approval of Resolution No. 28-2015 Authorizing Interfund Loan for Advance of Certain Costs in Connection with TIF District No. 5
- e. Approval of Resolution No. 26-2015 Denying Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances at 532 Ferndale Road West

The Council stated a letter was received from Mr. Gustafson requesting adjustments to the June 2, 2015 City Council Regular meeting minutes. Ms. Nelson reported staff had reviewed the meeting video and made the appropriate corrections to the minutes, and found them to be consistent with Mr. Gustafson's requested adjustments. The Resolution for the June 2 approvals of the East Block would be revised to reflect the intent of the Council expressed in the approved minutes.

1 The motion carried 5/0.

2
3 **AGENDA ITEM 6. New Business.**

4 **a. Consider Approval of Amended and Restated Development Agreement with**
5 **Wayzata Bay Redevelopment Company, LLC**

6 Ms. Nelson reported on staff's work with Presbyterian Homes regarding changes to the existing
7 Development Agreement and preparation of an Amended and Restated Agreement. This proposed
8 new agreement has been approved by the HRA.

9 Stacie Kvilvang, Ehlers & Associates, 3060 Centre Point Drive, the City's consultant on
10 the project, presented the terms of the Amended and Restated Development Agreement that was
11 provided in the meeting packet.

12 By request of the Council, in reference to Construction and Work Force Parking, Ms.
13 Nelson stated that under the Amended and Restated Agreement, an infraction refers to the work
14 force not following through on their contract with regard to construction parking and/or parking
15 in areas in which they should not be. The Developer will be fined \$500 per day for the first five
16 days and \$1,000 per day thereafter.

17 Ms. Kvilvang acknowledged Ms. Nelson, Mr. Mehrkens from Presbyterian Homes, and
18 Mr. Lindgren from Dorsey and Whitney, for their quality work and direction during the
19 negotiations.

20 The Council asked about the Right of First Offer in the Amended and Restated
21 Agreement. Ms. Kvilvang clarified if the City decides to sell and has an offer, it is required to
22 give the developer 60 days before approving a purchase agreement. The developer can then try to
23 negotiate.

24 The Council inquired about \$250,000 from the City for pedestrian improvements around
25 the buffer and if it was tied to a specific use. Ms. Nelson replied if the Council elects to construct
26 a pedestrian improvement along Circle A, it would become an expense of the City's capital fund.

27 The Council asked when the City will cross over the \$21 million value to be eligible for
28 100% TIF. Ms. Kvilvang reported she anticipates that to be on January 2, 2017, which will be
29 payable in 2018. Ms. Kvilvang clarified that the City's legal and financial advisor expenses are
30 an administrative expense and will be covered by TIF.

31 The Council referred to Section 4.12 of the Agreement, page 141 in the meeting packet,
32 and stated it references an FOFR Agreement that is not included in the defined terms and
33 agreement. The Council inquired if there is a side agreement for a FOFR. Steve Bubul, Kennedy
34 & Graven, attorney for Wayzata Bay Redevelopment Company, LLC, stated there is a FOFR side
35 agreement that would be entered into if the Right of First Offer was exercised, but it was not
36 included in the amended agreement because it is so unlikely to be used.

37 The Council referred to the section of the Agreement at page 96 of the Council packet
38 and asked for clarification on reducing the amount to \$1 million for public improvements. Ms.
39 Nelson stated \$1 million reflects what is left to be completed at this point in the project. It does
40 not cover what is left on Wayzata Boulevard and Superior because that is part of the assessment
41 agreement with Presbyterian Homes.

42 Mr. Mullin expressed concern about enforcing parking fines with the contractors and
43 suggested having permits on their vehicles stating it is a work vehicle. Mrs. Anderson felt this
44 would become too burdensome to enforce. Mr. Willcox suggested a small decal on the work
45 vehicle that could not be removed. Mr. Tyacke pointed out the agreement states it is up to the
46 master developer to provide a plan acceptable to the City and this plan could be added to the
47 development agreement. Ms. Nelson said staff would explore these suggestions.

48 Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to approve the Amended and
49 Restated Development Agreement with Wayzata Bay Redevelopment Company, LLC. The
50 motion carried 5/0.

b. Consider First Reading of an Ordinance Granting a Franchise to Mediacom Minnesota LLC to Construct, Operate and Maintain a Cable System in the City; Setting Conditions; Providing for Regulation and Use of the System; and Prescribing Penalties for the Violation of its Provisions

Ms. Nelson reported the City staff and Mediacom have reached an agreement on a mutually acceptable proposed new Cable Television Ordinance.

Brian Grogan, Moss & Barnett, the City's legal counsel for the Franchise Ordinance, stated this Ordinance requires a four-fifths vote under the City's charter to pass. He presented background information on the existing franchise, the process used to assess the needs of the City, and the negotiation process for renewal. The key terms of the new franchise include: 1) Ten year term with option for an additional five year term; 2) Five percent franchise fee; 3) \$10,000 security fund; 4) Free service to public buildings and schools; 5) Strong customer standards; 6) Two PEG channels; and 7) \$1.20 PEG fee.

Ms. Nelson stated the City received about \$68,000 in 2014 from the five percent franchise fee and the PEG fee. She also noted there is a declining number of cable subscribers, which reflects declining revenue under the existing franchise agreement.

The Council asked for clarification on why there are fewer PEG channels offered yet the PEG fee has doubled. Mr. Grogan replied a good portion of the revenues had previously been spent on improvement of the local channel. The increase in the fee is to drive all the capital cost of the PEG to that fee in order to allow the five percent franchise fee to go into the general revenue fund.

Mr. Tyacke referred to page 1 of the proposed Ordinance that contained findings, and requested to see the data that supports those findings. Mr. Grogan stated this data was gathered during the needs assessment process and would be made available to the Council.

The Council expressed concerns relating to the lack of customer service, lack of timeliness in responses, and continued increase costs and that they would like to see language in the Ordinance to hold Mediacom accountable for lack of service to its customers.

Bill Jensen, Vice President of Mediacom, addressed the Council. He reported this Ordinance has tougher customer service standards than other communities and hopes the perception of this new Ordinance is an upgrade.

Mr. Grogan stated in the Ordinance, potential liquidated damages will hold Mediacom accountable. He reported Ms. Nelson fought hard to have this in the Ordinance and had stated it would not be adopted by the Council unless this provision was included. By request of the Council, Mr. Grogan outlined some of the provisions for the customers of Mediacom as detailed in Section 5 of the Ordinance.

The Council inquired about discounted pricing for low-income seniors. Mr. Grogan stated it was discussed extensively, but the FCC establishes the rate regulation rules and recently issued rules that take away any rate regulation from all jurisdictions nationwide.

Mrs. Anderson recommended staff publish the service provisions for customers. She also recommended staff and Council begin discussion on future options as there are declining numbers of subscribers and thus declining revenue to the City.

Ms. Nelson agreed it is a good idea to let the public know of the service provisions in the Ordinance and provide them a way to get their issues resolved.

Mrs. McCarthy suggested having a form on the City's website that could be filled out in order to keep record of the complaints.

All members of the Council shared personal anecdotes of difficulty with Mediacom and its lack of customer service.

Mr. Tyacke made a motion, seconded by Mrs. Anderson, to approve the First Reading of an Ordinance Granting a Franchise to Mediacom Minnesota LLC to Construct, Operate and Maintain a Cable System in the City; Setting Condition; Providing for Regulation and Use of the System; and Prescribing Penalties for the Violation of its Provisions.

1 The Council asked if there was a way to compile the complaints. Ms. Nelson reported
2 there is language in the Ordinance that requires Mediacom to provide the City with reports on
3 complaints. Mr. Grogan stated the customer service issues raised are not contractual issues, but
4 are perhaps enforcement issues.

5 Mr. Mullin offered a friendly amendment requesting that staff draft a communication
6 about revised customer service standards and seek Mediacom's assistance to help communicate
7 that, and to create a web-based form that customers can submit. He noted this would provide the
8 City with a list of complaints that can be compared with the report of complaints that Mediacom
9 is required to provide.

10 Mr. Tyacke suggested every six months, a customer bill of rights be included with the bill
11 the customers receive with an outlined process to follow if they have problems.

12 Mr. Grogan replied most of what the Council has suggested can take place without any
13 change to the Ordinance. If conditions are added to the Ordinance, it will have to be negotiated
14 with Mediacom.

15 Mrs. McCarthy suggested the communication be sent out with the utility bill. She also
16 asked if the City would be willing to explore conducting another survey in six months and at one
17 year to see if Mediacom's customer service is improving.

18 Mr. Willcox stated the agreement has all the elements in it to improve customer service,
19 but the City has to follow through with enforcement.

20 Mr. Mullin withdrew his friendly amendment.

21 Mr. Tyacke suggested if first reading of the Ordinance is approved tonight, that staff
22 summarize in a memo what has been discussed for review prior to the second reading.

23 The motion carried 5/0.

24
25 ~~**c. Consider Resolution No. 27 2015 250 Bushaway Subdivision and Variances**~~

26 This item was moved to the July 21, 2015, Council meeting.

27
28 **d. Consider Approval of Updated Strategic Plan**

29 Ms. Nelson reported on the updated Strategic Plan, items that were completed, and items that
30 were added based upon the year's planning.

31 The Council suggested adding a new line item of Traffic and Circulation under Growth.

32 Mrs. Anderson suggested adding the Bushaway Project to the Strategic Plan.

33 Mr. Willcox suggested a way to better train employees at the Muni and to consider
34 making a survey available to the clientele about the service there. Mrs. McCarthy suggested
35 instead of a written survey, people be asked a few questions on their way out.

36
37 **AGENDA ITEM 7. City Manager's Report and Discussion Items.**

38 **a. Upcoming Dates**

39 It was noted that Thursday, July 9, 2015 is the Member Appreciation Evening at the Chamber
40 with the Police vs. Fire Softball game at 6:00 p.m.

41
42 **b. Announcements**

43 Mrs. Anderson announced the trolley is running on Wednesdays for the concerts in July.

44
45 **AGENDA ITEM 7. Public Forum Continued (if necessary).**

46 There were no comments.

47
48 **AGENDA ITEM 8. Adjournment.**

49 Mrs. Anderson made a motion, seconded by Mr. Tyacke to adjourn. There being no further
50 business, Mr. Willcox adjourned the meeting at 9:43p.m.

1 Respectfully submitted,
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3
4

5 Becky Malone
6 Deputy City Clerk
7

8 Drafted by Shannon Schmidt
9 *TimeSaver Off Site Secretarial, Inc.*

DRAFT

***Check Detail Register©**

July 2015

			Check Amt	Invoice	Comment
10100 Anchor Bank					
Paid Chk#	099318	7/8/2015	ARCTIC GLACIER INC.		
E 640-47000-254	Soft Drinks/Mix For Resale		\$181.08	377518410	ICE RESALE
E 640-47000-254	Soft Drinks/Mix For Resale		\$121.17	379518507	ICE RESALE
Total ARCTIC GLACIER INC.			\$302.25		
Paid Chk#	099319	7/8/2015	ARTISAN BEER COMPANY		
E 640-47000-253	Beer For Resale		\$256.00	3040781	BEER
Total ARTISAN BEER COMPANY			\$256.00		
Paid Chk#	099320	7/8/2015	BELLBOY BAR SUPPLY CORP.		
E 640-47000-251	Liquor For Resale		\$1,250.90	48983300	LIQUOR
E 640-47000-259	Freight		\$18.45	48983300	FREIGHT
E 640-47000-210	Operating Supplies (GENERAL)		\$32.95	92286300	SUPPLIES
Total BELLBOY BAR SUPPLY CORP.			\$1,302.30		
Paid Chk#	099321	7/8/2015	BERNICK'S WINE		
E 640-47000-254	Soft Drinks/Mix For Resale		\$281.23	228993	MISC.BEV.
Total BERNICK'S WINE			\$281.23		
Paid Chk#	099322	7/8/2015	BETH, GERALD O		
E 640-48000-341	General Promotions		\$175.00	7/14/15	BAR MUSIC 7/14/15
Total BETH, GERALD O			\$175.00		
Paid Chk#	099323	7/8/2015	BETH, GERALD O		
E 640-48000-341	General Promotions		\$175.00	7/21/15	BAR MUSIC 7/21/15
Total BETH, GERALD O			\$175.00		
Paid Chk#	099324	7/8/2015	BETH, GERALD O		
E 640-48000-341	General Promotions		\$175.00	7/28/15	BAR MUSIC 7/28/15
Total BETH, GERALD O			\$175.00		
Paid Chk#	099325	7/8/2015	BLOOMQUIST, RICK		
E 640-48000-341	General Promotions		\$300.00	7/18/15	BAR MUSIC 7/18/15
Total BLOOMQUIST, RICK			\$300.00		
Paid Chk#	099326	7/8/2015	CANDLELIGHT FLORAL		
E 640-48000-340	Advertising		\$18.50	1005	ADVERTISEMENT
Total CANDLELIGHT FLORAL			\$18.50		
Paid Chk#	099327	7/8/2015	COCA-COLA		
E 640-47000-254	Soft Drinks/Mix For Resale		\$284.92	0198052808	MISC.BEV.
E 640-48000-254	Soft Drinks/Mix For Resale		\$1,378.80	0198052809	MISC.BEV.
Total COCA-COLA			\$1,663.72		
Paid Chk#	099328	7/8/2015	COZZINI BROS., INC.		
E 640-48500-415	Other Equipment Rentals		\$139.99	C1831971	KNIFE EXCHANGE
Total COZZINI BROS., INC.			\$139.99		
Paid Chk#	099329	7/8/2015	CULLIGAN-METRO		
E 640-48500-210	Operating Supplies (GENERAL)		\$124.81	101X27859506	SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$115.07	101X27953408	SUPPLIES
Total CULLIGAN-METRO			\$239.88		
Paid Chk#	099330	7/8/2015	DAHLHEIMER DISTRIBUTING CO.		
E 640-48000-253	Beer For Resale		\$267.00	1162284	BEER
Total DAHLHEIMER DISTRIBUTING CO.			\$267.00		
Paid Chk#	099331	7/8/2015	DAY DISTRIBUTING		

***Check Detail Register©**

July 2015

			Check Amt	Invoice	Comment
E 640-48000-253	Beer For Resale		\$818.00	808501	BEER
E 640-48000-253	Beer For Resale		\$343.00	809405	BEER
E 640-47000-253	Beer For Resale		\$1,182.70	809406	BEER
Total DAY DISTRIBUTING			\$2,343.70		
Paid Chk# 099332	7/8/2015	DENNYS 5TH AVENUE BAKERY			
E 640-48500-255	FOODIngredients For Resale		\$113.16	563883	FOOD
E 640-48500-255	FOODIngredients For Resale		\$59.23	564004	FOOD
E 640-48500-255	FOODIngredients For Resale		\$51.37	564520	FOOD
Total DENNYS 5TH AVENUE BAKERY			\$223.76		
Paid Chk# 099333	7/8/2015	G & K SERVICES			
E 640-48000-210	Operating Supplies (GENERAL)		\$68.89	1013185642	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-217	Uniforms		\$85.51	1013185642	KITCHEN UNIFORMS & SUPPLIES
Total G & K SERVICES			\$154.40		
Paid Chk# 099334	7/8/2015	GILBERT, MELODY			
E 640-48000-341	General Promotions		\$300.00	7/16/15	BAR MUSIC 7/16/15
Total GILBERT, MELODY			\$300.00		
Paid Chk# 099335	7/8/2015	GRAPE BEGINNINGS, INC.			
E 640-47000-259	Freight		\$4.50	183610	FREIGHT
E 640-47000-252	Wine For Resale		\$420.00	183610	WINE
E 640-47000-259	Freight		\$27.00	183837	FREIGHT
E 640-47000-252	Wine For Resale		\$1,764.00	183837	WINE
Total GRAPE BEGINNINGS, INC.			\$2,215.50		
Paid Chk# 099336	7/8/2015	ISRAEL, DAN			
E 640-48000-341	General Promotions		\$200.00	7/25/15	BAR MUSIC 7/25/15
Total ISRAEL, DAN			\$200.00		
Paid Chk# 099337	7/8/2015	JJ TAYLOR DISTRIBUTING OF MN			
E 640-48000-253	Beer For Resale		\$453.95	2361184	BEER
E 640-48000-253	Beer For Resale		\$784.55	2387839	BEER
Total JJ TAYLOR DISTRIBUTING OF MN			\$1,238.50		
Paid Chk# 099338	7/8/2015	JOHNSON BROS.-ST.PAUL			
E 640-47000-252	Wine For Resale		\$1,160.30	5196454	WINE
E 640-47000-259	Freight		\$19.52	5196454	FREIGHT
E 640-47000-252	Wine For Resale		\$224.00	5197907	WINE
E 640-47000-259	Freight		\$2.44	5197907	FREIGHT
E 640-47000-259	Freight		\$6.10	5199538	FREIGHT
E 640-47000-252	Wine For Resale		\$196.00	5199538	WINE
E 640-48000-252	Wine For Resale		\$129.22	5203903	WINE
Total JOHNSON BROS.-ST.PAUL			\$1,737.58		
Paid Chk# 099339	7/8/2015	KARLSBURGER FOODS, INC.			
E 640-48500-255	FOODIngredients For Resale		\$156.55	000382555	FOOD
Total KARLSBURGER FOODS, INC.			\$156.55		
Paid Chk# 099340	7/8/2015	KRAUTH, MAX			
E 640-48000-341	General Promotions		\$300.00	7/23/15	BAR MUSIC 7/23/15
Total KRAUTH, MAX			\$300.00		
Paid Chk# 099341	7/8/2015	NORTHWESTERN FRUIT COMPANY			
E 640-48500-255	FOODIngredients For Resale		(\$7.10)	816142	FOOD
E 640-48500-255	FOODIngredients For Resale		\$503.40	816782	FOOD
E 640-48000-251	Liquor For Resale		\$15.80	816782	LIQUOR
E 640-48000-253	Beer For Resale		\$6.00	816888	BEER

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E 640-48000-251	Liquor For Resale		\$7.60	816888	LIQUOR
E 640-48500-255	FOODIngredients For Resale		\$255.60	816888	FOOD
E 640-48500-255	FOODIngredients For Resale		\$341.75	817098	FOOD
E 640-48000-253	Beer For Resale		\$3.00	817098	BEER
E 640-48000-251	Liquor For Resale		\$7.60	817098	LIQUOR
Total NORTHWESTERN FRUIT COMPANY			\$1,133.65		
Paid Chk# 099342	7/8/2015	PAUSTIS & SONS			
E 640-48000-252	Wine For Resale		\$260.75	8505621	WINE
Total PAUSTIS & SONS			\$260.75		
Paid Chk# 099343	7/8/2015	PEPSI -COLA			
E 640-47000-254	Soft Drinks/Mix For Resale		\$244.00	51127823	MISC.BEV.
Total PEPSI -COLA			\$244.00		
Paid Chk# 099344	7/8/2015	PHILLIPS WINES & SPIRITS			
E 640-47000-252	Wine For Resale		\$96.00	2811704	WINE
E 640-47000-259	Freight		\$1.22	2811704	FREIGHT
Total PHILLIPS WINES & SPIRITS			\$97.22		
Paid Chk# 099345	7/8/2015	PINNACLE DISTRIBUTING			
E 640-47000-254	Soft Drinks/Mix For Resale		\$162.50	24678	MISC.BEV.
Total PINNACLE DISTRIBUTING			\$162.50		
Paid Chk# 099346	7/8/2015	PLUNKETT S PEST CONTROL			
E 640-48000-409	Maint services & Improv		\$120.41	4227893	SERVICE
Total PLUNKETT S PEST CONTROL			\$120.41		
Paid Chk# 099347	7/8/2015	QUALITY SERVICE, INC.			
E 640-48000-404	Repairs/Maint - Machin/Equip		\$238.85	30895	DOOR GASKET
E 640-48500-404	Repairs/Maint - Machin/Equip		\$218.83	30913	GRIDDLE REPAIRS
E 640-48500-404	Repairs/Maint - Machin/Equip		\$188.19	30930	GRIDDLE REPAIRS
E 640-48500-404	Repairs/Maint - Machin/Equip		\$698.97	30931	GRIDDLE THERMOSTAT
Total QUALITY SERVICE, INC.			\$1,344.84		
Paid Chk# 099348	7/8/2015	SINCLAIR, DAVID			
E 640-48000-130	Employer Paid Ins		\$100.00	JUNE 2015	JUNE 2015
Total SINCLAIR, DAVID			\$100.00		
Paid Chk# 099349	7/8/2015	SUNBURST CHEMICALS, INC.			
E 640-48500-210	Operating Supplies (GENERAL)		\$311.32	0347338	SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$104.47	0347338	SUPPLIES
Total SUNBURST CHEMICALS, INC.			\$415.79		
Paid Chk# 099350	7/8/2015	SYSCO MINNESOTA			
E 640-48500-210	Operating Supplies (GENERAL)		\$15.99	507011103	KITCHEN SUPPLIES
E 640-48500-255	FOODIngredients For Resale		\$3,773.99	507011103	FOOD
E 640-48000-251	Liquor For Resale		\$50.80	507011103	LIQUOR
E 640-48500-255	FOODIngredients For Resale		(\$84.29)	507020967	FOOD
E 640-48500-255	FOODIngredients For Resale		\$116.17	507030009	FOOD
E 640-48500-210	Operating Supplies (GENERAL)		\$135.30	507031202	KITCHEN SUPPLIES
E 640-48000-251	Liquor For Resale		\$104.87	507031202	LIQUOR
E 640-48500-255	FOODIngredients For Resale		\$5,418.69	507031202	FOOD
E 640-48000-342	Promotions - Food/Drinks		\$55.98	507041985	PROMO FOOD
E 640-48500-255	FOODIngredients For Resale		\$64.13	507041985	FOOD
E 640-48500-255	FOODIngredients For Resale		\$4,404.94	507060828	FOOD
E 640-48000-342	Promotions - Food/Drinks		\$56.14	507060828	PROMO FOOD
E 640-48000-251	Liquor For Resale		\$50.80	507060828	LIQUOR
E 640-48500-210	Operating Supplies (GENERAL)		\$59.32	507060828	KITCHEN SUPPLIES

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E 640-48500-255	FOOD	Ingredients For Resale	\$90.00	ACCT.562157	FOOD
	Total	SYSCO MINNESOTA	\$14,312.83		
Paid Chk# 099351	7/8/2015	T.D. ANDERSON INC.			
E 640-48000-409	Maint services & Improv		\$115.00	938958	BEER LINES CLEANED
	Total	T.D. ANDERSON INC.	\$115.00		
Paid Chk# 099352	7/8/2015	THORPE DISTRIBUTING CO.			
E 640-47000-253	Beer For Resale		\$17.15	903560	BEER
E 640-48000-253	Beer For Resale		(\$91.00)	903651	BEER
E 640-48000-253	Beer For Resale		\$65.70	904934	BEER
E 640-48000-253	Beer For Resale		\$313.00	904935	BEER
	Total	THORPE DISTRIBUTING CO.	\$304.85		
Paid Chk# 099353	7/8/2015	TOLL GAS & WELDING SUPPLY			
E 640-48000-210	Operating Supplies (GENERAL)		\$46.50	40029450	SUPPLIES
	Total	TOLL GAS & WELDING SUPPLY	\$46.50		
Paid Chk# 099354	7/8/2015	TRUE			
E 640-47000-254	Soft Drinks/Mix For Resale		\$92.33	128663	MISC.MDSE.RESALE
	Total	TRUE	\$92.33		
Paid Chk# 099355	7/8/2015	WINE MERCHANT			
E 640-47000-252	Wine For Resale		(\$1.22)	703383	WINE
E 640-47000-259	Freight		\$8.54	7036612	WINE
E 640-47000-252	Wine For Resale		\$1,656.00	7036612	WINE
E 640-48000-252	Wine For Resale		\$242.44	7036786	WINE
E 640-47000-259	Freight		\$31.72	7036815	FREIGHT
E 640-47000-252	Wine For Resale		\$3,040.00	7036815	WINE
	Total	WINE MERCHANT	\$4,977.48		
Paid Chk# 099356	7/8/2015	WIRTZ BEVERAGE MN BEER			
E 640-47000-253	Beer For Resale		\$221.40	1090428578	BEER
E 640-47000-252	Wine For Resale		\$3,227.15	1090428579	BEER
E 640-48000-253	Beer For Resale		\$407.00	1090428876	BEER
E 640-48000-253	Beer For Resale		\$261.00	1090432397	BEER
	Total	WIRTZ BEVERAGE MN BEER	\$4,116.55		
Paid Chk# 099357	7/8/2015	WIRTZ BEVERAGE MN WINE & SPIRI			
E 640-47000-252	Wine For Resale		\$3,264.00	1080342224	WINE
E 640-47000-259	Freight		\$37.70	1080342224	FREIGHT
E 640-47000-251	Liquor For Resale		\$1,765.30	1080342858	LIQUOR
E 640-47000-259	Freight		\$16.91	1080342858	FREIGHT
	Total	WIRTZ BEVERAGE MN WINE & SPIRI	\$5,083.91		
Paid Chk# 099358	7/8/2015	ZAHLER, TONY			
E 640-48000-341	General Promotions		\$400.00	7/11/15	BAR MUSIC 7/11/15
	Total	ZAHLER, TONY	\$400.00		
Paid Chk# 099359	7/9/2015	A.M. PAINTING, INC.			
E 404-40000-309	Contractual Services		\$3,500.00		HARMONY CIRCLE FENCE
	Total	A.M. PAINTING, INC.	\$3,500.00		
Paid Chk# 099360	7/9/2015	ARNE, DR.			
R 610-00000-37110	W/S/Storm Sales		\$112.11	REFUND	OVERPAYMENT ON FINAL UTILILITY BILL
	Total	ARNE, DR.	\$112.11		
Paid Chk# 099361	7/9/2015	ASSOC.OF MN EMERGENCY MGRS.			
E 101-42500-433	Dues, Licensing & Seminars		\$130.00	C28DD55308	D.DUDINSKY MEMBERSHIP RENEWAL

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Total	ASSOC.OF MN EMERGENCY MGRS.		\$130.00		
Paid Chk#	099362	7/9/2015	AT&T MOBILITY		
E 101-41940-321	Telephone		\$532.86	287250190047	CELL PHONES
Total	AT&T MOBILITY		\$532.86		
Paid Chk#	099363	7/9/2015	BAGY JO, INC.		
E 101-41100-493	Volunteer program		\$200.00	52754	VOLUNTEER SHIRTS & CAPS
E 101-41100-493	Volunteer program		\$562.50	52755	VOLUNTEER SHIRTS & CAPS
Total	BAGY JO, INC.		\$762.50		
Paid Chk#	099364	7/9/2015	BARCO MUNICIPAL PRODUCTS		
E 620-40000-210	Operating Supplies (GENERAL)		\$142.97	216234	UTILITY MARKING PAINT
E 610-40000-210	Operating Supplies (GENERAL)		\$142.98	216234	UTILITY MARKING PAINT
Total	BARCO MUNICIPAL PRODUCTS		\$285.95		
Paid Chk#	099365	7/9/2015	BLUE CROSS AND BLUE SHIELD		
G 101-21706	Health Insurance		\$44,078.50	AUGUST2015	HEALTH INS.AUG.2015
Total	BLUE CROSS AND BLUE SHIELD		\$44,078.50		
Paid Chk#	099366	7/9/2015	BRAKKE, GARY R.		
E 101-41500-301	Auditing and Acct g Services		\$4,935.00	6/19/15	FIRE RELIEF AUDIT
Total	BRAKKE, GARY R.		\$4,935.00		
Paid Chk#	099367	7/9/2015	BROYLES, PAT		
E 101-41100-493	Volunteer program		\$44.12	VOLUNTEER	VOLUNTEER PROGRAM EXPENSES
Total	BROYLES, PAT		\$44.12		
Paid Chk#	099368	7/9/2015	CARQUEST OF WAYZATA		
E 101-42100-404	Repairs/Maint - Machin/Equip		\$10.49	6973-252852	SQUAD REPAIRS
Total	CARQUEST OF WAYZATA		\$10.49		
Paid Chk#	099369	7/9/2015	CITY VIEW PLUMBING & HEATING		
E 409-40000-540	Equipment		\$2,941.00	43191	WATER HEATER - CH
Total	CITY VIEW PLUMBING & HEATING		\$2,941.00		
Paid Chk#	099370	7/9/2015	COMMERCIAL ASPHALT CO.		
E 430-40000-309	Contractual Services		\$304.15	150630	ASPHALT
Total	COMMERCIAL ASPHALT CO.		\$304.15		
Paid Chk#	099371	7/9/2015	DISTEL, DANIEL		
E 101-41550-302	Consultants		\$3,566.00		MONTHLY ASSESSING
Total	DISTEL, DANIEL		\$3,566.00		
Paid Chk#	099372	7/9/2015	EMERGENCY AUTOMOTIVE		
E 101-42100-404	Repairs/Maint - Machin/Equip		\$121.92	23840	SQUAD REPAIR
Total	EMERGENCY AUTOMOTIVE		\$121.92		
Paid Chk#	099373	7/9/2015	EMERYS TREE SERVICE, INC.		
E 404-40000-309	Contractual Services		\$295.00	20127	TREE REMOVAL & STUMP GRINDING
Total	EMERYS TREE SERVICE, INC.		\$295.00		
Paid Chk#	099374	7/9/2015	EULL S MANUFACTURING CO.,INC.		
E 670-40000-409	Maint services & Improv		\$175.96	023838	STORM SEWER REPAIR
Total	EULL S MANUFACTURING CO.,INC.		\$175.96		
Paid Chk#	099375	7/9/2015	FRED HOLASEK & SON, INC.		
E 101-45200-227	Plantings		\$5,416.52	00017369	PLANTINGS
Total	FRED HOLASEK & SON, INC.		\$5,416.52		

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Paid Chk#	099376	7/9/2015	GARELICK STEEL CO.		
E 101-45203-220	Repair/Maint Supply (GENERAL)		\$369.00	322621	PARTS
	Total GARELICK STEEL CO.		\$369.00		
Paid Chk#	099377	7/9/2015	GOPHER STATE ONE CALL		
E 610-40000-313	Permit Fees/Gopher State		\$260.43	137738	LOCATES
E 620-40000-313	Permit Fees/Gopher State		\$260.42	137738	LOCATES
	Total GOPHER STATE ONE CALL		\$520.85		
Paid Chk#	099378	7/9/2015	GRAINGER, INC.		
E 101-41940-401	Repairs/Maint Buildings		\$11.74	9778987645	BLDG.PARTS
	Total GRAINGER, INC.		\$11.74		
Paid Chk#	099379	7/9/2015	GRAYBAR		
E 408-40000-309	Contractual Services		\$16,470.00	979642694	STREET LIGHT REPLACEMENT
	Total GRAYBAR		\$16,470.00		
Paid Chk#	099380	7/9/2015	HD SUPPLY WATERWORKS, LTD		
E 610-40000-225	Repair & Maint - System		\$525.04	E069669	WATER SYSTEM PARTS
E 610-40000-225	Repair & Maint - System		\$225.52	E111526	WATER SYSTEM PARTS
E 610-40000-225	Repair & Maint - System		\$468.94	E114762	WATER SYSTEM PARTS
	Total HD SUPPLY WATERWORKS, LTD		\$1,219.50		
Paid Chk#	099381	7/9/2015	HENN.CNTY.ACCTG.SERVICES		
E 101-42120-308	Prisoner Care		\$414.36	10000062409	PRISONER PROCESSING
G 101-20300	Deposits Payable		\$75.00	10000062409	PRISONER PROCESSING
	Total HENN.CNTY.ACCTG.SERVICES		\$489.36		
Paid Chk#	099382	7/9/2015	HENNEPIN COUNTY TREASURER		
G 650-20818	Garbage Sales Tax		\$1,387.23	9% REFUSE T	9% REFUSE TAX - JUNE 2015
	Total HENNEPIN COUNTY TREASURER		\$1,387.23		
Paid Chk#	099383	7/9/2015	HERITAGE SHADE TREE CONSULTANT		
E 404-40000-302	Consultants		\$4,197.50	5468	FORESTRY CONSULTANT
	ital HERITAGE SHADE TREE CONSULTANT		\$4,197.50		
Paid Chk#	099384	7/9/2015	HOLIDAY		
E 101-42100-212	Motor Fuels		\$156.36		PD FUEL
	Total HOLIDAY		\$156.36		
Paid Chk#	099385	7/9/2015	HOME DEPOT		
E 610-40000-210	Operating Supplies (GENERAL)		\$16.02		SUPPLIES
E 101-45200-210	Operating Supplies (GENERAL)		\$264.33		SUPPLIES
E 101-45200-210	Operating Supplies (GENERAL)		\$83.59		CHEMICALS
E 408-40000-499	Miscellaneous		\$54.45		SUPPLIES
E 101-45203-220	Repair/Maint Supply (GENERAL)		\$78.85		SUPPLIES
	Total HOME DEPOT		\$497.24		
Paid Chk#	099386	7/9/2015	ICMA		
E 101-41500-433	Dues, Licensing & Seminars		\$952.00	350172	H.NELSON MEMBERSHIP RENEWAL
	Total ICMA		\$952.00		
Paid Chk#	099387	7/9/2015	KELLY, MICHAEL JR.		
E 101-45203-220	Repair/Maint Supply (GENERAL)		\$35.30	REIMB.	SUPPLIES
	Total KELLY, MICHAEL JR.		\$35.30		
Paid Chk#	099388	7/9/2015	KUSTOM SIGNALS, INC.		
E 101-42100-404	Repairs/Maint - Machin/Equip		\$60.00	515313	PD PARTS

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Total KUSTOM SIGNALS, INC.			\$60.00		
Paid Chk# 099389	7/9/2015	LHB, INC.			
E 430-40000-302	Consultants		\$191.50	130445.00-14	EASTMAN LANE STREETSCAPE
Total LHB, INC.			\$191.50		
Paid Chk# 099390	7/9/2015	LOFFLER COMPANIES, INC.			
E 101-41500-200	Office Supplies (GENERAL)		\$27.00	2011426	SUPPLIES
E 101-41500-311	Data Processing		\$2,911.76	2015981	NETWORK SUPPORT
Total LOFFLER COMPANIES, INC.			\$2,938.76		
Paid Chk# 099391	7/9/2015	LONG LAKE TRU VALUE			
E 101-42200-210	Operating Supplies (GENERAL)		\$114.49		SUPPLIES
E 101-45203-220	Repair/Maint Supply (GENERAL)		\$31.03		SUPPLIES
E 610-40000-210	Operating Supplies (GENERAL)		\$36.67		SUPPLIES
E 620-40000-210	Operating Supplies (GENERAL)		\$16.98		SUPPLIES
E 101-42100-210	Operating Supplies (GENERAL)		\$7.39		SUPPLIES
E 101-43100-210	Operating Supplies (GENERAL)		\$42.56		SUPPLIES
E 101-45200-210	Operating Supplies (GENERAL)		\$104.64		SUPPLIES
E 101-42100-240	Small Tools and Minor Equip		\$17.99		SUPPLIES
Total LONG LAKE TRU VALUE			\$371.75		
Paid Chk# 099392	7/9/2015	LOU'S GLOVES			
E 101-43100-241	Safety equip/testings		\$87.00	009676	SAFETY GLOVES
Total LOU'S GLOVES			\$87.00		
Paid Chk# 099393	7/9/2015	MANSFIELD OIL COMPANY			
E 101-49200-212	Motor Fuels		\$1,957.14	580522	FUEL
E 101-49200-212	Motor Fuels		\$175.51	580527	FUEL
E 101-49200-212	Motor Fuels		\$1,230.85	581130	FUEL
E 101-49200-212	Motor Fuels		\$1,624.86	601961	FUEL
Total MANSFIELD OIL COMPANY			\$4,988.36		
Paid Chk# 099394	7/9/2015	MARY DELAITTRE			
E 233-40000-302	Consultants		\$5,100.00	7/1/15	LAKE EFFECT
Total MARY DELAITTRE			\$5,100.00		
Paid Chk# 099395	7/9/2015	MCCARTHY, LYNN			
E 101-41100-493	Volunteer program		\$97.54	REIMB.	VOLUNTEER EXP.REIMB.
Total MCCARTHY, LYNN			\$97.54		
Paid Chk# 099396	7/9/2015	METERING & TECHNOLOGY SOLUTION			
E 610-40000-211	Meter supplies		\$153.00	3935	METERS
E 620-40000-211	Meter supplies		\$153.00	3935	METERS
E 610-40000-211	Meter supplies		\$45.00	3936	METERS
E 620-40000-211	Meter supplies		\$45.00	3936	METERS
tal METERING & TECHNOLOGY SOLUTION			\$396.00		
Paid Chk# 099397	7/9/2015	METROPOLITAN COUNCIL			
E 620-40000-386	Other Utilities		\$36,867.42	0001046212	SEWER SERVICE
Total METROPOLITAN COUNCIL			\$36,867.42		
Paid Chk# 099398	7/9/2015	MICRO CENTER			
E 409-40000-540	Equipment		\$142.93	5645746	COMPUTER CABLES
Total MICRO CENTER			\$142.93		
Paid Chk# 099399	7/9/2015	MN CHILD SUPPORT PAYMENT CENTE			
G 101-21710	County WH		\$197.40	0014468629	WITHHOLDING ORDERS
G 101-21710	County WH		\$235.00	0015104841	WITHHOLDING ORDERS

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total MN CHILD SUPPORT PAYMENT CENTE			\$432.40		
Paid Chk#	099400	7/9/2015	MN PETROLEUM SERVICE		
E 101-41940-404	Repairs/Maint - Machin/Equip		\$311.09	107989	PARTS
Total MN PETROLEUM SERVICE			\$311.09		
Paid Chk#	099401	7/9/2015	MN UC FUND		
E 640-48000-140	Unemployment Comp (GENERAL		\$948.69	07970965	2ND QTR.2015 UNEMPLOYMENT
Total MN UC FUND			\$948.69		
Paid Chk#	099402	7/9/2015	NAPA AUTO PARTS-WATERTOWN		
E 101-43100-210	Operating Supplies (GENERAL)		\$137.24	440908	PARTS
Total NAPA AUTO PARTS-WATERTOWN			\$137.24		
Paid Chk#	099403	7/9/2015	NEWMAN TRAFFIC SIGNS		
E 101-43100-226	Sign Repair Materials		\$1,496.80	0287275	STREET SIGN POSTS
Total NEWMAN TRAFFIC SIGNS			\$1,496.80		
Paid Chk#	099404	7/9/2015	OFFICE DEPOT		
E 101-45200-200	Office Supplies (GENERAL)		\$96.15	776883901001	SUPPLIES
E 101-43100-200	Office Supplies (GENERAL)		\$96.15	776883901001	SUPPLIES
E 610-40000-200	Office Supplies (GENERAL)		\$48.08	776883901001	SUPPLIES
E 620-40000-200	Office Supplies (GENERAL)		\$48.07	776883901001	SUPPLIES
E 101-45200-200	Office Supplies (GENERAL)		(\$25.00)	777253528001	SUPPLIES
Total OFFICE DEPOT			\$263.45		
Paid Chk#	099405	7/9/2015	OVSHAK, KATHY		
E 101-41500-331	Mileage & Expense Account		\$75.90	REIMB.	MILEAGE 2ND QTR.2015
Total OVSHAK, KATHY			\$75.90		
Paid Chk#	099406	7/9/2015	PETERSON, TODD		
E 101-42100-217	Uniforms		\$98.98	REIMB.	UNIFORM/FOOTWARE
Total PETERSON, TODD			\$98.98		
Paid Chk#	099407	7/9/2015	POPP TELECOM		
E 101-42100-309	Contractual Services		\$33.88	10011563	PD LONG LAKE
Total POPP TELECOM			\$33.88		
Paid Chk#	099408	7/9/2015	RDO EQUIPMENT CO.		
E 101-43100-220	Repair/Maint Supply (GENERAL)		\$31.64	P31768	PARTS
Total RDO EQUIPMENT CO.			\$31.64		
Paid Chk#	099409	7/9/2015	SCHWAAB, INC.		
E 101-41500-200	Office Supplies (GENERAL)		\$44.75	E58562	SUPPLIES
Total SCHWAAB, INC.			\$44.75		
Paid Chk#	099410	7/9/2015	SPRINT		
E 101-42100-323	Radio Units		\$128.38	134573312-16	PD SERVICE
Total SPRINT			\$128.38		
Paid Chk#	099411	7/9/2015	SPRINT		
E 101-42200-323	Radio Units		\$295.17	523093316-16	FD SERVICE
Total SPRINT			\$295.17		
Paid Chk#	099412	7/9/2015	STATE OF MINNESOTA		
E 101-42100-323	Radio Units		\$270.00	00000230676	PD RADIO SERVICE
Total STATE OF MINNESOTA			\$270.00		
Paid Chk#	099413	7/9/2015	STREICHER S		

***Check Detail Register©**

July 2015

			Check Amt	Invoice	Comment
E 101-42100-217	Uniforms		(\$259.99)	CM270137	PD UNIFORMS
E 101-42100-217	Uniforms		\$311.98	I1155945	PD UNIFORMS
Total STREICHER S			\$51.99		
Paid Chk# 099414	7/9/2015	TEMACA LAWN SPRINKLERS, INC.			
E 101-45203-406	Street lights and Signal Maint		\$1,806.58	2167	REPAIRS
Total TEMACA LAWN SPRINKLERS, INC.			\$1,806.58		
Paid Chk# 099415	7/9/2015	TIME SAVER			
E 101-41100-302	Consultants		\$477.00	M21450	MTG.MINUTES
Total TIME SAVER			\$477.00		
Paid Chk# 099416	7/9/2015	TRI-CITY			
E 610-40000-309	Contractual Services		\$30.00	6/1-6/30/15	WATER ANALYSIS
E 610-40000-309	Contractual Services		\$63.00	6/1-6/30/15	WATER ANALYSIS
Total TRI-CITY			\$93.00		
Paid Chk# 099417	7/9/2015	UPS STORE			
E 404-40000-499	Miscellaneous		\$300.00	0538	DOG PARK BANNER
Total UPS STORE			\$300.00		
Paid Chk# 099418	7/9/2015	VERIZON WIRELESS			
E 101-42200-323	Radio Units		\$12.01	9747629379	FD SERVICE
Total VERIZON WIRELESS			\$12.01		
Paid Chk# 099419	7/9/2015	VILLAGE CHEVROLET			
E 101-45200-222	Repair & Maint - Equip		\$2.63	284323	PARTS
Total VILLAGE CHEVROLET			\$2.63		
Paid Chk# 099420	7/9/2015	WARNING LITES			
E 101-43100-415	Other Equipment Rentals		\$404.70	147024	EQUIP.RENTAL
G 101-20300	Deposits Payable		\$562.60	147219	EQUIP.RENTAL
Total WARNING LITES			\$967.30		
Paid Chk# 099421	7/9/2015	WAYZATA ROTARY CLUB			
E 101-41500-331	Mileage & Expense Account		\$240.00	566	MTG.MEALS
E 101-41500-433	Dues, Licensing & Seminars		\$53.00	566	MTG.DUES
Total WAYZATA ROTARY CLUB			\$293.00		
Paid Chk# 099422	7/9/2015	WINKELS, BRIAN AND TASHA			
G 101-20310	Escrow		\$3,060.00	REFUND	PROJECT ESCROW REFUND - 123 BROADWAY VARIANCE
Total WINKELS, BRIAN AND TASHA			\$3,060.00		
Paid Chk# 099423	7/9/2015	WSB & ASSOCIATES			
E 430-40000-309	Contractual Services		\$71.50	01204-391-1	2015 STREETS
Total WSB & ASSOCIATES			\$71.50		
Paid Chk# 099424	7/9/2015	XCEL ENERGY			
E 101-41940-381	Electric Utilities		\$3,317.21		SERVICE
E 101-42200-381	Electric Utilities		\$461.75		SERVICE
E 610-40000-381	Electric Utilities		\$6,596.77		SERVICE
E 640-47000-381	Electric Utilities		\$1,422.85		SERVICE
E 640-48000-381	Electric Utilities		\$3,320.00		SERVICE
E 620-40000-381	Electric Utilities		\$1,526.34		SERVICE
E 101-41940-381	Electric Utilities		\$11.30		SERVICE
E 101-45203-381	Electric Utilities		\$274.27		SERVICE
Total XCEL ENERGY			\$16,930.49		

***Check Detail Register©**

July 2015

Check Amt Invoice Comment**10100 Anchor Bank \$220,887.76****Fund Summary****10100 Anchor Bank**

101 GENERAL FUND	\$84,786.77
233 LAKFRONT IMPROVE	\$5,100.00
404 PARK AND TRAIL CIP	\$8,292.50
408 GENERAL CIP	\$16,524.45
409 EQUIP REVOLVING	\$3,083.93
430 STREET CIP	\$567.15
610 WATER FUND	\$8,723.56
620 SEWER FUND	\$39,060.20
640 LIQUOR	\$53,186.01
650 SOLID WASTE	\$1,387.23
670 STORMWATER	\$175.96
	\$220,887.76

CITY OF WAYZATA



PLANNING DEPARTMENT

MEMORANDUM

To: City Council
From: Bryan Gadow, Director of Planning and Building
Date: July 16, 2015
Re: Garrison's Landing – Development Agreement

On January 20, 2015, the City Council approved an application for a Concept/General Plan PUD and associated lot combination, variances, and CUPs for the construction of a new mixed use building ten (10) unit condominium units and retail at 236 Minnetonka Ave S, 240 Minnetonka Ave S, and 519 Indian Mound via Resolution 07-2015 and Ordinance 751.

One of the conditions of approval is that the Applicant and City enter into a development agreement to be recorded against the properties containing the City's approvals and conditions of approval. Staff and the City Attorney have worked with the Applicant's attorney to draft the development agreement. Once approved, the development agreement will be recorded at Hennepin County.

CITY OF WAYZATA
PUD and Project Development Agreement

THIS PUD AND PROJECT DEVELOPMENT AGREEMENT (“Agreement”) made this ____ day of _____, 2015, by and between the City of Wayzata, a Minnesota municipal corporation (“City”), on the one hand, and Garrison Landing, LLC, a Minnesota limited liability company (hereinafter the “Developer”), and Haglund’s Corner, LLC, Minnesota limited liability company (hereinafter the “Owner”) of the properties located at 236 Minnetonka Avenue South and 240 Minnetonka Avenue South and 519 Indian Mound East, Wayzata, Minnesota, on the other (the City, the Owner, and the Developer are hereafter each referred to as a “Party” and collectively referred to as the “Parties”), regarding property located at 236 Minnetonka Avenue South, 240 Minnetonka Avenue South, and 519 Indian Mound East, Wayzata, Minnesota that has been approved by the City of Wayzata for redevelopment pursuant to Resolution No. 07-2015, attached as Exhibit B, (the “City Resolution”) and Ordinance No. 751 (the “Ordinance”), attached as Exhibit C. The City Resolution and the Ordinance are incorporated herein by reference.

In consideration of One Dollar (\$1.00) and other good and valuable consideration, including the foregoing and the terms set forth herein, the parties agree as follows:

1. Terms.

A. The Project. The project to be constructed by the Developer involves tearing down existing commercial structures on the Property, and constructing a new mixed use building of 45, 227 square feet (SF) with 3,000 SF of retail located half below grade and ten (10) residential condominium units in three stories (collectively, the “Project”).

B. The Property. The legal descriptions of the properties that have received the approvals for the Project are attached hereto as Exhibit A, and the street addresses and property identification numbers of the properties (collectively, the “Property”) are:

Address	Property ID number
236 Minnetonka Ave S	06-117-22-24-0064
240 Minnetonka Ave S	06-117-22-23-0065
519 Indian Mound	06-117-22-24-0066

C. Planned Unit Development (“PUD”) General Plan Approval Conditions and Other Standards; Amendment of Prior Agreement. Subject to the terms and conditions set forth in the City Resolution which is attached hereto as Exhibit B, the City Council of the City of Wayzata has granted Developer approval of a PUD General Plan for the Project (the “PUD”).

D. Operations. The Property and the PUD shall at all times be used, and be managed and operated, by Developer in accordance with the specific terms and conditions of this Agreement, the City Resolution and Ordinance. The Developer shall ensure that all Property is used and managed according to the requirements of this Agreement, and other agreements and covenants referenced in this Agreement, and all other applicable laws and regulations.

2. Developer. Notwithstanding any language to the contrary herein, “Developer” shall mean Garrison Landing, LLC, a Minnesota limited liability company, until such time as the fee title is transferred to another entity or person, at which time Garrison Landing, LLC shall be released from all obligations hereunder, so long as (i) the City consents to the assignment in writing, in its sole discretion, which consent shall not be unreasonably withheld, conditioned, or delayed; and (ii) the new owner or owners, in writing, assumes the obligations of the Developer hereunder in a document approved, in writing, by the City. Thereafter the new fee owner or owners shall be the “Developer” as to the applicable portion of the Property for the purposes of this Agreement.

3. Definition and Amendment of Plans. The City, pursuant to the City Resolution and Ordinance, has approved the concurrent preliminary and final plat for combination of three (3) lots into one (1) lot, Elevator Penthouse CUP, Project Design Review, Site Plan Review, Rezoning to PUD, and PUD Concept and General Plan for the Property, including the development plans and specifications, and the mixed use building design, which are attached to the City Resolution as Attachment A and are on file with the City (the “Plans”). The Plans are hereby made part of this Agreement. The Developer shall develop the Property within the PUD in material accordance with the Plans and in accordance with this Agreement. The Developer may seek approval of changes to the Plans from the Wayzata City Council according to the requirements of the Wayzata City Code, though the City Council shall not be required to approve such changes. If the City Council approves such changes, the changes shall become amendments to the Plans. No material changes (i.e. changes that will significantly change the configuration, land use or character of the Project) to the Plans may be implemented until such changes have been approved by the City Council according to the requirements of the Wayzata City Code and this Agreement. To the extent required by one of the Parties, the other Party shall execute an agreement acknowledging any amendment to this Agreement or the Plans and record the same in the land records office for Hennepin County. The Developer must also obtain any necessary “City Permits”, which shall include but not be limited to the following: 1) building permits, 2) grading permits, 3) sign permits, and 4) fence permits prior to commencing any construction activity on the Property. City Permits will be issued only if Developer (i) meets the general requirements for such permits and (ii) is in material compliance with this Agreement.

4. Water and Sewer Charges. Before a building permit is issued for the construction of the structure on the Property, the applicant of the building permit shall pay to the City any sanitary sewer and water connection charges based on the Metropolitan Council Environmental Services (“MCES”) sewer availability charge (“SAC”) units and rates as determined by the MCES. The City reserves the right to increase the fees prior to the time at which the fees to the City and the MCES are paid if, and only to the extent, such increase reflects the City and MCES rates in effect at the time the building permit is issued and the fee paid. The City will credit the Developer for any SAC units and WAC units against the aforesaid sanitary sewer and water

connection charges as and to the extent any such credits are determined by the MCES; it being acknowledged that such credit(s) will correspond to the prior assessments or charges on which water and sanitary sewer have been paid on the Property, including the existing commercial structures that were present on the Property prior to the Project approval.

5. **Maintenance Costs.** The Developer shall maintain, and be liable for the cost of constructing and maintaining all parking and vehicular traffic ways, and any improvements thereto, in each case as depicted in the Plans.

6. **Responsibility for Cost of Improvements.** The Developer shall, at its cost, install, in accordance with the Plans, the building permit(s) issued by the City for the Project, and in accordance with all applicable City ordinances and standards, all the improvements set forth in the Plans to be constructed on the Property and shall be responsible, at its sole cost, for site grading, surveying and staking, as needed, the setting of lot and block monuments, as needed, for all lots. The City shall not install or pay for any of the improvements associated with the Plans.

7. **Encroachment and Easements.** The Developer shall enter into a Public Right-of-Way Encroachment Agreement with the City, in the form attached hereto as Exhibit E (the “Encroachment Agreement”), regarding the proposed below grade retail area, of which, a portion is located on City Right-of-Way, as depicted in the Plans (the “Encroachment Area”). The Developer shall be responsible for the installation, on-going maintenance, and snow removal for the Encroachment Area in accord with the Encroachment Agreement.

8. **Site Grading and Stormwater Maintenance.**

A. **Grading.** All site grading for the Project must be done in material compliance with the Plans, the site grading plan and the grading permit. Within 60 days after completion of the grading, the Developer shall provide the City with an “as constructed” grading drawing and a certification by a registered land surveyor or engineer that all elements of the grading, including those associated with the storm water maintenance, have been constructed in accordance with the Plans. The “as constructed” drawing shall include field-verified elevations of the location and elevations along all swales and ditches and lot corners and building pads and all other details customarily found on such drawings. The City may withhold issuance of any certificate of occupancy for any improvement in the Project until the approved certified grading plan is on file with the City. All erosion control measures shall be in place as determined by the City in its reasonable discretion prior to commencement of building construction.

B. **Storm Water Best Management Practices (BMPs) Improvements and Maintenance.**

1. **Stormwater Devices.** The Developer has proposed that storm water within the Project be handled through a pervious paver system for the parking area and commercial patio with an associated EcoStorm stormwater treatment system (collectively, the “Stormwater System”) (as depicted on Exhibit D). The Stormwater System will be owned and maintained by the Developer and/or the Unit Owners’

Association(s) (whether one or more ,“UOA”), and will not be transferred to the City.

2. Storm Water Maintenance. The Developer, shall inspect and maintain, at its cost, the installation and maintenance of the under ground storage tank until such time that the UOA assumes its responsibilities, as agreed to in the Stormwater Maintenance Agreement executed by the Developer, which shall be in the form attached hereto as Exhibit D (“Stormwater Maintenance Agreement”). The Developer’s duties, and the City’s rights, regarding the Stormwater System are set forth in the Stormwater Maintenance Agreement.

9. Access During Construction. Prior to construction, the Developer shall secure any necessary temporary construction easements from the owners of properties adjacent to the Property. Access to any existing easements benefitting the City located on the Property shall remain in existence during construction and all other phases of the Project.

10. Clean Up. Prior to issuance of any certificate of occupancy (“CO”) by the City for any lot within the Property, the Developer shall remove from the lot, any trash, waste, excess soil, earth or debris resulting from construction work and not necessary for the completion of construction on said lot as contemplated by the Plans and as directed by the City.

11. Hazardous Waste. The Developer agrees that prior to or during grading and site redevelopment work, it shall completely remove and/or remediate any hazardous waste, and any contaminated soil or contaminated ground water from the Affected Parcels, if any is discovered, if and to the extent required by the Minnesota Pollution Control Agency and shall furnish the City with documented approval by such Agency of completion prior to the issuance of any certificate of occupancy for any “Affected Parcels,” which are defined as the lot and public rights of way within the Project that contain any hazardous waste, contaminated soil or contaminated ground water.

12. Warranties, Representations and Other Assurances. The Developer represents to the City that, with respect to itself (and with respect to its agents, if any, to its actual knowledge) no material misrepresentations have been or will be made, nor has any materially inaccurate information been knowingly provided to the City by the Developer during the City’s review process.

13. Security. The Developer shall furnish the City with an irrevocable letter of credit, cash deposit, or a payment and performance bond, in its discretion, (the “Surety”) in an amount equal to Nine Thousand Nine Hundred Dollars (\$9,900.00), being 125 percent of estimated actual construction costs of the public sidewalks on the Property, being the only public improvements required by the Plans (“Public Improvements”) and the below-referenced Site Improvements, which Surety amount shall not include, without limitation, (i) any City administration, oversight and inspection costs of all utility improvements within a public right-of-way (which are due at the time of issuance of the building permit), including, without limitation, water, sanitary sewer, storm sewer, and landscaping as set forth in the Plans (“Site Improvements”), or (ii) costs of any building structure, management and any other improvements not located in the City right-of-way (“Private Improvements”). If application for a building permit is not made within six (6) months

following the date of this Agreement, the final amount of the Surety shall be subject to adjustment as reasonably delivered by the City Manager, at the time of issuance of the building permit and will be adjusted to reflect the above costs at that time. The issuer of the Surety, if a letter of credit or payment and performance bond, if applicable, shall be subject to the approval of the City Manager. The letter of credit or payment and performance bond, if applicable, shall be in force until all of the Public Improvements under this Agreement have been fully completed, and fully tested, inspected and accepted by the City, and all warranty periods provided for by this Agreement have expired. The letter of credit or payment and performance bond, if applicable, may be for a one year term, provided it is automatically renewable for successive one year periods from the present or any future expiration dates, unless sixty (60) days prior to an expiration date, the bank or bond issuer (as the case may be) notifies the City that it elects not to renew for an additional period. The Surety shall secure compliance of the completion of the Site Improvements. The City may draw on the cash deposit or letter of credit or make a claim on the payment and performance bond, as applicable, with five (5) business days' written notice to Developer, if the Developer fails to complete the Site Improvements within thirty (30) days after the issuance of the Certificate of Occupancy for the Project, provided however, that the City shall not draw on such letter of credit or cash deposit or make a claim on the bond, if within such notice period, Developer commences and diligently pursues to completion a cure in a manner satisfactory to the City. With City approval, the final amount of the Surety may be reduced from time to time as obligations of Developer under this Agreement secured by such Surety are satisfied. The amount of such reduction shall equal the lesser of the cost or value of the obligation satisfied, provided however, that the remaining amount after any such reductions shall be sufficient to fund the remaining Site Improvements.

14. License. The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all necessary work as provided below in regard to the Site Improvements and/or inspections deemed appropriate by the City, provided that the City shall take no action on the Property to cure Developer's default without first providing the notice and cure rights provided under this Agreement. The license shall expire after all the improvements required by this Agreement have been inspected and accepted by the City. Only in regard to the Site Improvements, if the Developer fails to pay or perform its obligations under this Agreement after notice and expiration of any cure period, then the City may enter the Property and pay or perform such obligations and obtain payment for the expenses thereof from the proceeds of the Surety. Among other expenditures, the City may draw upon the Surety to satisfy any valid claims for payment of labor and materials costs for the Public Improvements by contractors or suppliers engaged by the Developer to complete the Public Improvements that have not been duly paid by the Developer, as, and only to the extent of, any final, unappealable judgment therefor against Developer issued by a court of competent jurisdiction. After the Surety has been provided to the City Manager in the form described in Section 14 of this agreement, the City hereby grants to the Developer, its agents, employees, officers and contractors the right to enter upon any of the Property that the Developer is deeding or dedicating to the City and upon any public right-of-way for purposes of performing any of the work described in the Plans.

15. Construction Deadlines.

A. The Developer shall begin physical implementation of the PUD within twelve (12) months following adoption of the City Resolution, as amended (the “Commencement Date”), unless Developer obtains an extension for the PUD as provided for in the City Zoning Ordinance, in which case the date specified in the extension approval resolutions for such extensions shall be the Commencement Date.

B. The Developer shall complete construction of all the Public Improvements no later than thirty (30) months after commencement of site grading.

C. If the Developer fails to reasonably satisfy one or more of the deadlines provided for in this Section, then unless otherwise extended by the City, such failure shall constitute, among other things, an “Event of Default” hereunder.

16. Responsibility for Costs.

A. Except as otherwise specified herein, the Developer shall pay all documented costs incurred by it or the City in conjunction with the approval of the Project and ensuring compliance with the Plans, including but not limited to reasonable legal, planning, engineering and inspection fees and expenses incurred in connection with approval and acceptance of the PUD, the preparation of this Agreement and other legal documents, and all reasonable costs, expenses, legal, engineering and planning fees incurred by the City in reviewing the application and related documents, and in monitoring and inspecting the progress of the Project.

B. The Developer shall indemnify and hold the City and its officers, employees and agents harmless from claims made by Developer for damages sustained or costs directly incurred resulting from development of the Project, construction and operation, except for such damages or costs resulting from the negligence, intentional misconduct or intentional violation of this Agreement or applicable laws and ordinance by the City, or its officers or employees.

C. The City shall indemnify and hold the Developer and its officers, employees and agents harmless from claims for damages sustained or costs directly incurred resulting from the gross negligence, intentional misconduct or intentional violation of this Agreement or applicable laws and ordinance by the City, or its officers or employees.

D. The Developer shall reimburse the City for reasonable costs incurred by the City in the enforcement of Developer’s obligations under this Agreement, including engineering, building official, planning and attorney’s fees, and for the City’s performance of Developer’s obligations under this Agreement in the event that the Developer fails to commence or complete such obligations on a timely basis to the extent the City is entitled under this Agreement to perform Developer’s said obligations.

E. The Developer shall pay in full all documented bills submitted to it by the City for obligations properly incurred by the City under this Agreement within sixty (60) days after receipt; if the bills are not paid on time, the City may halt all development work and

construction on the Property until the bills are paid in full, and may draw on the Surety to discharge such obligations. Bills not paid within sixty (60) days shall accrue interest at the rate of eight percent (8%) per year.

17. Events of Default. The following shall be “Events of Default” under this Agreement:

- i. Failure by the Developer to pay when due and invoiced the amounts required to be paid by Developer under any provision of this Agreement.
- ii. Failure by the Developer to observe and substantially perform any covenant, condition or obligation on its part to be observed or performed under this Agreement.

18. Remedies of Default. Whenever any Event of Default occurs and the Developer fails to cure such default within (i) ten (10) days after receipt of written notice of a monetary default by the City; or (ii) thirty (30) days after receipt of written notice by the City of a non-monetary default, or such longer period as may be reasonably necessary to cure such non-monetary default so long as the Developer has acted promptly and pursued such cure with diligence; or (iii) in the case of an emergency (meaning an imminent threat to human health or the environment) such shorter period of time as may be reasonable under all of the circumstances, then the City may, in addition to any other remedies or rights available to the City at law or equity and those specifically given the City under this Agreement or its ordinances, take any one or more of the following actions:

- i. Perform or hire a third party to perform for the account of the Developer any obligation of the Developer to complete the Site Improvements (as defined in Section 13 of this Agreement) The Developer shall promptly reimburse the City for any reasonable expense incurred by the City. This Agreement is a license for the City to exercise its inspection and cure rights hereunder related to the Site Improvements, and it shall not be necessary for the City to seek a Court order for permission to enter the Property or to act in accordance with this Agreement. When the City does any work as allowed herein, the City may, in addition to its other remedies, assess any unreimbursed costs, in whole or in part, against that portion of the Property owned by the Developer and such portion of the Property shall be deemed to have benefited from the work in the reasonable amount expended by the City to perform such work.
- ii. Withhold approval of any permit with respect to that portion of the Property owned by the Developer, including building permits.
- iii. File a claim on Surety benefitting the City to pay for the cure of the default.
- iv. Require the Developer to discontinue work on that portion of the Property by the Developer until such time as the Event of Default has been cured.

- v. Assess against that portion of the Property owned by the defaulting Developer, except any reasonable costs provided for herein and incurred by the City due work necessary to the breach of this Agreement by the defaulting Developer and not theretofore reimbursed by the defaulting Developer and that portion of the Property owned by the defaulting Developer shall be deemed to have benefited in the amount and to the extent of such costs cure the Event of Default.

19. Conformance with Laws. The Developer shall comply with the terms of this Agreement and all applicable local, state, and federal laws and regulations applicable to the development of that portion of the Property owned by the Developer.

20. Miscellaneous.

A. The Developer represents to the City that to the best of Developer's knowledge, the Project complies with all county, metropolitan, state and federal laws and regulations, and the Developer has no knowledge of any violations by the Project or Developer of applicable City Subdivision Ordinances, City Zoning Ordinances, or environmental regulations (as the same may have been modified by the City Resolution).

B. Only the Developer, and any successor or assign thereof who assumes the obligations of the Developer hereunder according to the requirements of this Agreement and in a form acceptable to the City, shall have recourse against the City under this Agreement.

C. If any portion, section, sub-section, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portions of this Agreement.

D. The action or inaction of the City shall not constitute a waiver of or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. No building permit or certificate of occupancy shall be issued which conflicts with the requirements of this Agreement. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

E. This Agreement, any amendments hereto, and conditions of the City Resolution and Ordinance are binding on all successors and assigns and shall run with the Property. The Developer and its successors and assignees are liable under this Agreement with respect to the obligations of the Developer until the Certificate of Completion described below is issued for the Project. The Developer may not assign this Agreement, without written consent of the City Council, which shall not be unreasonably withheld, prior to issuance of the Certificate of Completion described below provided however that the Developer may conditionally assign its rights and obligations under this Agreement to any lender who is providing financing to fund the cost of work as shown in the Plans. The Developer shall provide the City with a recorded copy of this Agreement, and any

amendments thereto, as soon as they are available. No building permits shall be issued until (i) evidence of such recording acceptable to the City has been provided by the Developer, and (ii) Developer has obtained and recorded agreements by all parties holding fee interest in the Property prior to recordation of this Agreement, and any mortgage holders, agreeing that their interest in the Property is subject to the terms and conditions of this Agreement.

F. After (i) the Developer has completed all of the work required by this Agreement, (ii) the City has inspected, approved and accepted ownership of all public improvements, and (iii) all warranty periods provided for in this Agreement have expired, then, at the Developer's request, the City will execute and deliver to the Developer a Certificate of Completion in recordable form evidencing performance by Developer of its obligations hereunder, subject to:

- i. Any representation or warranties, which may be in effect subsequent to the date of completion; and
- ii. Any other obligations specifically identified in such Certificate as having not been performed.

Any obligations imposed by this Agreement not certified as having been satisfied in such Certificate of Completion, and all warranties and representations of the Developer, shall remain the ongoing obligation of the Developer and its successors and assigns. Any subsequent owner of any portion of the Property shall be subject to all the restrictions and obligations contained herein to the extent that such restrictions and obligations have not been satisfied by the Certificate of Completion. Notwithstanding any provision of this Agreement to the contrary, from and after the time the Project or any part thereof, is established as a condominium pursuant to Minnesota Statutes Chapter 515B, no person or entity who is a condominium unit owner (other than Developer, to the extent Developer is a unit owner) and no person or entity who holds a security interest in a condominium unit shall have any personal liability or obligation for the performance of Developer's obligations or Developer's liabilities hereunder other than those obligations and liabilities, if any, that may only be performed or satisfied in whole, or in part, by such unit owner or security holder.

G. The City agrees that it will, from time to time and within ten (10) business days after request by either Developer or a subsequent owner of any portion of the Property, execute and deliver to the requesting party a compliance certificate (addressed to the requesting party and such other parties as the requesting party may designate) certifying to the City's actual knowledge (to the extent the following is true) (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, the same is in full force and effect as so modified), (ii) that there have been no defaults hereunder (or specifying any claimed defaults), (iii) that the Developer has completed its development and construction obligations hereunder, and (iv) such other matters as may be reasonably related to this Agreement.

H. Each right, power or remedy herein conferred upon either party is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to such party at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to the party having such right, power and remedy and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

I. This Agreement for the Project must be recorded in the appropriate Hennepin County land records at the expense of the Developer and a copy of the recorded executed Agreement provided by the Developer to the City.

J. The Developer warrants and represents that it has had the benefit of competent legal and other professional counsel on the Project, the Application process and this Agreement, and is entering freely into this Agreement with full understanding of its obligations, covenants, and other terms.

K. The Developer agrees to take out and maintain or cause to be taken out and maintained until a Certificate of Completion has been issued for the Project, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its contractors or subcontractors. Limits for bodily injury and death shall be no less than \$1,000,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence; or a combination single limit policy of \$2,000,000 or more. The City shall be named as an additional insured on the policy. The Developer shall file with the City a certificate evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given 30 days advance written notice of the cancellation of the insurance.

21. Effect of Development Approval. Notwithstanding any provision of this Agreement to the contrary, to the full extent permitted by State laws, any further development or construction of new improvements and any additions or alterations to improvements not expressly approved under this Agreement will require additional approvals from the City, as required by City ordinances, and in full compliance with any amendments to the City's Comprehensive Plan or Zoning Ordinance requirements enacted after the date of this Agreement.

22. Notices. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified or registered mail at the following address:

Garrison Landing, LLC
4906 Lincoln Drive
Edina, MN 55436-1071
Attn: Gary Kraemer – Chief Manager

Required notices to the Owner shall be in writing, and shall be either hand delivered to the Owner, its employees or agents, or mailed to the Owner by certified or registered mail at the following address:

Haglund's Corner, LLC
5515 County Road 151
Mound, MN 55364

Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by registered or certified mail in care of the City Manager at the following address:

Attention: City Manager
Wayzata City Hall
600 East Rice Street
Wayzata, MN 55391

[Remainder of page intentionally left blank; signatures follow]

DEVELOPER:

Garrison Landing, LLC

By: _____
Gary Kraemer, its Chief Manager

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____ 2015, by Gary Kraemer, the Chief Manager of Garrison Landing, LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public

OWNER:

Haglund's Corner, LLC

By: _____
Its: _____

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____ 2015, by _____, the _____ of Haglund's Corner, LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public

THIS INSTRUMENT DRAFTED BY:

City of Wayzata
600 E. Rice Street
Wayzata, MN 55391

LIST OF EXHIBITS

- Exhibit A – Legal Description of Property
- Exhibit B – City Council Resolution No. 07-2015
- Exhibit C – City Ordinance 751
- Exhibit D – Stormwater Maintenance Agreement
- Exhibit E – Public Right-of-Way Encroachment Agreement

EXHIBIT A
Legal Description of Property

Existing Legal Description:

Parcel 1: The Southwesterly 60 feet of the Northeasterly 115 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Parcel 2: The Southwesterly 50 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Parcel 3: Lot 5, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Approved Final Plat Description:

LOT 1, BLOCK 1, KRAEMER WAYZATA ADDITION, Hennepin County, Minnesota.

RESOLUTION NO. 07-2015

**RESOLUTION APPROVING AN APPLICATION FOR CONCEPT/GENERAL PLAN
PUD AND REZONING, CONCURRENT PRELIMINARY AND FINAL PLAT,
SHORELAND CUP, BUILDING SETBACK VARIANCES, CONDITIONAL USE
PERMIT FOR ELEVATOR PENTHOUSE, PROJECT DESIGN REVIEW AND SITE
PLAN REVIEW AT 236 MINNETONKA AVE S, 240 MINNETONKA AVE S, AND 519
INDIAN MOUND**

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

Section 1. BACKGROUND

- 1.1 Project. John Adams, representing John Kraemer & Sons, and Haglund's Corner LLC (collectively, the "Applicant") has submitted an application (the "Application") for approval of a Concurrent Concept and General Plan Planned Unit Development (PUD) (the "Proposed PUD"), a concurrent preliminary and final plat for a lot combination of commercial property (the Plat" or "Proposed Subdivision"), a Shoreland Conditional Use Permit (CUP) (the "Shoreland CUP"), a variance for building height above thirty five (35) ft in a PUD District (the "Building Height Variance"), , a conditional use permit for elevator penthouse above forty (40) ft (the "Mechanical CUP") , building and site setback variances (collectively, the "Setback Variance"), approval of Project Design ("Project Design") and approval of a site plan ("Site Plan") to redevelop the properties at 236 Minnetonka Ave S, 240 Minnetonka Ave S, and 519 Indian Mound (collectively, the "Property").

The Applicant's proposed new a mixed use building of 45,227 SF with 3,000 SF of retail located half below grade and ten (10) residential condominium units in three stories (collectively, the "Project").

- 1.2 Application Requests. As part of the Application, the Applicant is requesting approval of the following items:
- A. Concurrent Concept and General Plan Planned Unit Development (PUD) under Section 801.33.
 - B. Rezoning to PUD District.
 - C. Concurrent Preliminary and Final Plat Subdivision to combine lot lines under Chapter 805.
 - D. Shoreland Conditional Use Permit for Impervious Surface coverage above twenty five percent (25%) under Section 801.91.
 - E. Variance for Building Height above thirty five (35) ft and three (3) stories under Section 801.33.2.A.14.
 - F. Variance from Section 801.75.6 for ten (10) ft Building Setback to allow zero (0) ft setbacks on west and south building facades.

Exhibit B

- G. Variance from Section 801.20.9.C to allow less than a ten (10) ft parking area setback.
- H. Variance from Section 801.20.9.E.8 to allow less than a ten (10) ft curb cut spacing from the side yard lot line.
- I. Conditional Use Permit (CUP) under Section 801.19.2.B for stairs and elevator penthouse taller than five (5) ft to a height of ten (10) and fifteen (15) ft, respectively.
- J. Project Design Review for a commercial structure under Section 801.09.
- K. Site Plan Review under Section 801.22.
- L. City Council approval of City Right of Way encroachment for outdoor patio area.

- 1.3 Property. The property identification numbers and owners of the parcels comprising the Property are:

236 Minnetonka Ave S	06-117-22-24-0064	Haglund's Corner LLC
240 Minnetonka Ave S	06-117-22-24-0065	Haglund's Corner LLC
519 Indian Mound	06-117-22-24-0066	Haglund's Corner LLC

- 1.4 Land Use. The Property is located within the C-1 Office and Limited Commercial District, as defined in Section 801.75 of the Wayzata Zoning Ordinance. The Property is guided for Mixed Use Commercial in the Wayzata Comprehensive Plan.

- 1.5 Notice and Public Hearing. Notice of a public hearing on the Application was published in the *Sun Sailor* on December 11, 2014. A copy of the notice was mailed to all property owners located within 350 feet of the Property on December 5, 2014. The required public hearing was held at the December 15, 2014 Planning Commission meeting.

- 1.6 Planning Commission Action. Planning Commission Action Summary. The Planning Commission reviewed the Application and held a Public Hearing on December 15, 2014. Four (4) individuals spoke on the Application during the Public Hearing. The Planning Commission directed staff to develop a draft *Planning Commission Report and Recommendation* recommending approval of the Application on a vote of four (4) in favor and three (3) opposed. The Planning Commission adopted the Planning Commission Report and Recommendation recommending approval of the Application on January 5, 2015 on a vote of four (4) in favor and one (1) opposed, with those who had previously voted no on the Application, restating their reasons for voting no on the record, but voting to adopt the Planning Commission Report and Recommendation only to facilitate moving the Application onto City Council for review.

Section 2. STANDARDS

2.1 Planned Unit Development – General Standards – 801.33.1

Purpose. Section 801.33 of the Zoning Ordinance provides for the establishment of Planned Unit Developments to allow greater flexibility in the development of neighborhoods and/or non residential areas by incorporating design modifications as part of a PUD conditional use permit or a mixture of uses when applied to a PUD District. The PUD process, by allowing deviation from the strict provisions of the Zoning Ordinance related to setbacks, lot area, width and depth, yards, etc., is intended to encourage:

- A. Innovations in development to the end that the growing demands for all styles of economic expansion may be met by greater variety in type, design, and placement of structures and by the conservation and more efficient use of land in such developments.
- B. Higher standards of site and building design through the use of trained and experienced land planners, architects, landscape architects, and engineers.
- C. More convenience in location and design of development and service facilities.
- D. The preservation and enhancement of desirable site characteristics such as natural topography and geologic features and the prevention of soil erosion.
- E. A creative use of land and related physical development which allows a phased and orderly development and use pattern.
- F. An efficient use of land resulting in smaller networks of utilities and streets thereby lower development costs and public investments.
- G. A development pattern in harmony with the objectives of the Wayzata Comprehensive Plan. (PUD is not intended as a means to vary applicable planning and zoning principles.)
- H. A more desirable and creative environment than might be possible through the strict application on zoning and subdivision regulations of the City.

2.2 Planned Unit Development – General Standards – 801.33.2

- A. General Standards. Section 801.33.2.A of the Zoning Ordinance sets forth the general standards for review of any PUD application. These are:

Exhibit B

1. Health Safety and Welfare. The Council shall evaluate the effects of the proposed project upon the health, safety and welfare of residents of the community and the surrounding area.
2. Intent and Purpose of PUDs. The Council shall evaluate the project's conformance with the overall intent and purpose of Section 33 of the Zoning Ordinance.
3. Ownership. An application for a PUD District or conditional use permit approval must be filed by the land owner or jointly by all land owners of the property included in a project.
4. Comprehensive Plan. The proposed PUD must be consistent with the City's Comprehensive Plan.
5. Sanitary Sewer Plan. The proposed PUD must be consistent with the City's Sanitary Sewer Plan and not create a discharge which is in excess of the City's assigned regional limitations.
6. Common Space. The proposed PUD must provide common private or public open space and facilities at least sufficient to meet the minimum requirements established in the Comprehensive Plan and such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residents of the PUD.
7. Common Space Operating and Maintenance Requirements. Whenever common private or public open space or service facilities are provided within a PUD, the PUD plan must contain provisions to assure the continued operation and maintenance of such open space and service facilities to a predetermined reasonable standard. Common private or public open space and service facilities within a PUD must be placed under the ownership of one of the following, as approved by the City Council: (i) dedicated to the public, where a community-wide use is anticipated, (ii) Landlord control, where only tenant use is anticipated, or (iii) Property Owners Association, provided the conditions of 801.33.2.A.6.c are met.
8. Staging of Public and Common Open Space. When a PUD provides for common private or public open space, and is planned as a staged development over a period of time, the total area of common or public open space or land escrow security in any stage of development shall, at a minimum, bear the same relationship to

the total open space to be provided in the entire PUD as the stages or units completed or under development bear to the entire PUD.

9. Density. The proposed PUD must meet the density standards agreed upon by the applicant and City, which must be consistent with the Comprehensive Plan.
10. Utilities. All utilities associated with proposed PUD must be installed underground.
11. Utility Connections. All utilities associated with proposed PUD must meet the utility connection requirements of Section 801.33.2.A.10.
12. Roadways. All roadways associated with the proposed PUD must conform to the Design Standards and Wayzata Subdivision Regulations, unless otherwise approved by City Council.
13. Landscaping. All landscaping associated with the proposed PUD must be according to a detailed plan approved by the City Council. In assessing the plan, the City Council shall consider the natural features of the particular site, the architectural characteristics of the proposed structure and the overall scheme of the PUD plan.
14. Setbacks. The front, rear and side yard restrictions on the periphery of the Planned Unit Development site at a minimum shall be the same as imposed in the underlying districts, if a PUD conditional use permit, or the previous zoning district, if a PUD District. No building shall be located less than fifteen (15) feet from the back of the curb line along those roadways which are part of the internal street pattern. No building within the PUD project shall be nearer to another building than one-half (1/2) the sum of the building heights of the two (2) buildings. In PUD Districts for parcels that were zoned commercial prior to PUD and which exceed 13 acres, the allowable setbacks shall be as negotiated and agreed upon between the applicant and the City.
15. Height. The maximum building height to be considered within a PUD District shall be thirty five (35) feet and three (3) stories, whichever is lesser. There shall be no deviation from the height standards applied within the applicable zoning districts for PUD conditional use permits. In PUD Districts for parcels that were zoned commercial prior to PUD and which exceed 13 acres, the maximum allowable height and number of floors shall be as negotiated and agreed upon between the applicant and the City.

- 2.3 Residential and Non-Residential PUD Standards – Section 801.33.3 and 4. Sections 801.33.3 and 4 set forth lot area, minimum frontage, municipal water and sewer availability, roadway and parking standards for PUDs which have a residential and non-residential components. In addition to the standards set forth in these sections, City Council may impose such other standards for a PUD project as are reasonable and as the Council deems are necessary to protect and promote the general health, safety and welfare of the community and the surrounding area.
- 2.4 PUD Procedure.
- A. Concept Plan Approval Non-Binding. Concept Plan approval is the first step in a multi-stage process of an application for a PUD. Concept Plan approval in no way binds the City to subsequent approval of a General Plan of Development or other approvals that may be required. Section 801.33.5.B.
 - B. Application Contents. An application for approval of a Concept Plan of development for a PUD project must contain the information and materials listed in Section 801.33.5.C.
 - C. Planning Commission Review and Recommendation. Within sixty (60) days following the public hearing on any an application, the Planning Commission shall forward a report on the application to the City Council, and it shall recommend (i) approval of the application as submitted, (ii) approval of the application subject to certain modifications or conditions therein, or (iii) disapproval of the application. Section 801.33.5.C.13.
- 2.5 Standards for Rezoning. Under the City's Zoning Ordinance, the City Council acts on any proposed amendment upon receiving the report and recommendation of the Planning Commission. Section 801.03.2. In considering a proposed amendment to the Zoning Ordinance, the Planning Commission shall consider the possible adverse effects of the proposed amendment. Its judgment shall be based upon (but not limited to) the following factors:
- A. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
 - B. The proposed use's conformity with present and future land uses of the area.
 - C. The proposed use's conformity with all performance standards contained herein (i.e., parking, loading, noise, etc.).
 - D. The proposed use's effect on the area in which it is proposed.

- E. The proposed use's impact upon property value in the area in which it is proposed.
- F. Traffic generation by the proposed use in relation to capabilities of streets serving the property.
- G. The proposed use's impact upon existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity.

2.6 Zoning Ordinance Variance Standards. Section 801.05.1.C of the Zoning Ordinance provides the criteria for reviewing variances from the standards of the Zoning Ordinance. The criteria are as follows:

- A. Variances shall only be permitted when they are:
 - (i) in harmony with the general purposes and intent of the Zoning Ordinance; and
 - (ii) consistent with the Comprehensive Plan.
- B. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance.
- C. "Practical difficulties" as used in connection with the granting of a variance, means that:
 - (i) the property owner's proposal for the property is reasonable but not permitted by the Zoning Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.
- D. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- E. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes, section 216C.06, subdivision 14, when in harmony with the Zoning Ordinance.
- F. The City Council shall not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zoning district where the affected person's land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.
- G. The City Council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

- H. An application for a variance shall set forth reasons that the variance is justified under the applicable criteria of the Zoning Ordinance in order to make reasonable use of the land, structure or building.

2.7 Subdivision / Preliminary and Final Plats.

Chapter 805 of the Wayzata City Code, (the "Subdivision Ordinance") sets forth the procedure and substantive review criteria for applications for a subdivision. Before any plat can be recorded or of any validity, it must be referred to the City Planning Commission and approved by the City Council as having fulfilled the requirements of the Subdivision Ordinance. Section 805.03. Section 805.15 of the Wayzata Subdivision Ordinance allows the City to review a proposed preliminary and final plat simultaneously. Under Section 805.14.e of the Subdivision Ordinance, the Planning Commission must consider the possible adverse effects of a preliminary plat and report its findings and recommendation to City Council. Its judgment must be based upon, but not limited to, the following factors:

- A. Goals. Under Section 805.2.b of the Subdivision Ordinance, subdivisions approved under the Subdivision Ordinance must be guided by the following:
 - 1. Preserve and enhance Wayzata's "small town" character (Comprehensive Plan).
 - 2. Respect the existing scale, character and pattern of the City, recognizing existing neighborhoods and commercial areas (Wayzata Physical Plan).
 - 3. Support a pedestrian environment at a human, not automotive scale (Wayzata Physical Plan).
 - 4. Relate development/redevelopment to the natural characteristics of the land to enhance the development through the preservation of attractive natural amenities (i.e., lakes, wetlands, creeks, wooded areas, slopes, etc.) (Comprehensive Plan).
- B. Criteria for Approval. Under Section 805.14.e of the Subdivision Ordinance, the Planning Commission must consider the possible adverse effects of a preliminary plat and report its findings and recommendation to City Council. Its judgment must be based upon, but not limited to, the following factors:
 - A. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.

Exhibit B

- B. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.
- C. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filing or grading.
- D. Existing stands of significant trees shall be retained where possible. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.
- E. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.
- F. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.
- G. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding neighborhood or commercial area.
- H. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.
- I. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the Downtown Architectural District, Commercial and Institutional Architectural Districts, and Residential Architectural Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.
- J. The proposed lot layout and building pads shall conform to all performance standards contained herein.
- K. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.

- L. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

2.8 Concurrent Preliminary/Final Plat.

Section 805.15 of the Subdivision Ordinance allows the City to review the preliminary and final plat simultaneously. The final plat shall incorporate all changes, modifications, and revisions required by the City. Otherwise, it shall conform to the approved preliminary plat.

- 2.9 Design Standards. The design of all new buildings and exterior improvements to the public side of nonresidential and/or multifamily buildings in Wayzata which clearly alter the appearance of a structure are subject to the review and approval of the Wayzata Planning Commission and City Council. City Code Section 801.09; Wayzata Design Standards Section 1.5. The relevant design criteria for the "Bluff District" are included in Section 801.09.

Based upon Staff and Planning Commission's review of the proposed design, there would be two (2) deviations requested from the design standards for this Project:

1. 801.09.5.A&B - Upper Story Setbacks – For 2nd and 3rd story
2. 801.09.15.1 – Parking Lot Landscaping – Along northern property line

- 2.10 Shoreland Impact Plan and Conditional Use Permit. Section 801.91.19 requires landowners or developers developing land in the Shoreland District to first submit a conditional use permit application in accordance with Section 801.04 (CUPs) and a Shoreland Impact Plan in accordance with Section 801.91.19A. The purpose of the Shoreland Impact Plan shall be to eliminate and minimize as much as possible potential pollution, erosion and siltation. All conditional use permits for consideration under Section 801.91.19 are subject to the following stipulations:

- A. The projects shall be analyzed to determine the impact of impervious surfaces, storm water runoff, floodplain, and water quality implications. Only those projects shall be allowed where the adverse impacts have been mitigated through approved means to the extent possible.
- B. Storm water treatment measures including, but not limited to, sediment basins (debris basins), desilting basins or silt traps, installation of debris guards and microsil basins on storm water inlets, oil skimming devices, etc. shall be required subject to the review of the City Engineer and the Minnehaha Creek Watershed District on projects where applicable.

Exhibit B

- C. Projects shall be analyzed in terms of provisions for maintenance and enhancement of landscape features, and change in the natural condition of the soil, trees, grade courses and marshes. The vegetative planting plan shall contain trees, when fully mature, that will exceed the building height. The plan shall also minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible. It shall further provide for the relocation or replanting of trees which are proposed to be removed.
- D. Projects shall be analyzed in terms of the appearance of the structure when viewed from the lake's surface. Building materials, and color shall be analyzed to determine which facade and roof materials minimize the appearance and blend the structure into the shoreland and vegetation.
- E. Building heights shall be analyzed to determine the impact on surrounding structures and views from the lake surface or other shores. Structures shall not be allowed to exceed a height beyond that is allowed by the base zoning district or cannot be screened by landscaping or other design measures.
- F. Residential densities on a project basis shall not be allowed to exceed the maximum allowed density of the base zoning district for which the project is proposed. For higher density residential development and planned unit developments, the density shall not be allowed to exceed the density standards as specified in the R-5 District of this Ordinance.
- G. Lot coverage on a project basis shall be restricted to the provisions for maximum impervious surface coverage as provided for in this Ordinance.
- H. Overall residential densities in the shoreland area shall not exceed the surplus development capacity for residential density, as calculated for Lake Minnetonka, Gleason and Peavey Lakes, as specified in the Wayzata Comprehensive Plan/Shoreland Management Plan, as may be amended.
- I. Overall lot coverage in the shoreland area shall not exceed the surplus development capacity for impervious surface coverage calculated for Lake Minnetonka, Gleason and Peavey Lakes, as specified in the Wayzata Comprehensive Plan/Shoreland Management Plan, as may be amended.
- J. All projects shall be in conformance with the Stormwater Management Plan for the City of Wayzata, May 1988, as may be amended and/or approved by the City Engineer.
- K. All projects shall be in conformance with the Wayzata Comprehensive Plan/Shoreland Management Plan, as may be amended.

- L. All projects shall be subject to the review of the Minnehaha Creek Watershed District.

In addition to the above conditions, the provisions of Section 801.04.2.F must be considered and satisfactorily met. Section 801.04.2.F requires City Council to consider possible adverse effects of the proposed conditional use. Their judgment shall be based upon (but not limited to) the following factors:

- A. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
- B. The proposed use's compatibility with present and future uses of the area.
- C. The proposed use's conformity with all performance standards contained herein (i.e., parking, loading, noise, etc.).
- D. The proposed use's effect on the area in which it is proposed.
- E. The proposed use's impact upon property values in the area in which it is developed.
- F. Traffic generated by the proposed use is in relation to capabilities of streets serving the property.
- G. The proposed use's impact upon existing public services and facilities including parks, schools, streets and utilities, and the City's service capacity.

2.11 Site Plan.

Site and construction plans must be submitted to and approved by the Building Official prior to the issuance of any building permit. Except in the case of individual single family uses and minor projects, additions or alterations as determined by the Zoning Administrator and all building and site plans as specified by Section 801.09 of this Ordinance shall be subject to review by the Planning Commission and approval by the City Council. All site and construction plans officially submitted to the City shall be treated as a formal agreement between the building contractor and the City. Once approved, no changes, modifications or alterations shall be made to any plan detail, standard or specifications without prior submission of a plan modification request to the Building Official for his review and approval. City Code Section 801.22.2-4.

Section 3. FINDINGS

The City Council of the City of Wayzata hereby confirms and memorializes that the Application requests outlined in Section 1.2 of this Resolution meet the applicable

requirements of Wayzata's Zoning and Subdivision Ordinances, based upon the following findings of fact made on the record (as well as all Application materials, staff reports, public comment presented at the hearing, and the Recommendation of the Planning Commission):

3.1 Proposed PUD.

- A. Intent and Purpose of PUDs. The Proposed PUD conforms with the overall intent and purpose of a PUD as outlined in Section 33 of the Zoning Ordinance.
- B. General Standards. The Proposed PUD satisfies all of the fourteen general standards listed in Section 801. 33.2.A and in Section 2.2 of this Resolution.
 1. Health Safety and Welfare; Intent and Purpose of PUDs. The Proposed PUD would not have a negative effect on the health, safety and welfare of residents of the community and the surrounding area. The Proposed PUD conforms with the overall intent and purpose of Section 33 of the PUD Ordinance.
 2. Ownership. The Applicant owns, or at the time of final approval will own, all of the property to be included in the Proposed PUD.
 3. Comprehensive Plan Consistency. The Proposed PUD is consistent with the City's Comprehensive Plan as the Property is guided for Mixed Use Commercial use.
 4. Sanitary Sewer Plan Consistency. The Proposed PUD is consistent with the City's Sanitary Sewer Plan.
 5. Common Open Space. Proposed PUD will provide common public open space in the northeast corner of the Property. As a condition of approval, provisions shall be in place to assure the continued operation and maintenance of such.
 6. Operating and Maintenance Requirements. As a condition of approval, the PUD plan for the Proposed PUD must contain provisions to assure the continued operation and maintenance of open space and service facilities to a predetermined reasonable standard, and the common private or public open space and service facilities within the Proposed PUD must be placed under the ownership of a Property Owners Association, provided the conditions of 801.33.2.A.6.c are met.

7. Staging of Public and Common Open Space. When a PUD provides for common private or public open space, and is planned as a staged development over a period of time, the total area of common or public open space or land escrow security in any stage of development shall, at a minimum, bear the same relationship to the total open space to be provided in the entire PUD as the stages or units completed or under development bear to the entire PUD. The Project is not proposed as a staged development, but rather will be constructed in one stage.
 8. Density. The Proposed PUD meets the density standards for the current zoning and is consistent with the Comprehensive Plan. The proposed Project density is ten (10) dwelling units, which is less than the twelve (12) dwelling units allowed under the R-5 Average Density Multiple Family District standards for mixed use projects.
 9. Utilities. Under the General Plan for the Proposed PUD, all utilities associated with Proposed PUD shall be installed underground and meet the utility connection requirements of Section 801.33.2.A.10.
 10. Utility Connections. Under the General Plan for the Proposed PUD, all utilities associated with proposed PUD meet the utility connection requirements of Section 801.33.2.A.10.
 11. Roadways. There are no new roadways associated with the PUD.
 12. Landscaping. All landscaping associated with the Proposed PUD will be according to a detailed plan and take into account the natural features of Property, the architectural characteristics of the proposed residences and the overall scheme of the PUD plan.
 13. Setbacks. The front, rear and side yard restrictions on the periphery of the Proposed PUD meet the applicable setback requirements in the C-1 District, except where setback variances are requested for the Project, as noted elsewhere in this Report.
 14. Height. The proposed building height within the Proposed PUD is more than allowed under the PUD District Standards. The Applicant has included a Building Height Variance request, as noted elsewhere in this Report.
- C. Residential Area PUD Standards. The Proposed PUD meets the standards of Section 801.33.3 for PUDs with a residential component, as except as noted above.

3.2 Zoning Amendment. The Planning Commission has considered the possible adverse effects of the Zoning Amendment and finds as follows:

- A. The Zoning Amendment does not contravene the specific policies and provisions of the official City Comprehensive Plan as they apply to the Property.
- B. The proposed mixed retail and residential use for the Property is in conformity with present and future land uses of the area.
- C. The proposed mixed retail and residential use of the Property is in conformity with all performance standards contained in the Zoning Ordinance (i.e., parking, loading, noise, etc.), except as noted elsewhere in this Report.
- D. The proposed mixed retail and residential use's effect on the area in which it is proposed would be generally compatible with the neighborhood and surrounding uses.
- E. The proposed mixed retail and residential use is not likely to have a negative impact upon property value in the area in which it is proposed.
- F. The capabilities of the streets serving the Property should be sufficient for the traffic generated by the proposed mixed retail and residential use.
- G. Existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity should be sufficient for the proposed mixed retail and residential use.

3.3 Proposed Subdivision (Lot Combination).

- A. Goals. The Proposed Subdivision is consistent with the goals of the Subdivision Ordinance, including a recognition of adjacent existing neighborhoods and commercial areas; providing additional housing supply for the mix of available housing in the City; and supporting a pedestrian environment at a human, not automotive scale, with the incorporation of below grade retail with outdoor areas.
- B. Criteria for Approval.
 - 1. The Project associated with the Proposed Subdivision is consistent with the Wayzata Comprehensive Plan. The proposed Subdivision conforms with the Mixed Use Commercial guidance of the Comprehensive Plan for this area.

2. The building pad associated with the Project ("Proposed Building Pad") would not negatively impact any sensitive areas.
3. The Proposed Building Pad has been selected and located with respect to natural topography to minimize filling or grading.
4. Existing significant trees would be retained where possible on the Property. As part of the Project, there would be additional trees and screening planted as part of the landscape plan.
5. The Proposed Subdivision would not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas as it would be consistent with the surrounding area.
6. The design of the lots, the proposed building pad, and the site layout of the Proposed Subdivision responds to and is reflective of the surrounding lots and neighborhood and commercial character.
7. The lot that results from the Proposed Subdivision lot combination would not be dissimilar from adjacent commercial lots. The proposed lot conform with and exceed the C-1 Office and Limited Commercial District.
8. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of the commercial building is addressed in a separate design review under Section 801.09, as noted elsewhere in this Report.
9. The proposed lot layout and Proposed Building Pad of the Proposed Subdivision would conform will relevant performance standards, with setback and height variance requests noted elsewhere in this Report.
10. The Proposed Subdivision is not likely to tend to or actually depreciate the values of neighboring properties in the area in which it is proposed.
11. The Proposed Subdivision would be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

3.4 Shoreland CUP.

- A. The Applicant has complied with applicable requirements and regulations for a Shoreland CUP under Section 801.91.19 of the Zoning Ordinance.

- B. The Applicant has complied with the applicable requirements and regulations for a Conditional Use Permit under Section 801.04 of the Zoning Ordinance.
- C. The Application includes the installation of a pervious paver system in the surface parking lot. As a condition of approval, the Applicant shall also install a roof drain and cistern system to capture water runoff from the roof of the proposed building.

3.5 Mechanical CUP.

- A. The Applicant requests a Conditional Use Permit under Section 801.19.2.B for an elevator penthouse and stairs above forty (40) ft. The proposed elevator penthouse would not exceed 53.1 ft to the top of the penthouse.
- B. The Applicant has complied with applicable requirements and regulations for a Conditional Use Permit under Section 801.04 of the Zoning Ordinance.
- C. As a recommended condition of approval, the Applicant shall continue to work on reducing the height of the proposed elevator penthouse if practically feasible.

3.6 Project Design.

- A. The Project Design as proposed in the Application meets the criteria of the applicable Design Standards, with the exception of the following Design deviations noted in the Design Critique:
 - 1. 801.09.5.A&B - Upper Story Setbacks – For 2nd and 3rd story
 - 2. 801.09.15.1 – Parking Lot Landscaping – Along northern property line
- B. The negative impact of such deviations is outweighed by the positive effect the Project will have on the area in which it is proposed due to the use of high quality materials and the inclusion of retail use within the building.

3.7 Building Height and Setback Variances.

- A. The Property is guided for Mixed Use Commercial use. The Application does not alter the usage of the Property, and instead proposes a new retail and ten (10) unit residential building. The Variance requests are due to the City's stated desire to incorporate retail uses along the Minnetonka Avenue corridor.

- B. The Applicant has established that a practical difficulty exists in complying with certain requirements of the Zoning Ordinance due to the City's stated desire to incorporate retail uses along the Minnetonka Avenue corridor. The plight of the landowner is due to these unique circumstances related to the desired use of the Property. The requested Building Height Variance is the minimum amount necessary to facilitate both below grade retail and upper level residential uses within the proposed new building. The Variances, if granted, will not alter the essential character of the locality.
- C. The Applicant has proposed to use the Property in a reasonable manner under the Zoning Ordinance. The Property is currently zoned for Mixed Use Commercial use, and the Applicant desires to construct a new mixed retail and residential building on the Property.
- D. Economic considerations are not the sole reason for the Variance requests. The City's stated desire for retail activity along the Minnetonka Avenue Corridor is the determinative factor for the Variance requests. The Project could meet the City's Zoning Ordinance standards without the need for variance with a residential and commercial office building.
- E. The Applicant's narrative has articulated the reasons for the Variance requests due to the location and elevation of the Property.

3.8 Site Plan. The current Site Plan conforms with the applicable requirements of the Wayzata Zoning Ordinance, with exceptions noted elsewhere in this Report. As a condition of approval, prior to the issuance of any building permits for the Property, the final Site Plan shall be reviewed and approved by Staff to ensure conformance with the approved PUD Plan.

Section 4. CITY COUNCIL ACTION

4.1 Based on the Findings in Section 3 of this Resolution, the requests for approval of the (1) the Proposed PUD; (2) Proposed Subdivision; (3) Zoning Amendment; (4) Shoreland CUP; (5) Mechanical CUP; (6) Building Height Variance; (7) Setback Variances; (8) Project Design; and (9) Site Plan (as depicted in Attachment A), is **APPROVED** subject to all of the following conditions (failure to comply with any one of these conditions shall result in the revocation of the approvals):

- A. The Applicant must enter into a stormwater maintenance agreement with the City that will cover design, installation, maintenance, and inspection of all stormwater management systems approved as part of this Application, which will be recorded against the Property.

Exhibit B

- B. The Applicant must amend the stormwater plan to include a roof drain and cistern system as proposed and agreed to by the Applicant.
- C. The Applicant must continue to work on reducing the height of the proposed elevator penthouse. The Applicant must also include seasonable screening of the rooftop area. The height of the of the elevator shaft shall be no more than eleven (11) feet from the parapet wall and will be screened with Boston Ivy.
- D. The Applicant must add additional landscaping and screening between the northern parking lot and the adjacent City park.
- E. The Applicant must design and construct the elevator penthouse and stair enclosures with the same building materials as the overall building.
- F. The Applicant must consider the following design suggestions from the Planning Commission:
 - I Incorporating architectural elements and planter boxes to the north façade of the building facing the parking lot.
 - ii. Heating the sidewalk and below grade patio area along the western building façade.
 - iii. Incorporating additional screening of garage door and North wall.
- F. The Applicant must maintain a sidewalk width of no less than five (5) ft and must meet applicable ADA standards.
- G. The Applicant and/or the Property Owners' Association must enter into an agreement with the City for maintenance of the common open area in the northeast corner of the Property, as depicted on the Site Plan.
- H. All comments of City Staff outlined in the Planning Report on the Application dated December 15, 2014 shall be incorporated into the PUD as specified in such comments and further directed by such staff.
- I. The Applicant must secure all necessary building permits for construction, and all laws and regulations applicable to the Project.
- J. All expenses of the City of Wayzata, including consultant, expert, legal, and planning fees incurred must be fully reimbursed by the Applicant.
- K. The Applicant must record the Final Plat document with the appropriate Hennepin County officials within one hundred twenty (120) days in conformance with Section 805.15.E.7, and provide a recorded copy to the City.

Exhibit B

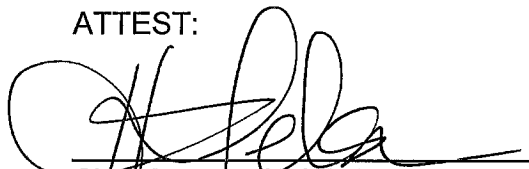
- L. The Applicant must enter into a Right of Way (ROW) Encroachment agreement with the City for the sidewalk and associated patio area on City ROW, and provide the City with a hold harmless agreement.
- M. The Applicant must enter into a development agreement with the City in a form acceptable to the City Attorney, covering all of the approvals, restrictions, and conditions noted above.
- N. The Applicant is encouraged to diversify tree stock in the landscaping plan.
- O. The building height plus the parapet wall cannot exceed forty (40) feet.
- P. The Applicant must maintain public spaces in the park and retail space, including the community tables and retail outdoor seating.

Adopted by the Wayzata City Council this 20th day of January, 2015.



Mayor Ken Willcox

ATTEST:



City Manager Heidi Nelson

ACTION ON THIS RESOLUTION:

Motion for adoption: Mullin

Seconded by: Tyacke

Voted in favor of: Anderson, Mullin, Tyacke

Voted against: McCarthy, Willcox

Abstained: None

Absent: None

Resolution adopted.

Exhibit B

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Wayzata, Minnesota, at a duly authorized meeting held on January 20, 2015.

Becky Malone
Becky Malone, Deputy City Clerk
SEAL

Exhibit B

Attachment A

Application Submittals



aerial view of existing site

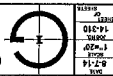


aerial view of proposed development

Attachment A

BOUNDARY AND TOPOGRAPHIC SURVEY FOR **JOHN ADAMS** IN LOTS 3, 4 AND 5, BLOCK 5, WAYZATA REVISED HENNEPIN COUNTY, MINNESOTA

GRONBERG & ASSOCIATES, INC.
 445 N. WILLOW DRIVE LONG LAKE, MN 55366
 PHONE: 952-473-4141 FAX: 952-473-4436



DATE	BY	REVISIONS
10-1-14		
10-1-14		
10-1-14		
10-1-14		

MINN. LICENSE NUMBER 17355

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.

CHECKED BY

DESIGNED BY

DATE

BY

REVISIONS

REMARKS

DATE

BY

REVISIONS

REMARKS

DATE

BY

REVISIONS

REMARKS

DATE

BY

REVISIONS

REMARKS

DATE

BY

REVISIONS

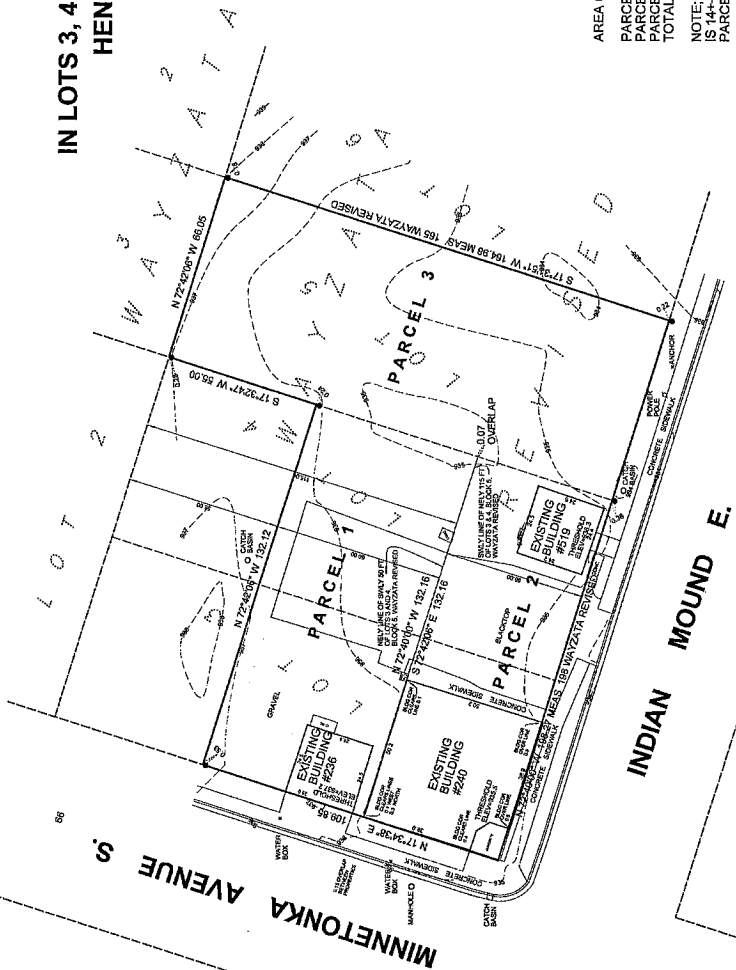
REMARKS

DATE

BY

REVISIONS

REMARKS



AREA CALCULATIONS

PARCEL 1 = 7928± SQ. FT.
 PARCEL 2 = 6609± SQ. FT.
 PARCEL 3 = 10898± SQ. FT.
 TOTAL AREA = 25421± SQ. FT.

NOTE: INDIVIDUAL AREAS TOTAL 25435± SQ. FT.; HOWEVER THERE IS 14± SQ. FT. OF SHARED LAND IN THE OVERLAP BETWEEN PARCELS 1 AND 2

LEGAL DESCRIPTION OF PREMISES SURVEYED:

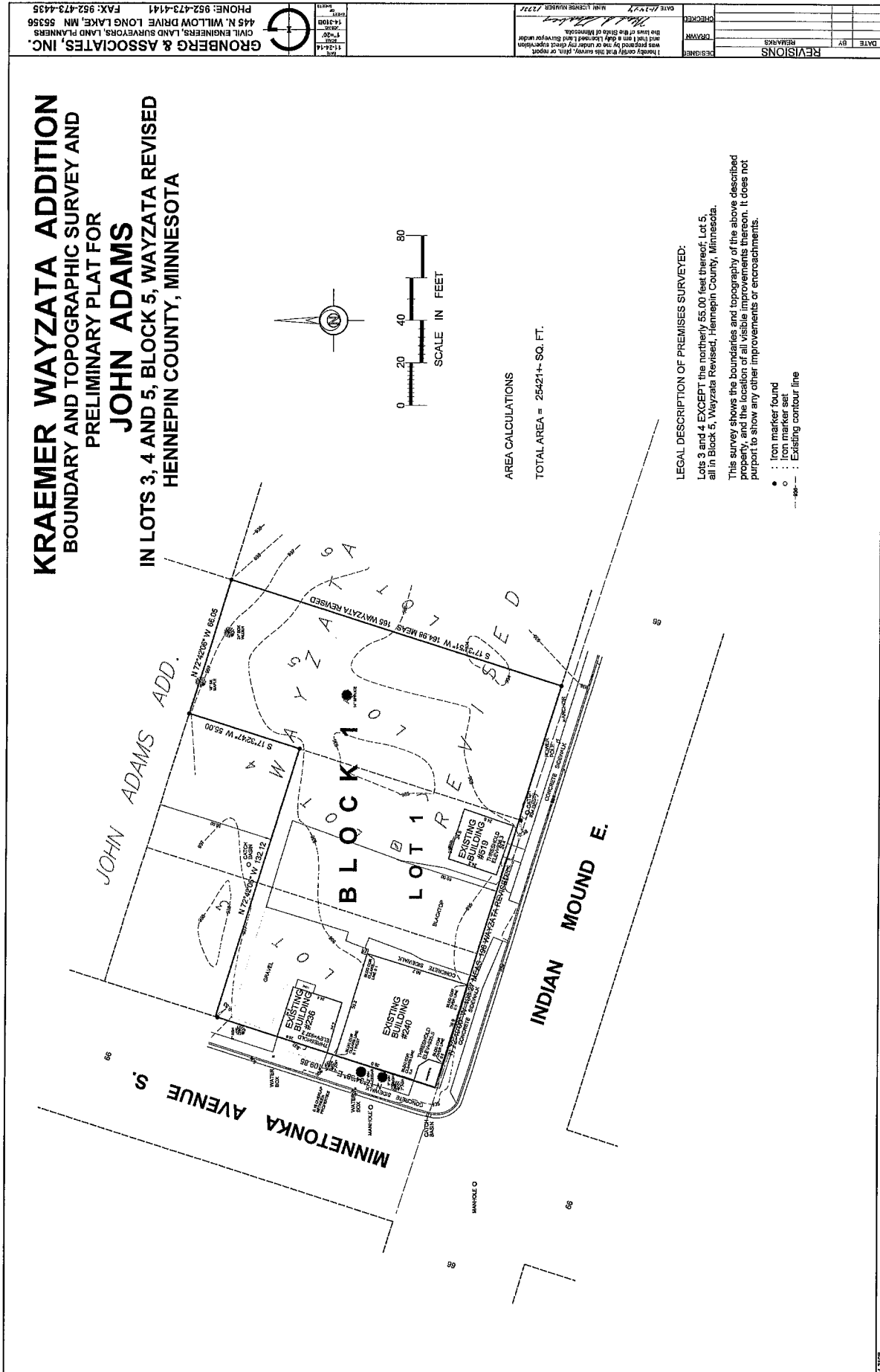
Parcel 1:
 The Southwesterly 60 feet of the Northeasterly 115 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.
 Parcel 2:
 The Southwesterly 50 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.
 Parcel 3:
 Lot 5, Block 5, Wayzata Revised, Hennepin County, Minnesota.

This survey shows the boundaries and topography of the above described property, and the location of all visible improvements thereon. It does not purport to show any other improvements or encroachments.

- : Iron marker found
- o : Iron marker set
- : Existing contour line

Exhibit B

Attachment A



C.R.DOC.NO.



GRONBERG & ASSOCIATES, INC.
ENGINEERS, LAND SURVEYORS, PLANNERS

Know all persons by these presents that Haglund's Corner, LLC, a Minnesota limited liability company, fee owner of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

Lots 3 and 4 EXCEPT the northerly 66.00 feet thereof; Lot 5, all in Block 6, WAYZATA "REVISED" HENNEPIN COUNTY MINN
Has caused the same to be surveyed and platted as KRAEMER WAYZATA ADDITION.

Has caused the same to be surveyed and plotted as KRAEMER WAYZATA ADDITION.

In witness whereof said Haglund's Corner, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this _____ day of _____, 20____.

Haglund's Corner, LLC, a Minnesota limited liability company

By _____, its _____
COUNTY OF _____ The foregoing instrument was acknowledged before me this _____ day of _____, 20____
at _____, in _____, at Hagstone's Corner, LLC, a Minnesota limited liability company, on behalf
the common now

Notary Public, _____ County, _____ Notary's printed name
My commission expires _____

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

**Mark S. Gronberg Licensed Land Surveyor and Engineer
Minnesota License Number 12755**

STATE OF _____)
COUNTY OF _____) The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
Mark S. Gronberg, Land Surveyor and Engineer.

Notary Public, _____ County, _____
Notary's printed name _____

This plat of KROEMER WAYSATA ADDITION was approved and accepted by the City Council of Weyzata, Minnesota, at a regular meeting held this _____ day of _____, 20____, if applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City, or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 600.02, Subd. 2.

CITY COUNCIL OF WEYZATA, MINNESOTA

RESIDENT AND REAL ESTATE SERVICES, HENNEPIN COUNTY, MINNESOTA
I hereby certify that taxes payable in 20____ and prior years have been paid for land described on this plat. Dated this ____ day of _____

By _____, Deputy

MARK V. CHAPIN, HENNEPIN COUNTY AUDITOR

20

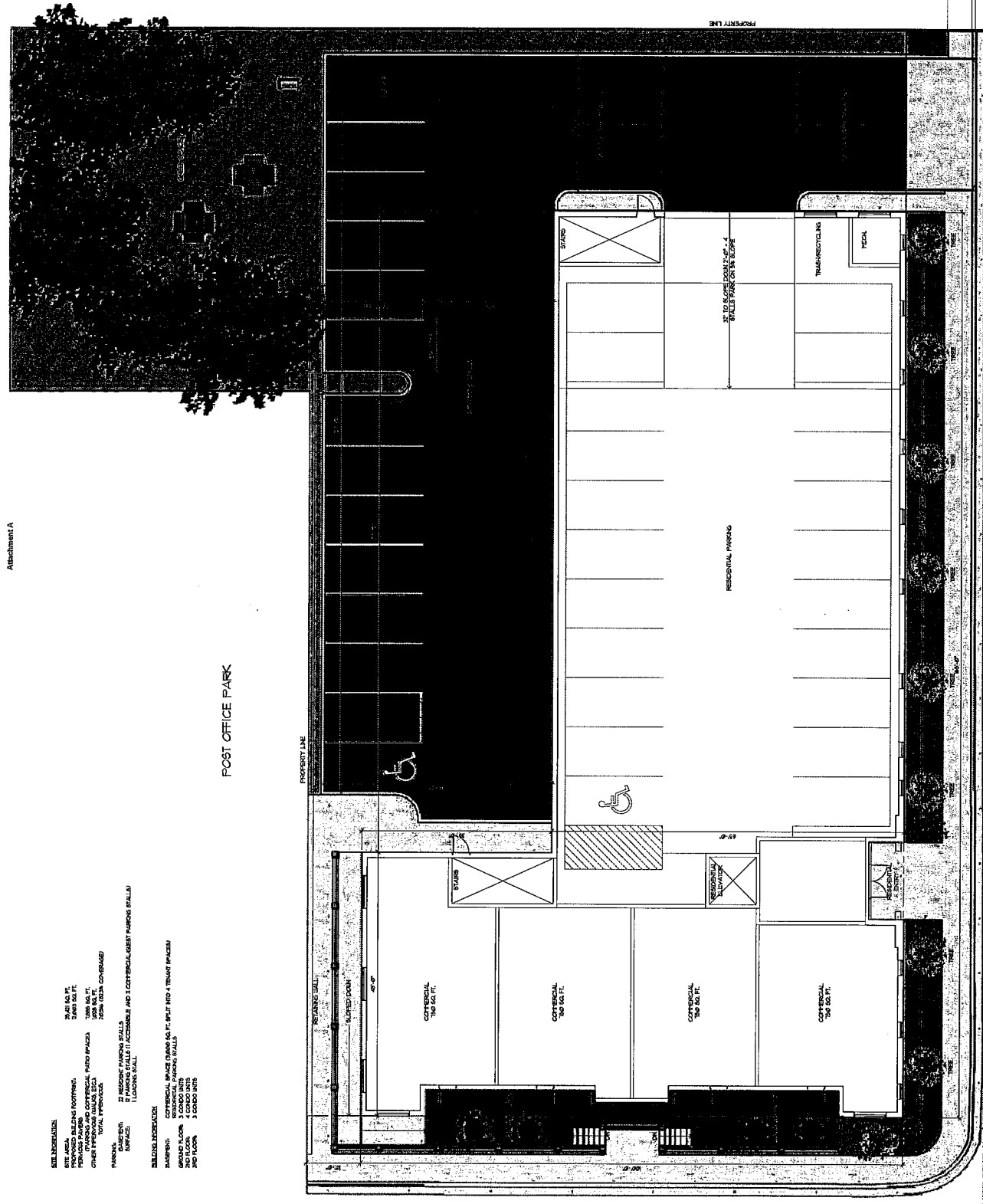
SURVEY DIVISION, HENNEPIN COUNTY, MINNESOTA
Pursuant to MINN. STAT. Sec. 343R.565, (1989), this plat has been approved this _____ day of _____, 20____.

By _____
CHRIS F. MAVIS, HENNEPIN COUNTY SURVEYOR

I hereby certify that the within plat of KRAEMER WAYZATA ADDITION was recorded in this office this _____ day of _____, 20____ at _____ o'clock _____AM.

MARTIN MCCORMICK, HENNEPIN COUNTY RECORDER

By _____, Deputy



Attachment A

SITE INFORMATION
 SITE AREA: 26,410 SQ. FT.
 EXISTING BUILDING FOOTPRINT: 2,640 SQ. FT.
 EXISTING PARKING: 100 SPACES
 OTHER EXISTING UTILITIES: 100' DIA. (SEE COVER/AGE)
 TOTAL IMPERVIOUS: 26,410 SQ. FT.
 PARKING: 23 RESIDENT PARKING SPACES
 11 COMMERCIAL PARKING SPACES
 100' DIA. (SEE COVER/AGE)
 BUILDING INFORMATION
 BUILDING: COMMERCIAL SPACE (26,410 SQ. FT. BUILT INTO 4 TENANT SPACES)
 RESIDENTIAL PARKING SPACES: 23
 COMMERCIAL PARKING SPACES: 11
 2ND FLOOR: 4 CONDO UNITS
 3RD FLOOR: 3 CONDO UNITS

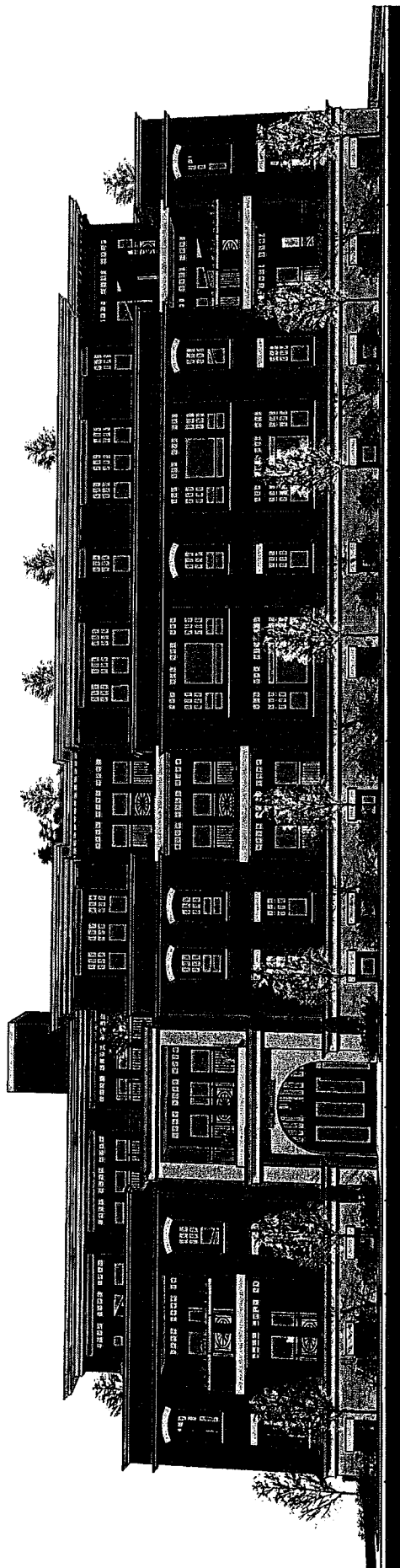
1. ARCHITECTURAL SITE PLAN
 INDIAN POND STREET E



Minnetonka Ave. elevation



view from corner of Minnetonka Ave. and Indian Mound St.



Indian Mound St. elevation



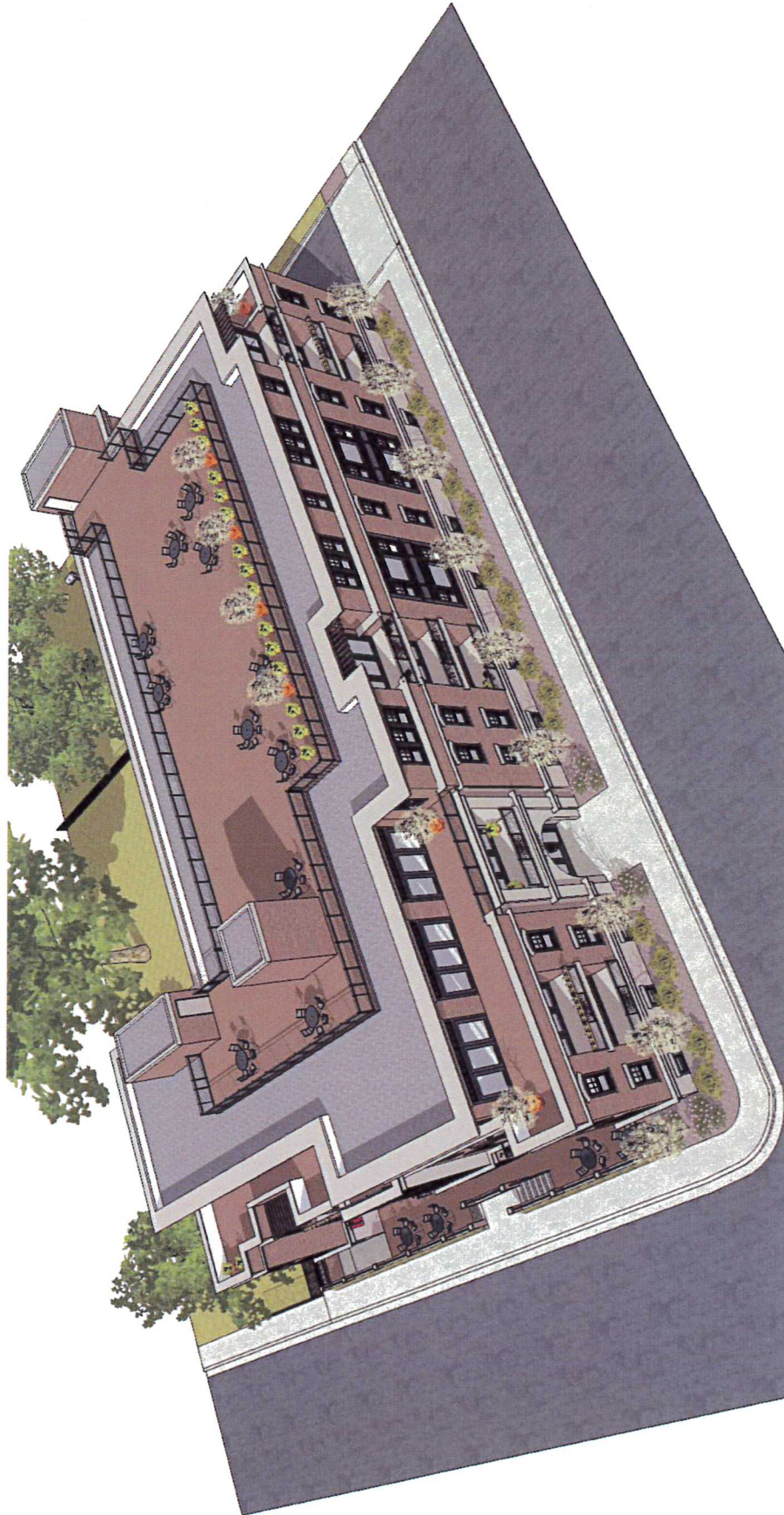
view from north of parking lot



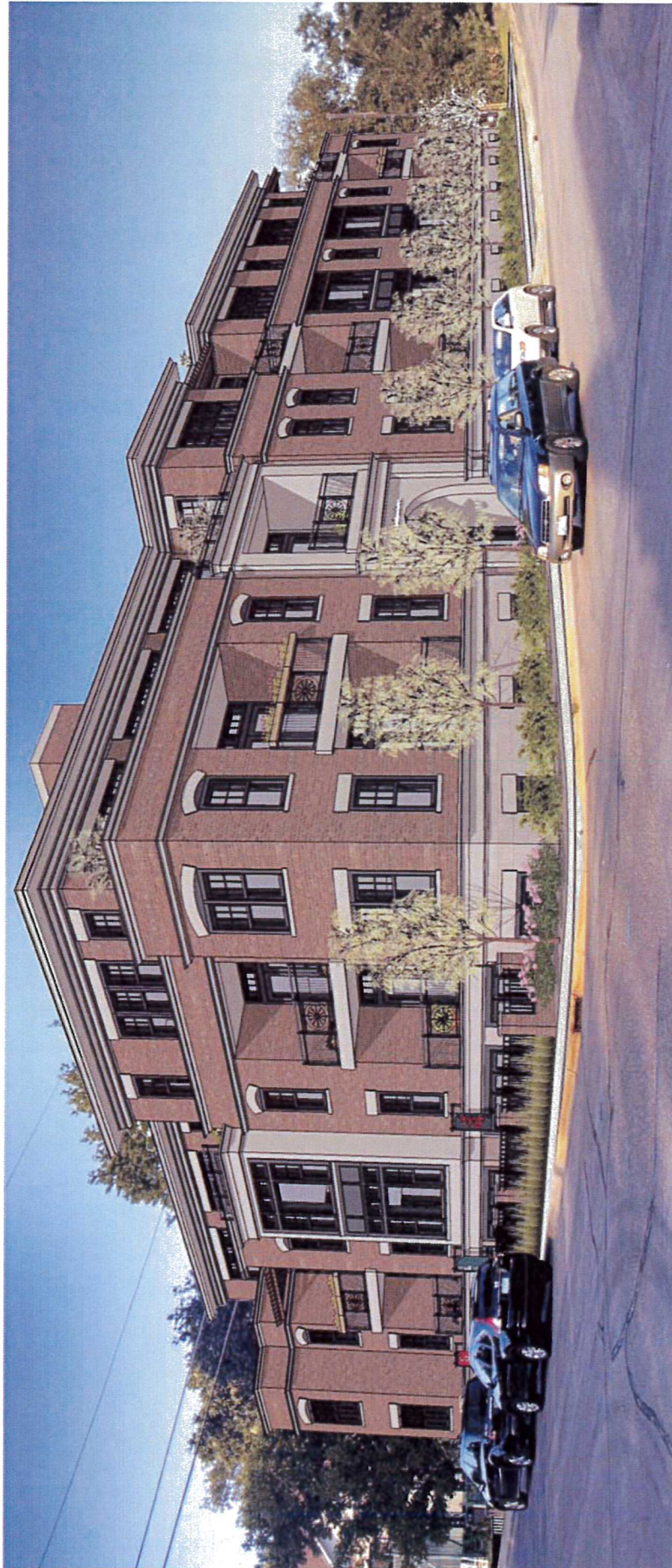
view from north on Minnetonka Ave.



Minnetonka Ave. lower level commercial space



aerial view



view from corner of Minnetonka Ave. and Indian Mound St.

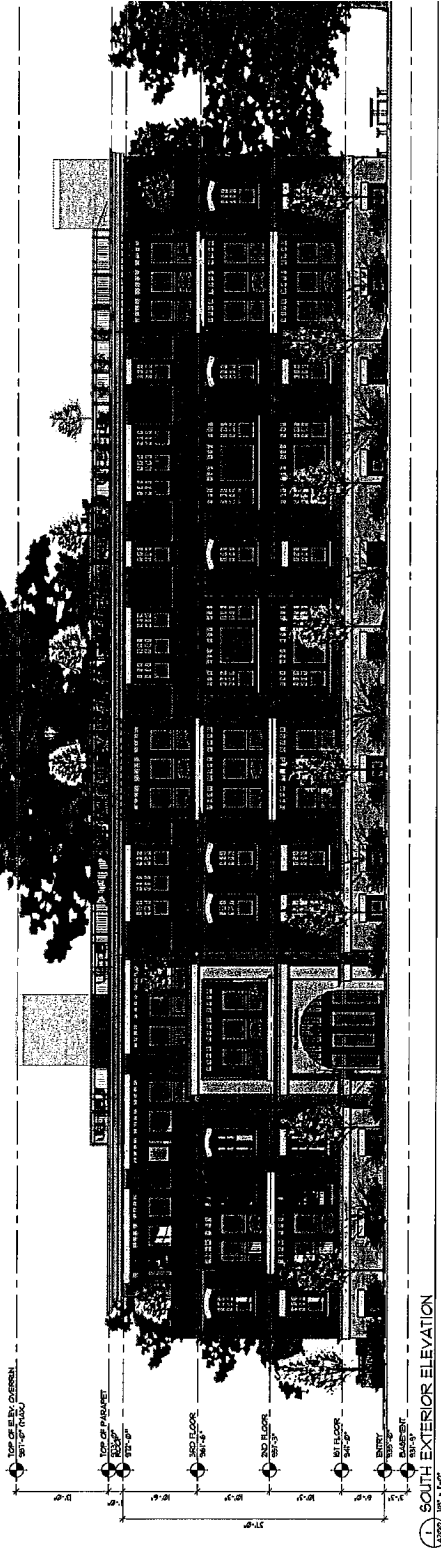


118 E. 26th Street
Minneapolis, MN 55404
P: 612-479-8225
F: 612-479-8152
www.tanek.com

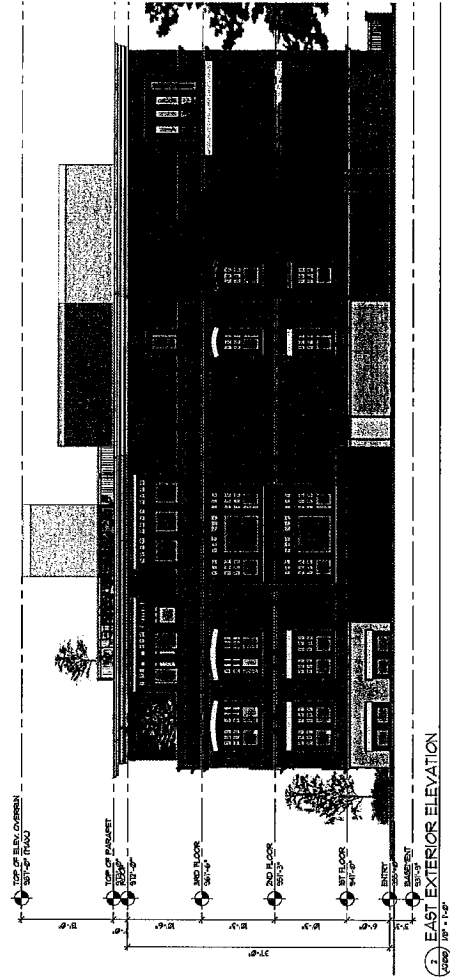
page

Mixed Use
Development
236 Minnesota Ave
Wayzata, MN

Exhibit B



EXTERIOR FINISHES AND CALCULATIONS	
BRICK	
South Elevation	1560 sq. ft. (750)
East Elevation	2340 sq. ft. (1220)
CLAY ROOF	
South Elevation	1000 sq. ft. (500)
East Elevation	1000 sq. ft. (500)
GLASS CURTAIN WALL	
South Elevation	2240 sq. ft. (1120)
East Elevation	1000 sq. ft. (500)



a200

copyright 1994, 2004

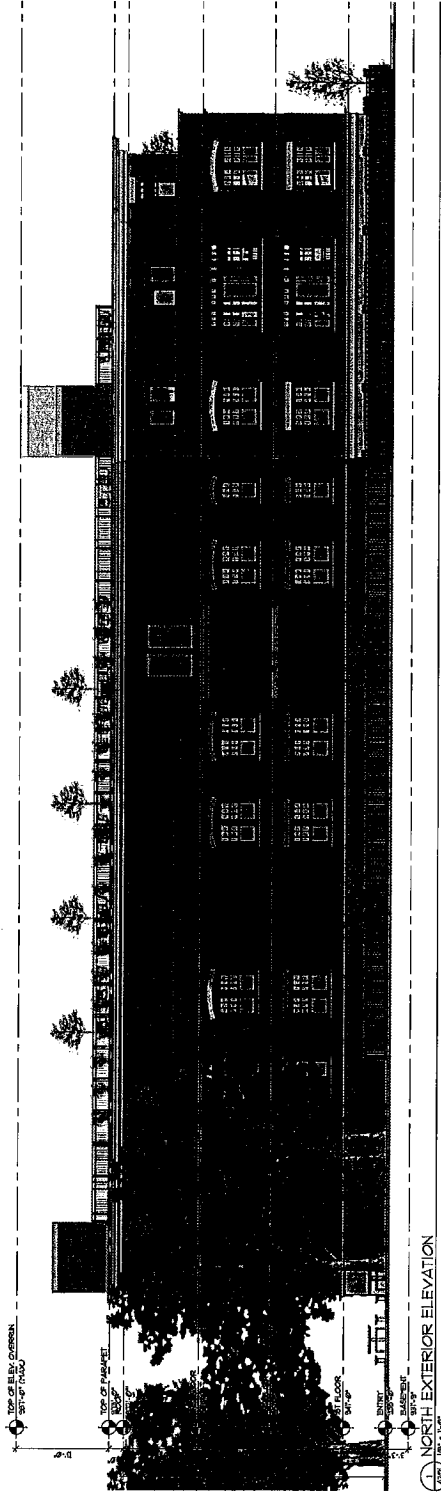


118 E. 26th Street
 Suite 100
 Minneapolis, MN 55404
 P: 612-479-8225
 F: 612-479-8152
 www.tanek.com

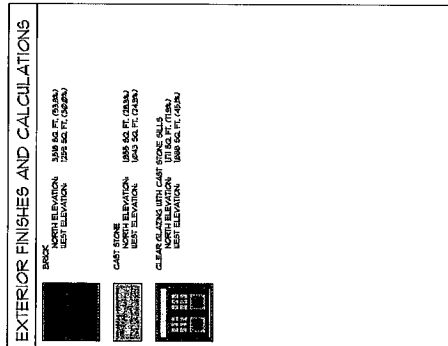
Mixed Use
 Development
 238 Milwaukee Ave
 Weyzata, MN

NOT FOR CONSTRUCTION

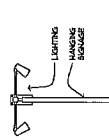
Exhibit B



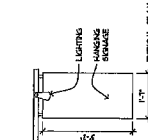
1 NORTH EXTERIOR ELEVATION
 1/8" = 1'-0"



2 WEST EXTERIOR ELEVATION
 1/8" = 1'-0"



3 SIGNAGE DETAIL
 1/8" = 1'-0"



4 SIGNAGE DETAIL
 1/8" = 1'-0"

EXTERIOR FINISHES AND CALCULATIONS			
BRICK			
NORTH ELEVATION	3,518 SQ. FT. (3,518)		
WEST ELEVATION	1,228 SQ. FT. (1,228)		
CLAY STONE			
NORTH ELEVATION	1,008 SQ. FT. (1,008)		
WEST ELEVATION	1,008 SQ. FT. (1,008)		
CLEAR GLASS			
NORTH ELEVATION	1,111 SQ. FT. (1,111)		
WEST ELEVATION	1,008 SQ. FT. (1,008)		



118 E. 26th Street
Suite 300
Minneapolis, MN 55404
P:612.579-8225
F:612.579-8152
www.tanek.com

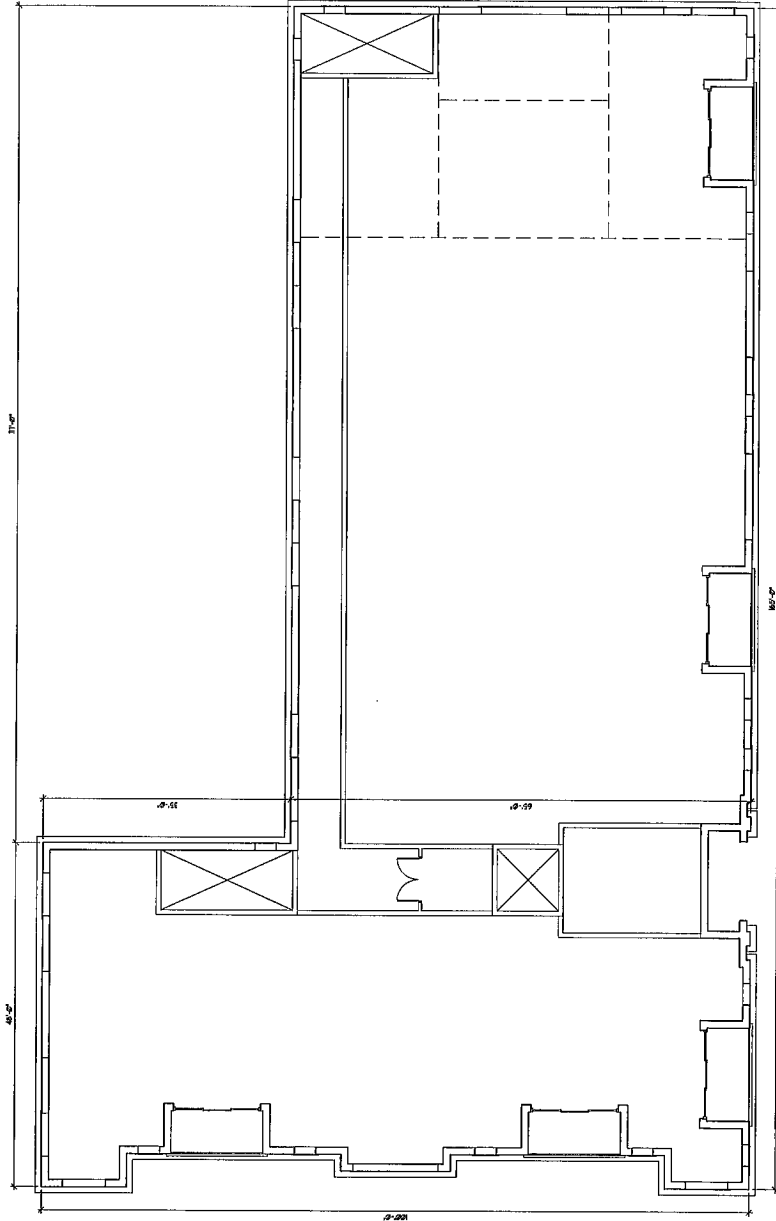
Mixed Use
Development
238 Milwaukee Ave.
Weyzata, MN

Exhibit B
NOT FOR CONSTRUCTION

scale 1/8" = 1'-0"
name
drawing
date
revision
review 12.03.2014
city application 11.26.2014
city application 10.31.2014
FIRST FLOOR PLAN

a101

copyright 2014



1. FIRST FLOOR PLAN
1/8" = 1'-0"



118 E. 26th Street
Suite 100
Minneapolis, MN 55404
P612-479-8226
F612-479-8152
www.tanek.com

Mixed Use
Development
238 Milwaukee Ave
Weyzata, MN

NOT FOR CONSTRUCTION

Exhibit B

I have prepared this plan to show the location of the proposed structure and the location of the proposed structure. This plan is not for construction.

name

date

signature

scale

name

date

signature

scale

name

date

signature

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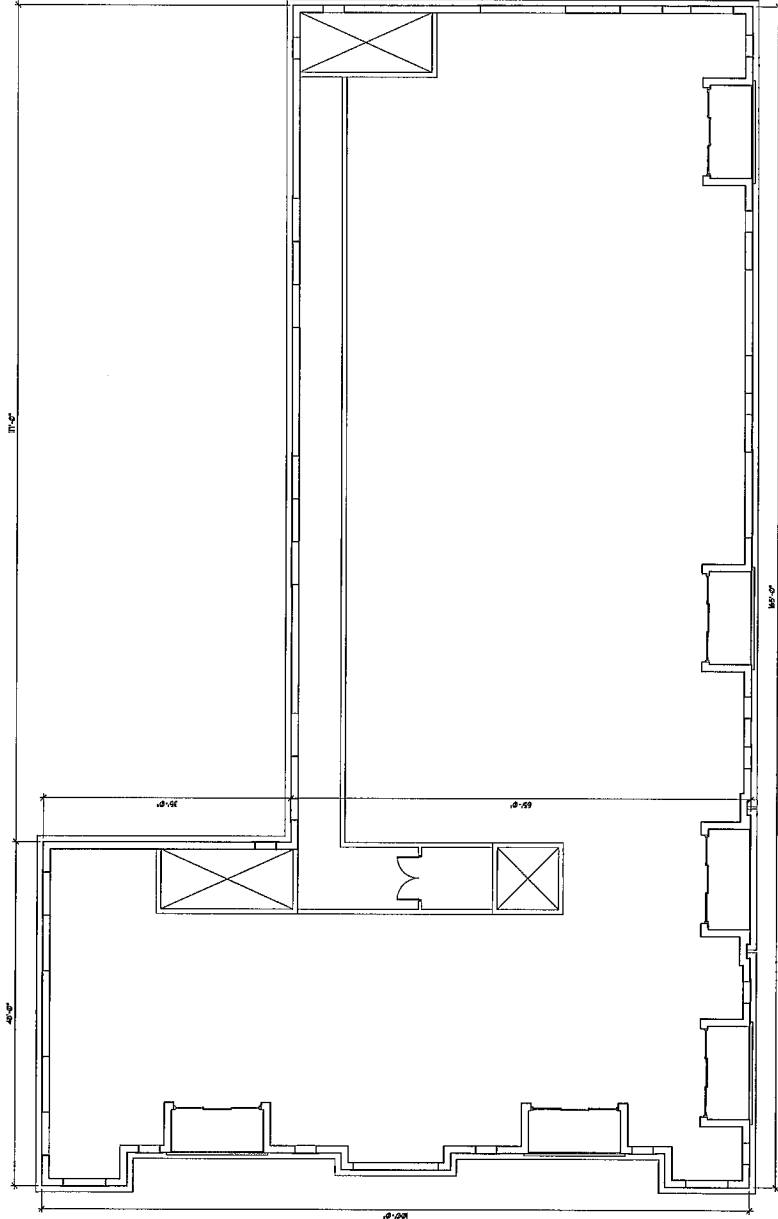
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name

date

signature

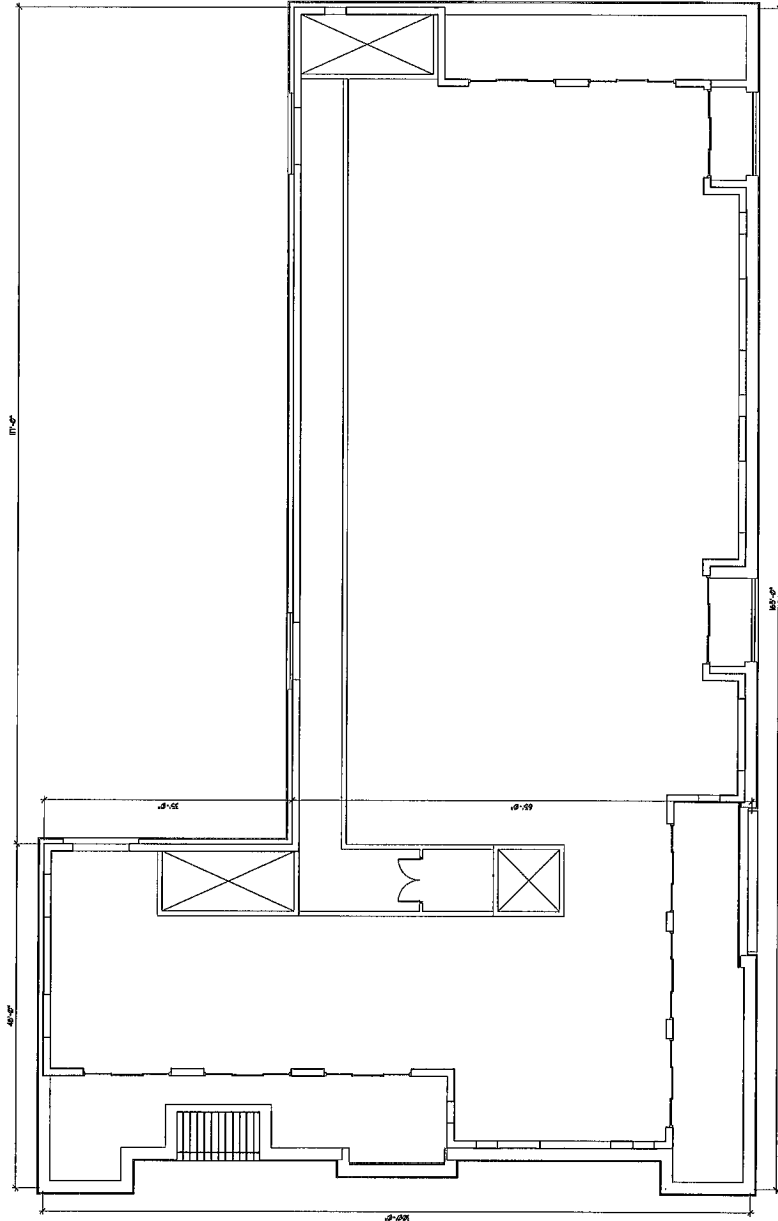
scale



1 SECOND FLOOR PLAN
1/8" = 1'-0"

a102

Copyright Tanek 2014



1 THIRD FLOOR PLAN (PENTHOUSES)
A993 1/8" = 1'-0"



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F:612-379-4152
www.tanek.com

Mixed Use
Development
235 Minneapolis Ave
Weyzata, MN

project

Exhibit B

NOT FOR CONSTRUCTION

scale

name

date

signature

1/8" = 1'-0"

notes

revised

12.03.2014

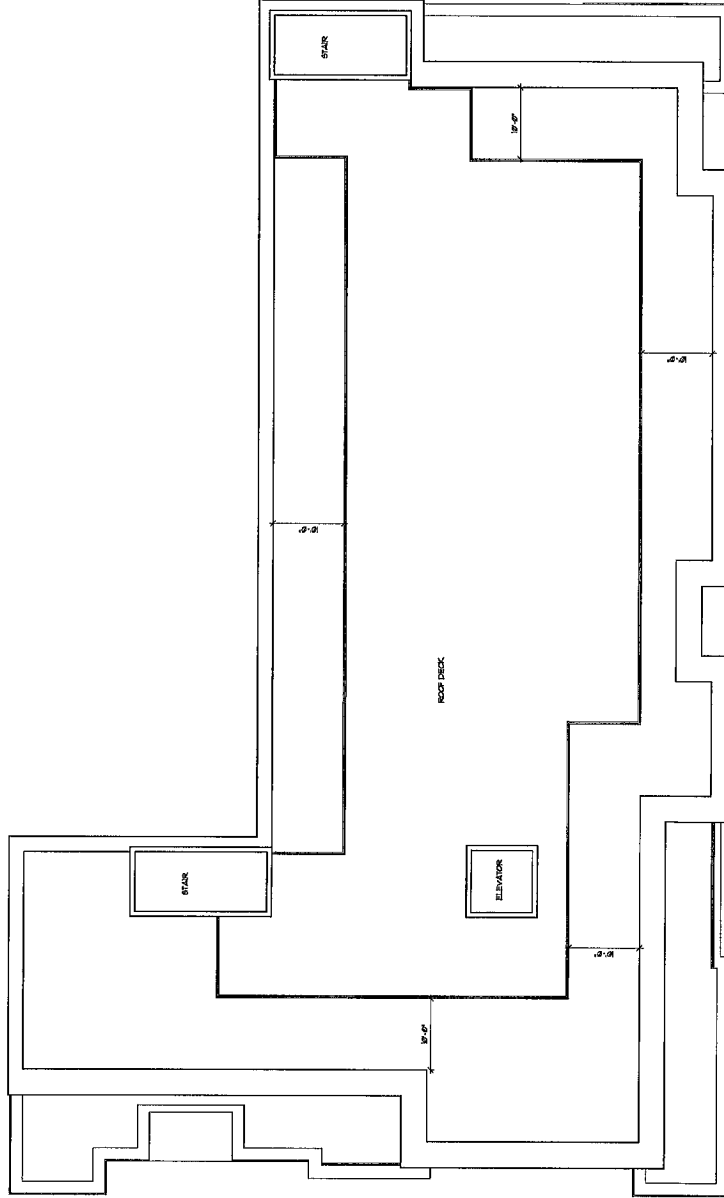
11.26.2014

city application 10.31.2014

ROOF PLAN

a104

copyright 2014



1 ROOF PLAN
1/8" = 1'-0"

Exhibit B

WAYZATA SITE

Drawn By: SANDY
Checked By: TRENT
Date: 11/26/2014
Scale: AS NOTED

Revisions

#	Date	Comments



PAGE 1 OF 1

GENERAL NOTES:

A. PULSE PRODUCTS DOES NOT ASSUME RESPONSIBILITY FOR THE INTERPRETATION OF THIS CALCULATION OR COMPLIANCE TO THE LOCAL, STATE, OR FEDERAL LIGHTING CODES OR ORDINANCES.

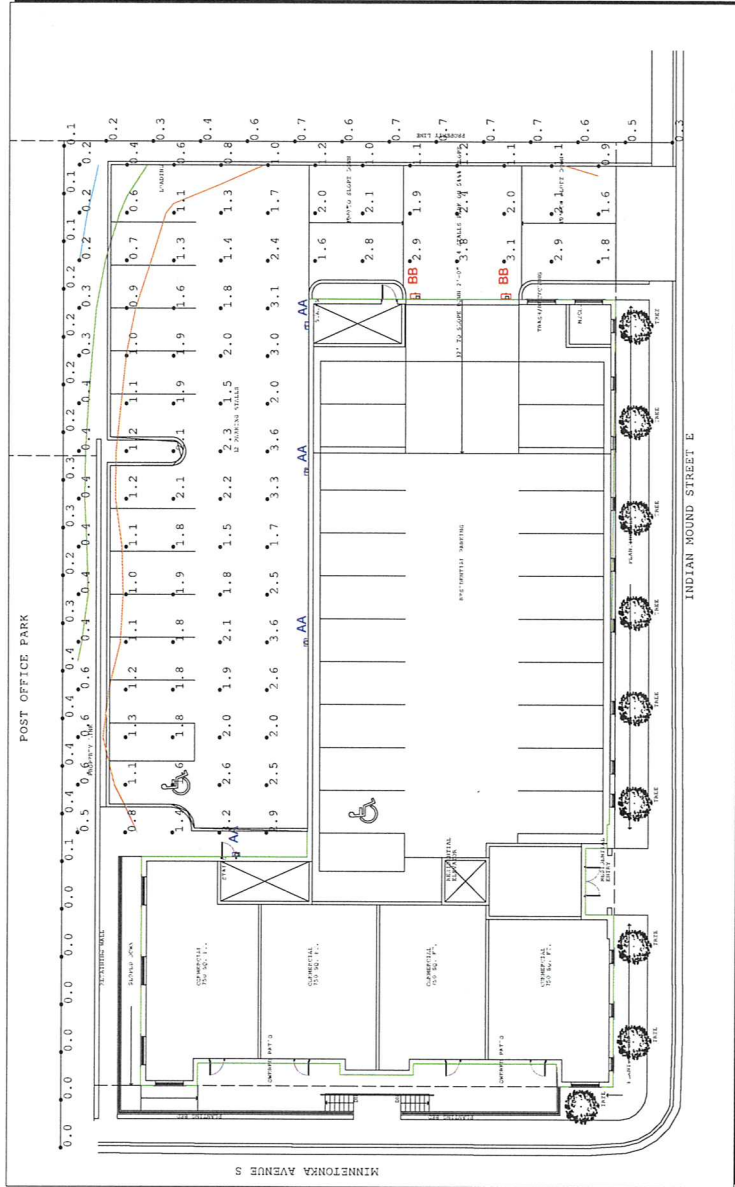
B. LIGHTING LAYOUT IS NOT INTENDED FOR CONSTRUCTION DOCUMENTS BUT ONLY TO ILLUSTRATE THE PERFORMANCE OF THE PRODUCT.

C. ALL READINGS/CALCULATIONS SHOWN ARE SHOWN ON OBJECTS/SURFACES.

Luminaire Schedule			Total Lamp Lumens			Description			Lum. Watts		
Symbol	Qty	Label	Arrangement								
	4	AA	SINGLE	N.A.	0.900	INVUE ENV-B02-LED-E1-BL4-ULG. 4547 LUMENS, MOUNT AT 16FT 8IN		59			
	2	BB	SINGLE	N.A.	0.900	INVUE ENV-B02-LED-E1-BL3-ULG. TYPE III, 4312 LUMENS, MOUNT AT 16FT 8IN		59			

Calculation Summary			Units			Avg/Min			Max/Min		
Label	Calc Type										
PROPERTY LINE	Illuminance					0.31	0.0	N.A.	N.A.	N.A.	N.A.
SITE GROUND	Illuminance					1.59	3.8	0.2	7.95	19.00	
PARKING	Illuminance					1.74	3.6	0.4	4.35	9.00	

Luminaire Location Summary			X			Y			Z			Tilt		
LumId	Label													
24	AA		917	93.9	16.66	0								
25	AA		961.2	79.7	16.66	90								
26	AA		1027.6	79.7	16.66	90								
27	AA		1034.3	37.1	16.66	0								
28	BB		1034.3	56.3	16.66	0								
29	BB													



Plan View
Scale: 1 inch = 12 ft.

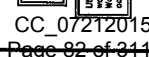
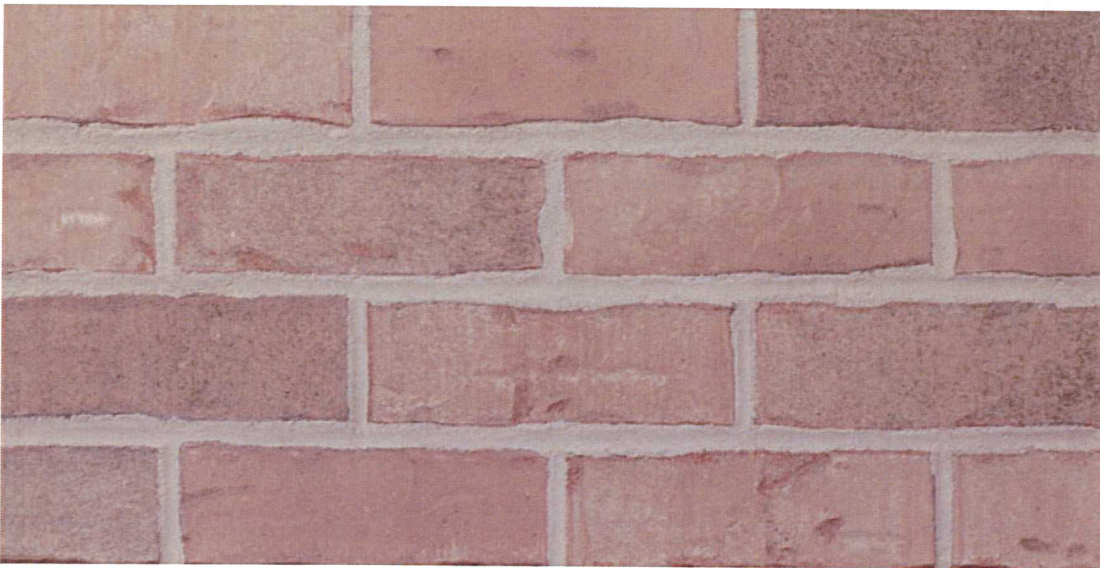


Exhibit B

cast stone



brick



CITY OF WAYZATA
HENNEPIN COUNTY, MINNESOTA
ORDINANCE NO. 751

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY
TO REZONE PROPERTY AT 236 AND 240 MINNETONKA AVE S AND
519 INDIAN MOUND TO PUD PLANNED UNIT DEVELOPMENT DISTRICT**

THE CITY OF WAYZATA ORDAINS:

Section 1. Zoning Map Amendment

- 1.1. Rezoning. Based upon the Report and Recommendation of the Wayzata Planning Commission, dated January 5, 2015, and City Council Resolution 07-2015 (the "Resolution"), the Official Zoning Map of the City of Wayzata is hereby amended to change the Zoning District designation of the Property, as defined in the Resolution, to PUD Planned Unit Development District.

Section 2. Effective Date

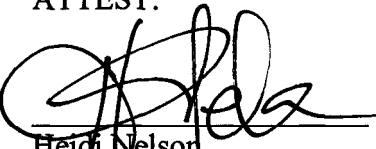
- 2.1 This Ordinance will become effective upon passage and publication.

Adopted by the City Council this 3rd day of February 2015.



Ken Willcox
Mayor

ATTEST:



Heidi Nelson
City Manager

First Reading: January 20, 2015
Second Reading: February 3, 2015
Publication: February 17, 2015

000043/480049/2041303_1

**STORMWATER FACILITIES MAINTENANCE AGREEMENT
AND RESTRICTIVE COVENANT**

This Stormwater Facilities Maintenance Agreement and Restrictive Covenant (“Agreement”) is made this _____ day of July, 2015, by and between the City of Wayzata, a Minnesota municipal corporation (hereinafter the “City”), and Garrison Landing, LLC, a Minnesota limited liability company (hereinafter the “Developer”), and Haglund’s Corner LLC, Minnesota limited liability company (hereinafter the “Owner”) of the properties located at 236 Minnetonka Avenue South and 240 Minnetonka Avenue South and 519 Indian Mound East, Wayzata, Minnesota.

R E C I T A L S

WHEREAS, the Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Wayzata, Minnesota, commonly described as 236 Minnetonka Avenue South, 240 Minnetonka Avenue South, and 519 Indian Mound East, (hereinafter the “Property”) and legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference; and

WHEREAS, the Owner and the Developer submitted a joint application to the City for approval of a Concept/General Plan Planned Unit Development (PUD), Rezoning to PUD, Concurrent Preliminary and Final Plat, Shoreland Conditional Use Permit, Building Setback Variances, Conditional Use Permit for Elevator Penthouse, Project Design Review and Site Plan Review for the Property on October 31, 2014 (collectively, the “Application”); and

WHEREAS, the City Council of Wayzata approved the Application on January 20, 2015 via Resolution 07-2015 and Ordinance No. 751; and

WHEREAS, in connection with the Developer's proposed development of the Property, the City has required and the Developer has agreed to construct and install a pervious paver system for the parking area and commercial patio with an associated EcoStorm stormwater treatment system (collectively, the “Stormwater System”); and

WHEREAS, such Stormwater System is described and shown on a construction drawing prepared by the Civil Engineering firm of Rehder & Associates, Inc., dated 8/29/2014 (***last revised June 5, 2015***) (hereinafter the “Stormwater System Drawing”), for the Owner’s Property, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference; and

WHEREAS, as a condition of project approval and/or as a condition of the City’s utilization of the Developer’s Stormwater System, the parties have entered into this Maintenance Agreement and Restrictive Covenant, in order to ensure that the drainage system will be constructed and maintained in accordance with the approved plans and the City’s development standards;

Exhibit D

NOW, THEREFORE, in consideration of the mutual agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City hereby agree as follows:

Exhibit D

TERMS

Section 1. Construction and Maintenance. Developer agrees to construct and maintain a Stormwater System on its Property, as shown on the Stormwater System Drawing, **Exhibit B**. The drainage system shall be maintained and preserved by the Developer, until such time as a condominium owners' association (hereafter "Association") is established for the Property, or until such time as the City, its successors or assigns, agree that the Stormwater System should be altered in some manner or eliminated.

Section 2. No Removal. No part of the Stormwater System shall be dismantled, revised, altered or removed, except as necessary for maintenance, repair or replacement.

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in **Exhibit A** as and to the extent needed to access the Stormwater System for inspection and to reasonably monitor the system for performance, operational flows or defects.

Section 4. Reporting. The Developer or Association shall be responsible for inspecting and maintaining the Stormwater System, at minimum, on an annual basis. The Developer or Association shall be responsible for providing a letter to the City Engineer, by September 1st of each year, stating that inspection and maintenance have been completed.

Section 5. Repairs, Failure of Owner to Maintain. If at any time the City Engineer does not receive this inspection and maintenance report and the City determines that maintenance or repair work is required to be performed on the Stormwater System, the City Engineer or his/her designee shall give notice to the Developer or Association of the noted deficiency. The Engineer shall also set a reasonable time in which the Developer or Association shall perform such work. If the repair or maintenance required by the Engineer is not completed within the time set by the Engineer, the City may perform the required maintenance and/or repair. Written notice will be sent to the Developer or Association, stating the City's intention to perform such repair or maintenance, and such work will not commence until at least 15 days after such notice is mailed, except in situations of emergency. If, within the sole discretion of the Engineer, there exists an imminent or present danger to the Stormwater System, the City's facilities or the public health and safety, such 15-day period will be waived and maintenance and/or repair work will begin immediately.

Section 6. Cost of Repairs and/or Maintenance. The Developer or Association shall assume all responsibility for the cost of any maintenance and for repairs to the Stormwater System situated on the Property. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Developer or Association for any work performed by the City pursuant to, and accord with, this Agreement. Overdue payments will require payment of interest by the Developer or Association at the current legal rate as liquidated damages.

Section 7. Notice to City of Repairs and/or Maintenance. The Developer or Association is hereby required to deliver written notice to the City Engineer prior to filling, piping, cutting or removing vegetation (except in routine landscape maintenance) in open vegetated drainage

Exhibit D

facilities (such as swales, channels, ditches, ponds, etc.), if any, or performing any alterations or modifications to the Stormwater System, and in each case where any such action is reasonably expected to have a material impact or effect on the utility or function of the Stormwater System, Developer or the Association shall obtain the prior written approval of the City Engineer hereto.

Section 8. Rights Subject to Permits and Approvals. The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Maintenance Agreement and Covenant.

Section 9. Additional Terms. As scheduled and defined in this Stormwater Maintenance Agreement, the Developer shall inspect all stormwater devices in a reasonable manner and provide the City with a written report on the inspection results based on the requirements of this Stormwater Maintenance Agreement. If the Developer fails to so inspect and report, or fails to maintain such stormwater devices in accordance with this Stormwater Maintenance Agreement and instruction from the City Engineer, within 30 days receipt of written notice from the City of such default, then the City may, in addition to any other remedies or rights available to the City at law or equity and those specifically given the City under this Agreement or its ordinances, take any one or more of the following actions: perform or hire a third party to perform for the account of the Developer any obligation of the Developer with respect to such stormwater device. The Developer shall promptly reimburse the City for any expense incurred by the City. The foregoing agreements constitutes a non-revocable license in favor of the City and/or its agents to enter the Property and to take such actions, and it shall not be necessary for the City to seek a court order for permission to enter the Property, or perform such inspections or maintenance, or act in accordance with this Agreement. When the City does any work, the City may, in addition to its other remedies, assess the actual out of pocket costs, without seeking costs for overhead, administration or processing in whole or in part against the Property and the Property shall be deemed to have benefited from the work in the same amount expended by the City to perform such work.

Section 10. Terms Run with the Property. The terms of this Maintenance Agreement and Covenant are intended to be and shall constitute a covenant running with the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns. Notwithstanding any provision of this Agreement to the contrary, however, from and after the time the Project or any part thereof, is established as a condominium pursuant to Minnesota Statutes Chapter 515B, (a) no person or entity who is a condominium unit owner (other than Developer, to the extent Developer is a unit owner) and no person or entity who holds a security interest in a condominium unit shall have any personal liability or obligation for the performance of the Developer's or Association's obligations hereunder or for the Developer's or Association's liabilities hereunder other than those obligations or liabilities, if any, that may only be performed or satisfied in whole, or in part, by said unit owner or security interest holder; and (b) upon the express assumption of the Developer's obligations hereunder by an Association, Developer shall have no further obligations or liability hereunder excepting any as first arose and were to be performed prior to the date of such assumption.

Section 11. Notice. All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and

Exhibit D

shall be deemed delivered on the sooner of actual receipt of three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Developer at the addresses set forth below:

To the City:

City Engineer
Public Works Facility
City of Wayzata
299 Wayzata Boulevard W
Wayzata, MN 55391

To the Developer:

Gary Kraemer
Chief Manager
Garrison Landing, LLC
4906 Lincoln Drive
Edina, MN 55436-1071

To the Owner:

Haglund's Corner, LLC
5515 County Road 151
Mound, MN 55364

Section 12. Severability. Any invalidity, in whole or in part, of any provision of this Maintenance Agreement and Covenant shall not affect the validity of any other provision.

Section 13. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

Section 14. Integration. This Maintenance Agreement and Covenant constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

[Remainder of page intentionally left blank; signatures follow]

Exhibit D

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this ____ day of _____, 2015.

DEVELOPER:

Garrison Landing, LLC

By: _____
Gary Kraemer, Chief Manager

4906 Lincoln Drive
Edina, MN 55436-1071

STATE OF MINNESOTA)) ss.
COUNTY OF HENNEPIN)

I certify that I know or have satisfactory evidence that Gary Kraemer is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Chief Manager of Garrison Landing, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

Notary Public, State of _____

My Commission Expires _____

Exhibit D

OWNER:

Haglund's Corner, LLC

By: _____
Its: _____

5515 County Road 151
Mound, MN 55364

STATE OF MINNESOTA)) ss.
COUNTY OF HENNEPIN)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of Haglund's Corner, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

Notary Public, State of _____

My Commission Expires _____

Exhibit D

CITY OF WAYZATA
A Minnesota municipal corporation

By: _____
Kenneth Willcox
Its: Mayor

CITY OF WAYZATA
A Minnesota municipal corporation

By: _____
Heidi Nelson
Its: City Manager

STATE OF MINNESOTA)) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Kenneth Willcox, Mayor of the City of Wayzata, a Minnesota municipal corporation, on behalf of the corporation.

By: _____

Notary Public, State of _____

My Commission Expires _____

STATE OF MINNESOTA)) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Heidi Nelson, City Manager of the City of Wayzata, a Minnesota municipal corporation, on behalf of the corporation.

By: _____
Notary Public, State of _____
My Commission Expires _____

Exhibit D

EXHIBIT A

[Legal Description or Survey]

Existing Legal Description:

Parcel 1: The Southwesterly 60 feet of the Northeasterly 115 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Parcel 2: The Southwesterly 50 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Parcel 3: Lot 5, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Approved Final Plat Description:

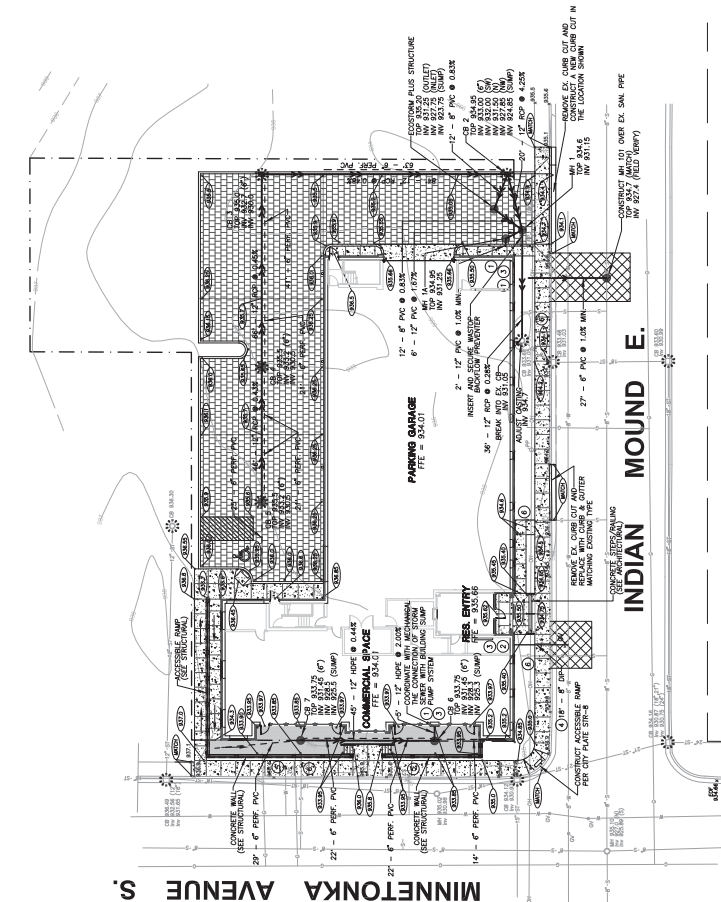
LOT 1, BLOCK 1, KRAEMER WAYZATA ADDITION, Hennepin County, Minnesota.

Exhibit D

EXHIBIT B

Stormwater System Drawing

[see attached]



Boundary & Topographical information was prepared by Gronberg & Associates, Inc. This information has not been verified as to its accuracy or completeness by

Information in Minnetonka Ave and Indian Mound Street taken from Record Plans provided by the City of Minnetonka. This information has not been verified as to its accuracy or completeness by Rehder & Associates, Inc.

Page 95 of 311

GRADING, DRAINAGE, EROSION CONTROL
AND UTILITY PLAN
GARRISON LANDING
CITY OF WAYZATA

C1

Rehder & Associates, Inc.
Civil Engineers, Planners and Land Surveyors
3140 Federal Drive, Suite 110 • Eagan, Minnesota 55122
651-452-5051 • Fax: 651-452-9797 • email: info@rehder.com
PROJECT NO.: 141-2153.051 DRAWING FILE: 2153051.DWG

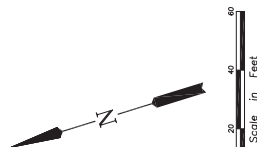
the laws of the State of Minnesota.
I hereby certify that this plan was prepared by
me or under my direct supervision and that I
am a duly Licensed Professional Engineer under

8-29-14	SMITH
6-5-15	F SET

pənssi

LEGEND

- | | | | | | | | | | | | | | | | | | | |
|------------------------------|----------------|----------------------|-------------------------|--------------------|-------------------|----------------------------|------------------|--------------------|------------|-------------------------|-------------------------|--------------------|-------------------------|----------------------|--------------------------|--------------------------------|------------------|------------------|
| PROPOSED MANHOLE/CATCH BASIN | PROPOSED VALVE | PROPOSED STORM SEWER | PROPOSED SANITARY SEWER | PROPOSED WATERMAIN | PROPOSED CONCRETE | PROPOSED PENICULUS FANBERS | PROPOSED CONDUIT | PROPOSED ELEVATION | SILT FENCE | INLET PROTECTION DEVICE | BOUNDARY ROW/BLOCK LINE | EXISTING WATERMAIN | EXISTING SANITARY SEWER | EXISTING STORM SEWER | EXISTING BURIED GAS LINE | EXISTING OVERHEAD UTILITY LINE | EXISTING CONTOUR | EXISTING CONTOUR |
| ● | ● | → | → | — | ■ | ■ | — | — | ⊗ | ⊗ | — | W | S | ST | G | OH | 880.0 | 895.50 |

[illegible]

MH 1	48°	R-1642B
MH 1A	48°	R-1642B
CB 2	48°	R-3067V
CB 3	48°	R-3067V
CB 4	48°	R-2573-1C
CB 5	48°	R-2573-1C
CB 6	48°	R-2573-1C
CB 7	48°	R-2573-1C
MH 101	48°	R-1642B

EROSION CONTROL NOTES

- ① - All erosion control measures shown shall be installed prior to grading operations and maintained until all areas disturbed have been restored.
- ② - Sweep paved public streets as necessary where construction sediment has been deposited.
- ③ - Each area disturbed by construction shall be restored per the specifications within 7 DAYS of substantial completion of grading in that area.
- ④ - Excess concrete/water from concrete trucks shall be disposed of in portable washout concrete basin or disposed of in a contained area.

UTILITY NOTES

- 1 - All sewer services to extend to a point 5' from proposed building.
- 2 - Bring water main into proposed building and cap at the floor.
- 3 - Verify all service locations and inverts with mechanical engineer before construction.
- 4 - All watermain to have a minimum of 7.5' of cover.
- 5 - Remove existing unused water services back to the main per City requirements.
- 6 - Remove/abandon existing unused sanitary sewer services back to the property line.
- 7 - Contractor to televisue lines to determine condition prior to abandonment.

Exhibit E

Public Right-of-Way Encroachment Agreement

Haglund's Corner, LLC and Garrison Landing, LLC (collectively, "Property Owner") as owners of property located at 236 Minnetonka Avenue South (PID #06-117-22-24-0064), 240 Minnetonka Avenue South (PID #06-117-22-24-0065), and 519 Indian Mound East (PID #06-117-22-24-0066), all in Wayzata, Minnesota (the "Property") is hereby granted a license to install and maintain on the City Right-of-Way adjacent to the Property (which is legally described on the attached Exhibit A), the Proposed Patio Area depicted on Exhibit B (the "Permitted Encroachment Materials").

In consideration of this license, the Property Owner agrees to the following:

Property Owner shall be responsible for the installation, ongoing maintenance and snow removal of and from the Permitted Encroachment Materials. Any and all costs associated with the initial installation, maintenance and said snow removal of and from the Permitted Encroachment Materials will be borne exclusively by the Property Owner.

If at any time the City of Wayzata, for itself or on behalf of public utility companies who have permission to have their utilities within the City Right-of-Way, requires temporary or permanent modification or removal of any or all of the Permitted Encroachment Materials for maintenance of existing public improvements or the installation of any other public improvements, or because of the need to use the City Right-of-Way in such a manner that requires removal of the Permitted Encroachment Materials, such removal or modification will be done by the City of Wayzata, provided that the City first informs the Property Owner of its intentions, explains to the Property Owner the need to access the City Right-of-Way, and does all such removal or modification in such a way so as to minimize the impact to the Permitted Encroachment Materials, to the extent reasonably possible without significant delay or cost, or if approved by the City, such removal or modification may be done by the Property Owner.

If there is an emergency situation requiring full or partial removal of any or all of the Permitted Encroachment Materials and the City, for itself or on behalf of public utility companies, is unable to contact the Property Owner within a reasonable time, the City will engage in such removal of the Permitted Encroachment Materials as deemed necessary to perform the emergency repairs.

Replacement of the Permitted Encroachment Materials will be at the discretion of the City, shall not interfere with the operation of any improvements constructed by the City in the City Right-of-Way, and the cost thereof shall be paid by the Property Owner.

The Property Owner agrees to indemnify the City from any claim made against the City for any damage or injury caused by the locating of the Permitted Encroachment Materials in the City Right-of-Way. Upon conveyance of fee title to the Property, the grantee, by accepting such conveyance, will thereby become the "Property Owner" and a new party to, and be benefitted and bound by, this Agreement, and the conveying owner will be released from any and all liability under this Agreement for any obligation to be performed or breach of this Agreement occurring thereafter. In furtherance of the foregoing, in case the Property is subdivided, any

Exhibit E

resulting parcel, lot or unit, as the case may be, on which no part of the Permitted Encroachment Materials is located shall, upon such subdivision, cease to be part of the Property for purposes of this Agreement and the person or entity to whom Property Owner conveys any such resulting parcel, lot or unit, and each successor in ownership thereof, shall not be a Property Owner for purposes of this Agreement and shall have no obligations or liability under this Agreement. The City shall not be responsible for any damage to the Permitted Encroachment Materials except as specifically set forth in this Agreement.

[Signatures on Following Page]

Exhibit E

This Agreement is executed as of the ____ day of _____, 2015.

CITY OF WAYZATA

PROPERTY OWNER(S)

Haglund's Corner, LLC

By:_____

By:_____

Its:_____

Its: _____

Garrison Landing, LLC

By:_____

Gary Kraemer

Its: Chief Manager

Exhibit E

EXHIBIT A

Legal Description

Parcel 1:

The Southwesterly 60 feet of the Northeasterly 115 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Parcel 2:

The Southwesterly 50 feet of Lots 3 and 4, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Parcel 3:

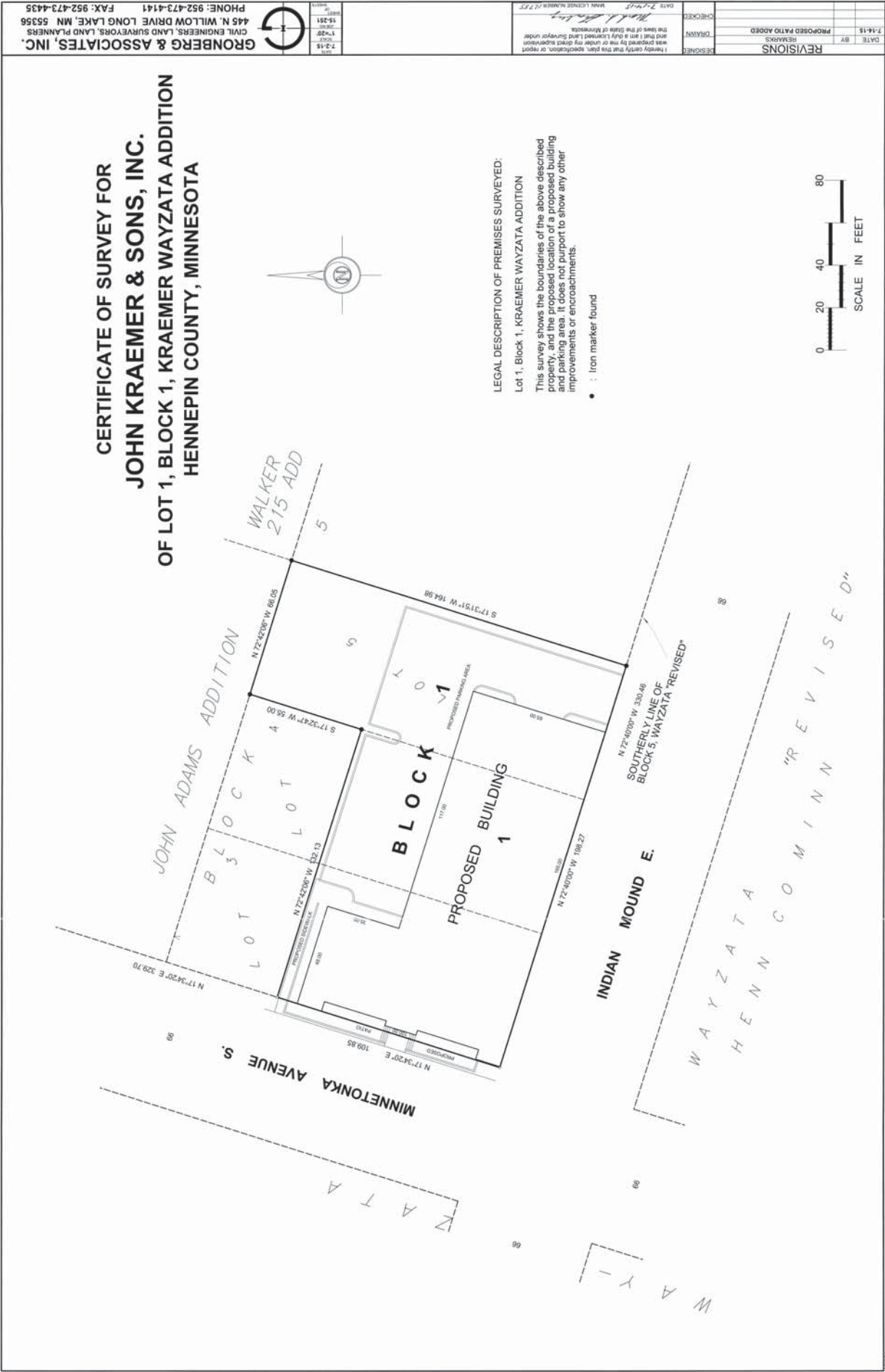
Lot 5, Block 5, Wayzata Revised, Hennepin County, Minnesota.

Exhibit E

EXHIBIT B

Permitted Encroachment Materials

[see attached]



7/21/2015
THE FOLLOWING 2015 MUNICIPAL LICENSES
WERE APPROVED ADMINISTRATIVELY

2015 Gas Fitters License	
Sayler Heating & Air Conditioning	St Louis Park, MN
Special Event/Itinerant Food License	
Chamber of Commerce Picnic - July 9, 2015	
Wayzata Bar & Grill	747 Mill Street
2015 Tree Removal and Treatment License	
Superior Lawn & Landscape	St Bonifacius, MN

**WAYZATA POLICE DEPARTMENT
ACTIVITY REPORT
JUNE, 2015**

Ordinance

Reported: 06-30-2015 1034

Report of two males going door-to-door passing out flyers. Males were advised of the city ordinance for solicitors and sent on their way.

Addresses Involved

15000 block of Holdridge Rd E, Wayzata, MN

Theft

Reported: 06-29-2015 0924

Report of a theft. Loss approximately \$105.

Addresses Involved

500 block of Brimhall Ave, Long Lake, MN 55356

Utility/Public Works Issue

Reported: 06-29-2015 0839

Hit gas line in construction zone. Wayzata Fire responded.

Addresses Involved

300 block of Bushaway Rd, Wayzata, MN 55391

Disturbance

Reported: 06-29-2015 0711

Noise complaint. Report of a loud television. Television could be heard in hallway. Resident was advised.

Addresses Involved

100 block of Central Ave S, Wayzata, MN 55391

Suspicious

Reported: 06-28-2015 2357

Officer observed a suspicious occupied vehicle in the parking lot of a closed business. Driver stopped in lot to complete paperwork.

Addresses Involved

1700 block of Wayzata Blvd W, Long Lake, MN 55356

Open Door

Reported: 06-28-2015 1507

Officer observed overhead door standing open. Officer checked building, found employee working on site.

Addresses Involved

2300 block of Daniels St, Long Lake, MN

Death

Reported: 06-27-2015 0831

Report of one unconscious and not breathing. Efforts to revive the male were unsuccessful.

Addresses Involved

100 block of Promenade Ave, Wayzata, MN 55391

DWI

Reported: 06-27-2015 0155

24 year old male from Minnetrista arrested for driving under the influence, driving after revocation, and improper lane usage. Tested .13

Addresses Involved

Highway 12 & Carlson Parkway, Minnetonka, MN

Names Involved

(Arrested) Gooley, Andrew James (Age:24)

Utility/Public Works Issue **Reported:** 06-26-2015 1639
Reported a gas odor at business. Wayzata Fire Department responded.
Addresses Involved
1100 block of Wayzata Blvd E, Wayzata, MN 55391

Suspicious **Reported:** 06-25-2015 2234
Report of suspicious activity at the residence. New resident was moving in.
Addresses Involved
400 block of Highcroft Rd, Wayzata, MN 55391

Animal **Reported:** 06-24-2015 1319
Report of a dog biting another dog.
Addresses Involved
Superior Boulevard & Mill Street, Wayzata, MN 55391

Theft **Reported:** 06-24-2015 0714
Report of a theft by check. Loss \$5575.
Addresses Involved
100 block of Promenade Ave, Wayzata, MN 55391

Theft **Reported:** 06-23-2015 1543
Report of a theft. Estimated loss \$45,000.
Addresses Involved
200 block of Bushaway Rd, Wayzata, MN 55391

Theft from Vehicle **Reported:** 06-23-2015 1110
Report of a theft from vehicle. Loss approximately \$900.
Addresses Involved
700 block of Mill Street, Wayzata, MN 55391 USA

Suspicious **Reported:** 06-22-2015 1553
Report of an attempted scam letter. No loss at this time.
Addresses Involved
100 block of Huntington Ave S, Wayzata, MN 55391 USA

Unwanted Person **Reported:** 06-22-2015 1428
Report of an unwanted solicitor. Business owner was advised of the solicitor ordinance and how to obtain a city permit.
Addresses Involved
500 block of Broadway Ave N, Wayzata, MN 55391

Fire **Reported:** 06-21-2015 1933
Report of a recreational fire causing heavy smoke in the area. Resident extinguished the fire.
Addresses Involved
200 block of Ridgeview Dr E, Wayzata, MN 55391

Disturbance **Reported:** 06-21-2015 1536
Report of loud music. Resident agreed to turn music down.
Addresses Involved
700 block of Wayzata Blvd E, Wayzata, MN 55391

DWI**Reported:** 06-21-2015 0245

31 year old male from Long Lake arrested for driving while under the influence. Tested .25

Addresses Involved

Central Avenue & Lakeview Avenue, Long Lake, MN 55356 USA

Names Involved(Arrested) Romero-Lemus, Pablo Alain (Age:31)

Disturbance**Reported:** 06-19-2015 2345

Report of a loud party. All was quiet upon officer arrival.

Addresses Involved2200 block of Watertown Rd, Long Lake, MN 55356

Domestic**Reported:** 06-19-2015 0010

Report of a male and female verbal dispute.

Addresses Involved1300 block of Wayzata Blvd E, Wayzata, MN 55391

Accident**Reported:** 06-18-2015 0735

Report of a bicycle and vehicle accident. Bicyclist was transported to the hospital.

Addresses Involved1300 block of Wayzata Blvd E, Wayzata, MN 55391

Unwanted Person**Reported:** 06-17-2015 1653

Report of two solicitors without a permit. Both parties were advised of the city ordinance and asked to leave.

Addresses Involved300 block of Dupont St, Long Lake, MN 55356

Theft**Reported:** 06-17-2015 1153

Report of identity theft. Loss \$900.

Addresses Involved200 block of Peavey Lane, Wayzata, MN 55391 USA

Animal**Reported:** 06-16-2015 1441

Report of a dog bite. This case is under investigation.

Addresses Involved100 block of Inglewood Street, Long Lake, MN 55356

Theft**Reported:** 06-15-2015 1205

Report of a theft. Loss approximately \$1300.

Addresses Involved1200 block of Wayzata Blvd, Wayzata, MN 55391

Financial Transaction Card Fraud**Reported:** 06-15-2015 1020

Report of financial transaction card fraud. Loss approximately \$217.

Addresses Involved100 block of Gleason Lake Rd, Wayzata, MN 55391

Assault **Reported:** 06-14-2015 1951

Report of two teenagers in a vehicle throwing rocks at a bicyclist.
Suspects left the area, prior to police being contacted.

Addresses Involved

Central Ave N & Wayzata E, Wayzata, MN

Ordinance **Reported:** 06-14-2015 1359

Report of a violation of city recreational fire ordinance. Resident advised.

Addresses Involved

100 block of Ridgeview Dr E, Wayzata, MN

Assault **Reported:** 06-13-2015 1926

Report of an assault. Victim did not want to pursue charges at this time.

Addresses Involved

0 block of Inglewood St, Long Lake, MN 55356

Disturbance **Reported:** 06-13-2015 1321

Report of protesters stopping vehicles. Protesters were peacefully assembled and were not blocking traffic.

Addresses Involved

16100 block of Wayzata Blvd, Wayzata, MN 55391

Burglary-Attempted **Reported:** 06-13-2015 0811

Report of an attempted burglary. Sliding door was opened.
Nothing appeared to have been taken.

Addresses Involved

400 block of Dexter Dr, Long Lake, MN 55356

Domestic **Reported:** 06-13-2015 0312

Report of a verbal domestic.

Addresses Involved

300 block of Pondridge Cir, Wayzata, MN 55391

Disturbance **Reported:** 06-12-2015 2007

Report of loud music and banging on the walls. Resident advised.

Addresses Involved

100 block of Gleason Lake Rd, Wayzata, MN 55391

Suspicious **Reported:** 06-12-2015 1909

Suspicious male located near closed businesses. Male was identified and advised to leave.

Addresses Involved

400 block of Mill St, Long Lake, MN

Unwanted Person **Reported:** 06-12-2015 1732

Report of an unwanted party trying to sell items. Male was advised and left the area.

Addresses Involved

15800 block of Holdridge Rd E, Wayzata, MN 55391

Theft **Reported:** 06-12-2015 1200

Report of a theft of money. Unfounded. Money was located.

Addresses Involved

100 block of Promenade Avenue, Wayzata, MN 55391 USA

Theft **Reported:** 06-12-2015 1148

Report of a theft of gasoline. Loss \$59.

Addresses Involved

1300 block of Wayzata Blvd E, Wayzata, MN 55391

Theft from Vehicle **Reported:** 06-12-2015 1136

Report of a theft from vehicle. Loss \$20.

Addresses Involved

400 block of Rice St E, Wayzata, MN 55391

Theft **Reported:** 06-11-2015 2106

Theft of diapers. Loss \$72.

Addresses Involved

1000 block of Wayzata Blvd E, Wayzata, MN 55391

Assault **Reported:** 06-11-2015 0638

*See attached complaint

Addresses Involved

100 block of Gleason Lake Road, Wayzata, MN 55391

Names Involved

(Arrested) Snyder, Wayne Steven (Age:63)

Controlled Substance **Reported:** 06-10-2015 2314

Wayzata Police responded to a disturbance complaint in the area. A vehicle was located in the swamp. K9 searched the area and a backpack containing drugs was located. This case is under investigation.

Addresses Involved

County Road 15 West & Hillside Drive, Wayzata, MN 55391

Financial Transaction Card Fraud **Reported:** 06-10-2015 0901

Report of a theft and subsequent financial transaction card fraud. Loss approximately \$847.

Addresses Involved

1000 block of Wayzata Blvd E, Wayzata, MN 55391

Warrant **Reported:** 06-09-2015 1334

49 year old male from Long Lake was arrested on an outstanding warrant. He paid cash bail at the scene and was released.

Addresses Involved

2400 block of Industrial Blvd W, Long Lake, MN 55356

Names Involved

(Arrested) Nelles, Michael John (Age:49)

Open Door **Reported:** 06-09-2015 0356

Officer observed an open garage door. Nothing suspicious found. Door was secured.

Addresses Involved

500 block of Tamarac Avenue, Long Lake, MN 55391 USA

Suspicious **Reported:** 06-08-2015 1141

Report of an attempted phone scam. No loss at this time.

Addresses Involved

200 block of Barry Ave S, Wayzata, MN 55391

Suspicious **Reported:** 06-07-2015 1149
Report of a male looking in the business windows. Male was the property owner.
Addresses Involved
1900 block of Wayzata Blvd W, Long Lake, MN 55356

Domestic Assault **Reported:** 06-06-2015 2217
52 year old male from Wayzata was arrested for 5th degree assault.
Addresses Involved
100 block of Walker Ave N, Wayzata, MN 55391
Names Involved
(Arrested) Harlan, Charles Robert (Age:52)

Unwanted Person **Reported:** 06-06-2015 1531
Report of a solicitor without a permit harassing residents. Male was advised of the city ordinance and asked to leave the area.
Addresses Involved
100 block of Benton Ave, Wayzata, MN 55391

Trespass **Reported:** 06-05-2015 0753
Report of an unwanted male sleeping in a vehicle. Male was given a trespass notice and advised not to return to the common areas of the property.
Addresses Involved
100 block of Gleason Lake Rd, Wayzata, MN 55391

Open Door **Reported:** 06-04-2015 1927
Open security gate. Nothing suspicious found. Gated was secured.
Addresses Involved
2400 block of Industrial Blvd W, Long Lake, MN 55356

Open Door **Reported:** 06-04-2015 1905
Officer located an open door. Homeowners were home and advised.
Addresses Involved
200 block of Charles St, Long Lake, MN 55356

Juvenile Curfew **Reported:** 06-04-2015 0020
Report of a juvenile male out after curfew. Juvenile male was given a verbal warning and released to his mother.
Addresses Involved
Ferndale Road W & Highcroft Road, Wayzata, MN 55391 USA

Suspicious **Reported:** 06-03-2015 2305
Report of an unoccupied vehicle left running for over an hour. Vehicle was left running accidentally. Owner was advised and shut it off.
Addresses Involved
600 block of Lake St E, Wayzata, MN 55391

Domestic Assault **Reported:** 06-03-2015 2012
Report of a domestic assault.
Addresses Involved
600 block of Lake St E, Wayzata, MN

Assist **Reported:** 06-03-2015 0958
Report of a male struck in the elevator. Wayzata Police and Wayzata Fire assisted.
Addresses Involved
900 block of Wayzata Blvd E, Wayzata, MN 55391

Theft **Reported:** 06-02-2015 2103
Report of a theft. Unknown loss at this time.
Addresses Involved
100 block of Promenade Avenue, Wayzata, MN 55391 USA

Threat **Reported:** 06-02-2015 1914
Report of a threatening phone call.
Addresses Involved
300 block of Minnetonka Ave, Wayzata, MN

Order Violation **Reported:** 06-02-2015 1224
Report of a violation of an order for protection.
Addresses Involved
100 block of Circle A Drive S, Wayzata, MN 55391 USA

Fuel Leak **Reported:** 06-01-2015 1939
Report of diesel fuel leak in parking lot. Wayzata Fire cleaned it up.
Addresses Involved
1300 block of Wayzata Blvd E, Wayzata, MN 55391

Controlled Substance **Reported:** 06-01-2015 1929
Report of found narcotics. Items were taken in as evidence.
Addresses Involved
1400 block of Wayzata Blvd E, Wayzata, MN 55391

Theft **Reported:** 06-01-2015 1011
Report of a theft of medications. This case is under investigation.
Addresses Involved
100 block of Promenade Ave, Wayzata, MN 55391

Theft **Reported:** 06-01-2015 0934
Report of a theft of mail and subsequent use of stolen checks. This case is under investigation.
Addresses Involved
1400 block of Holdridge Cir, Wayzata, MN 55391 USA

Unwanted Person **Reported:** 06-01-2015 0900
Report of an unwanted male sleeping in the workout room. Male was advised.
Addresses Involved
100 block of Gleason Lake Rd, Wayzata, MN 55391

Open Door **Reported:** 06-01-2015 0225
Officer located an open door while on patrol. Construction crew on site.
Addresses Involved
1900 block of Wayzata Blvd E, Wayzata, MN 55391

TRAFFIC – JUNE, 2015

CITATIONS	275
WRITTEN WARNINGS	26
VERBAL WARNINGS	82

Description	Jun 2015
MISSING PERSON	1
MISSING ANIMAL	1
MISSING/LOST PROPERTY	3
FOUND PROPERTY	7
ABANDONED VEHICLE	1
RECOVERED STOLEN PROPERTY	1
SAFEKEEPING & DISPOSAL	3
PIMV	3
PI INVOLVING BICYCLE/PED	1
PDMV	20
H & R PDMV	7
FALL/CUT	4
ANIMAL BITE	3
FIRE ALARM	10
GAS LEAK/SMELL	4
GENERAL HAZARD	1
HAZ ROAD CONDITION	7
SUICIDE THREAT	1
SUDDEN DEATH	1
OTHER MEDICAL	52
Medical Alarm	1
WELFARE CHECK - ADULT	12
WELFARE CHECK - JUV	4
INFO REC'D	17
VERBAL DOMESTIC	3
CIVIL MATTER	6
Trespass Warn/Order	1
DISTURBANCE/FIGHT/LOUD PARTY/HARASSMENT	15
RECEIVE COURT ORDER/OF	3
SUSPICION	29
OPEN DOOR/WINDOW	5
SCAM/FRAUD ATTEMPT	3
BURNING COMPL	2
FIREWORKS COMPL	2

MISC. JUVENILE PROBLEM	6
DRIVING/TRAFFIC COMPLAINT	30
PARKING COMPL	11
HOUSE/BUSINESS CHECKS	8
RECORD CHECKS	11
FIREARM PERMIT	4
HC SHERIFFS PERMIT TO CARRY	2
LIQUOR LICENSE CHECKS/PERMIT	2
PARKING PERMIT	1
OTHER ORD VIOL (JUNK CARS, ETC)	1
SOLICITATION	5
NOISE VIOLATION	1
ANIMAL COMPLAINT/CHECK	16
Dangerous Dog Registration	1
DOG LICENSE ISSUED	2
PATROL REQUEST	2
ADULT PROTECTION ASSIST	3
FINGERPRINTS	2
ASSIST CHILD PROTECTION	3
MOTORIST ASSIST/STALL	19
UTILITY PROBLEM	13
PUBLIC ASSIST	22
LOCKOUT	5
BUSINESS ALARM	24
HOME ALARM	17
911 HANG-UP	20
ASSIST OTHER DEPT	16
WARRANT/ATTEMPT/ARREST	2
SPECIAL EVENT	1
TRAFFIC CONTROL / DIRECT ENFORCEMENT	24
CASE FOLLOW UP	1
Cancel/No Contact	2
ASLT 2-INFLICTS BODILY HARM-OTH WEAP-POLICE	1
ASLT 5-MS-INFL OR ATTMPT BD HRM-OTH WPN-CHL ST	1
ASLT 5-MS-INFL OR ATTMPT HRM-HANDS-ADL STR	1
TERR THREATS-INFLT BH-UNK WEAP-ADLT-ACQ	1
TERR THREATS-INF PRO DM-EXPLO INCEN-POLICE	1
DOM ASLT-MS-INFLT BODILY HARM-HANDS-AD-FAM	3
BURG-UNK DEG-AT FRC RES-N-UNK WEAP-UNK ACT	1
CON SUB 5-UNK ACT-SYN NARC-UNK	1
CON SUB 5-UNK ACT-METHAM-UNK	1
CON SUB 5-POSSESS-MARIJUANA-UNK	1
ESC-FE-FLEE AN OFFICER	1
ACCIDENT-MS-FAIL STOP-DRVR CAUSED-UNK INJ-MV	1
TRAFFIC-MS-OTHER-MV	1

TRAF-AC-GM-3RD DEG DWI-UI ALCOHOL-MV	2
LIQUOR - POSSESSING	1
DISTURB PEACE-MS-DISORDERLY CONDUCT	1
MS-VIOL ORDER FOR PROTECTION	1
THEFT-UNK LVL VAL-BUILDING-SCH1 2 CT SU	2
THEFT-MORE 35000-FE-BUILDING-OTH PROP	1
THEFT-1001-5000 DLRS FE-BLDG-OTHER PROPERTY	1
THEFT-501-1000 DLRS GM-VEHICLE-OTHER	1
THEFT-500 OR LESS MS-BLDG-MONEY	1
THEFT-500 OR LESS MS-BLDG-OTH PROP	1
THEFT-500 OR LESS MS-YARDS-OTH PROP	1
THEFT-500 OR LESS MS-MAIL-MONEY	1
THEFT-500 OR LESS MS-SELF SERVE GAS-GAS ONLY	1
THEFT-500 OR LESS MS-MTR VEHICLE-MONEY	1
FRAUD-UK-FINANCIAL EXPLOIT VULN ADULT-UNK	1
FRAUD-FE-ISSUE WORTHLESS CHECK-MORE THAN 5000	1
FRAUD-FE-FIN-TRAN-CARD-NO CONSENT 501-2500	1
THEFT-GM-IDENTITY THEFT-501-2500	1
FRAUD-MS-FIN-TRAN-CARD-NO-CONSENT-250-LESS	1

State of Minnesota
County of Hennepin

District Court
4th Judicial District

Prosecutor File No. 15A04009
Court File No. 27-CR-15-15829

State of Minnesota,
Plaintiff,

vs.

WAYNE STEVEN SNYDER DOB: 05/07/1952
NPA

Defendant.

COMPLAINT

Summons

☒ Amended

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Assault-1st Degree-Use of deadly force against peace officer/prosecutor/judge or correction employee

Minnesota Statute: 609.221.2(a), with reference to: 609.101.2, 609.221.2(a), 609.221.2(b)

Maximum Sentence: 20 years and/or \$30,000

Offense Level: Felony

Offense Date (on or about): 06/11/2015

Control #(ICR#): 15010174

Charge Description: That on or about 6/11/2015, in Hennepin County, Minnesota, WAYNE STEVEN SNYDER , assaulted Officer Todd Peterson, while using a dangerous weapon or attempting to use deadly force against the officer while the peace officer was engaged in the performance of his or her duties imposed by law, policy or rule.

Minimum Sentence: 10 years

COUNT II

Charge: Assault-2nd Degree-Dangerous Weapon

Minnesota Statute: 609.222.1, with reference to: 609.222.1, 609.11.9, 609.11.4, 609.101.2

Maximum Sentence: 7 YEARS AND/OR \$4,200-\$14,000

Offense Level: Felony

Offense Date (on or about): 06/11/2015

Control #(ICR#): 15010174

Charge Description: That on or about 6/11/2015, in Hennepin County, Minnesota, WAYNE STEVEN SNYDER , assaulted Officer Lee, while using a dangerous weapon; to wit, Defendant rammed his van into Officer Lee's squad car.

Minimum Sentence: 1 YEAR AND 1 DAY

COUNT III

Charge: Fleeing a Peace Officer in a Motor Vehicle

Minnesota Statute: 609.487.3, with reference to: 609.487.3

Maximum Sentence: 3 YEARS AND 1 DAY AND/OR \$5,000

Offense Level: Felony

Offense Date (on or about): 06/11/2015

Control #(ICR#): 15010174

Charge Description: That on or about 6/11/2015, in Hennepin County, Minnesota, WAYNE STEVEN SNYDER did by means of a motor vehicle, flee or attempt to flee from a peace officer acting in the lawful discharge of an official duty, who WAYNE STEVEN SNYDER knew or reasonably should have known was a peace officer.

STATEMENT OF PROBABLE CAUSE

THE COMPLAINT HAS BEEN AMENDED TO CHANGE COUNT 1 TO ASSAULT FIRST DEGREE. PROBABLE CAUSE REMAINS THE SAME.

Complainant has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On June 11, 2015, at approximately 6:38 am, Wayzata Police Department Officer T. Peterson responded to a call on suspicious activity at a residence within the City of Wayzata, Hennepin County, State of Minnesota. Officers received information that a white cargo van was parked in the reporting party's driveway, and a white male with long, dark hair exited the van carrying what appeared to be an axe, a knife and something inside a bowl. While enroute, Peterson was advised that the cargo van was backing up and then left the residence.

As Peterson was approaching the residence, he observed a white cargo van in the process of making a left turn eastbound onto Wayzata Boulevard East. As the van approached Peterson's squad, Peterson slowed and activated his emergency lights. As the van passed, Peterson observed that the driver was a male party with long, dark hair. Peterson then made a u-turn, got behind the van with emergency lights still activated. The van did not yield to the officer and continued eastbound.

While pursuing the van, with emergency lights and siren activated, in the area west of Broadway Avenue, the van suddenly stopped, accelerated hard in reverse and rammed Peterson's squad car. The van then took off traveling eastbound again. The van suddenly stopped, reversed quickly and rammed Peterson's squad several times along Wayzata Boulevard East, each time causing the squad to rock back and forth. On at least several occasions, Peterson's squad was pushed backwards some distance into Officer Lee's squad car, which had arrived to assist.

As the officers continued to pursue the van on eastbound Wayzata Boulevard East, the van approached the intersection of the entrance ramp to eastbound Highway 12 and Gleason Lake Road, at which time the van struck a maroon passenger sedan that was stopped facing eastbound at the intersection. The impact pushed the sedan north on Gleason Lake Road. The van then stopped suddenly once again, accelerated hard in reverse and rammed Peterson's squad car.

At this time, Officer Lee pulled his squad around to the side and pulled in front of the van that had stopped, believing that the van had stalled. The van then rammed into Officer Lee's driver's side door. Peterson believed the driver of the van was trying to seriously injure or kill the officers by his repeated use of the van to ram the squad cars. Peterson then used his squad to pin the van in between his squad and Officer Lee's squad.

Peterson ran to the van, opened the door and pulled the driver, who was subsequently identified by a Washington driver's license as being WAYNE STEVEN SNYDER (DOB: 5/7/1952), Defendant herein, out of the vehicle. Defendant was uncooperative with officers and came towards Peterson in a crouched, fighting stance. Defendant yelled gibberish at Peterson, had wild eyes and Peterson believed that Defendant may be high on a controlled substance. Officer Lee's leg was briefly pinned inside the vehicle, but he was eventually able to free his leg and climb out of the passenger side of the squad to assist Peterson with Defendant. It took multiple officers to subdue Defendant and place handcuffs on him.

Defendant was transported to the Wayzata Police Department, where he yelled and screamed, and at one

point appeared to be foaming at the mouth.

Both squad car vehicles involved in the pursuit sustained substantial damage and were towed from the scene.

The driver of the sedan that was struck by Defendant's vehicle indicated that she was not injured. Her vehicle was disabled as a result of the impact.

Officers later spoke with the initial reporting party, who advised that the driver of the van had exited his van after parking in her driveway and walked around the house towards her backyard with an axe in his hand. She looked out back and did not see the male, but saw that the axe, a knife, and a milky white Tupperware-style bowl was laying in her yard. Officers later recovered an axe, a 12" knife, a bent machete, a screwdriver, a phone book, an opened bag of chips and a bottle that appeared to be Hydrogen Peroxide from the reporting party's back yard.

Defendant, in a post-Miranda interview, admitted that he saw the police following him with their lights and sirens on, and that he did not stop because he did not want to get shot. Defendant claims that he doesn't remember hitting anyone with his van, and that he just dumped items in the reporting party's yard because he did not want that stuff anymore.

SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant

Dennis Jahnke
Detective
350 S 5th St
Minneapolis, MN 55415
Badge: 473

Electronically Signed:
07/14/2015 11:57 AM

Subscribed and sworn to before the undersigned.

**Notary Public or
Judicial Official**

Ralph Clark, Peace Officer
License Number: 11669,
Hennepin County, Minnesota.
My license expires 06/30/2018
Detective
350 S 5th St
Minneapolis, MN 55415

Electronically Signed:
07/14/2015 12:02 PM

Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney

Bill Richardson
300 S 6th St
Minneapolis, MN 55487
(612) 348-5550

Electronically Signed:
07/13/2015 04:16 PM

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

☒ SUMMONS

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on _____, _____ at _____ AM/PM before the above-named court at 401 Fourth Avenue S, Minneapolis, MN 55415 to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

☐ WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ Execute in MN Only

☐ Execute Nationwide

☐ Execute in Border States

☐ ORDER OF DETENTION

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$50,000.00

Conditions of Release:

This complaint is issued by the undersigned Judge as of the following date: July 14, 2015.

Judicial Officer

Amy Dawson

Electronically Signed: 07/14/2015 02:14 PM

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF HENNEPIN
STATE OF MINNESOTA

State of Minnesota

Plaintiff

vs.

WAYNE STEVEN SNYDER

Defendant

Clerk's Signature or File Stamp:

RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this Summons upon the Defendant herein named.

Signature of Authorized Service Agent:

MEMORANDUM

To: Heidi Nelson

From: Brian T. Grogan

Date: July 15, 2015

Re: Mediacom Franchise - City of Wayzata, MN

Introduction

The Wayzata City Council ("Council") passed on First Reading the Ordinance granting a cable franchise to Mediacom Minnesota LLC ("Franchise") to construct, operate and maintain a cable system in the City. The Council will hold a second reading of the Mediacom cable franchise at its July 21st regularly scheduled council meeting.

At the first reading the Council raised several concerns including:

1. The legal, technical and financial qualifications of Mediacom;
2. The construction and operation plans of Mediacom;
3. Numerous customer service issues; and
4. Process to report and track complaints.

Below I have addressed each concern mentioned above.

Legal, technical and financial qualifications of Mediacom

This issue arises from the findings listed on the first page of the proposed Franchise Ordinance. This finding was carried forward from the existing franchise granted in 1998 as well as from similar franchise templates used by other Lake Minnetonka area cities served by Mediacom. The City worked off of a similar template to reduce cost and to avoid having to negotiate issues that had already been addressed in other neighboring communities. In addition, Federal law at 47 USC 546 (c) provides that a franchising authority should consider, among other factors, that the cable operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's renewal proposal.

To address this finding, the City undertook a review of Mediacom's past franchise fee payments to the City under the existing franchise and also conducted a review of Mediacom's technical performance. Copies of these reports are attached for Council review as Exhibits A and B. Due to cost concerns, the City did not direct a separate analysis of the legal, technical and financial qualifications of Mediacom. If the City desires, such a review can be completed, or the findings can be modified to eliminate this reference.

Construction and operation plans of Mediacom

This issue also arises from the findings listed on the first page of the proposed Franchise Ordinance. This finding was carried forward from similar franchise templates used by other Lake Minnetonka area cities served by Mediacom. A copy of the City technical review has been attached for the Council's review. Concerns related to Mediacom's future construction and operations within the City's rights-of-way are addressed in the body of the Franchise and the City Code – the City Code is incorporated by reference into the Franchise.

Numerous customer service issues

Under Federal Communications Commission regulation (47 CFR 76.309) and the Franchise, cable operators may schedule appointments for installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during normal business hours. Cable operators may also schedule service calls outside of normal business hours for the convenience of the subscriber.

A cable operator may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment. If the cable installer or technician is running late and will not meet the specified appointment time, he or she must contact the subscriber and reschedule the appointment at the convenience of the subscriber.

The federal standards concerning installations, outages and service calls must be met under normal operating conditions at least 95% of the time, measured quarterly.

All of the above standards, and many more, are contained in the proposed franchise. The City can work to develop a Cable Subscriber - Bill Of Rights as suggested by the Council to fully outline each of the obligations in the franchise and the FCC standards. This Bill of Rights can be published in the City newsletter and otherwise made available to residents to inform the residents regarding the new customer service obligations and the obligations imposed upon Mediacom. To the extent the City receives complaints from the public regarding Mediacom's performance, the City can use the enforcement tools in the proposed franchise to hold Mediacom in non-compliance and could draw liquidated damages from the letter of credit as permitted by the franchise.

Process to report and track complaints

All subscribers and members of the general public may direct complaints, regarding Mediacom's cable service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or a commission of the City.

Under the proposed franchise, Mediacom is required to resolve a complaint within thirty (30) days. In addition, Mediacom is required to respond to written complaints from the City in a timely manner, and provide a copy of each response to the City within fifteen (15) days.

Mediacom shall have printed clearly and prominently on each subscriber bill and in the customer service agreement provided for in Section 5.3(e) of the Franchise, Mediacom's twenty-four (24) hour phone number for subscriber complaints. Additionally, Mediacom shall provide information to subscribers concerning the procedures to follow when they are unsatisfied with measures taken by Mediacom to remedy their complaint. This information must include the phone number of the City office or Person designated to handle complaints.

2894616v1

EXHIBIT A
Franchise Fee Payments to the City



Alisa Quaglietta
Regulatory Analyst

May 15, 2014

Ms. Heidi Nelson
City Manager
City of Wayzata
600 Rice Street
Wayzata, MN 55391

RE: Franchise fee desk review report - City of Wayzata, Minnesota

Dear Ms. Nelson:

We have reviewed and recalculated the amount of franchise fees for 2012 and 2013 based on Moss & Barnett recommendations mentioned in your letter of October 30, 2013. Based on our findings we processed a check payable to the City of Wayzata for the amount of \$7,001.74. Also enclosed is a check for \$1,149.80 which consist of an interest owed for the years 2010 and 2011. This should suffice all the outstanding payments for Franchise Fees due to the City of Wayzata, MN as of 12/31/2013.

Please feel free to contact me if you have any more questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Alisa", with a long, sweeping flourish extending to the right.

Alisa Quaglietta

Mediacom Communications Corporation
1 Mediacom Way | Mediacom Park, NY 10918 | 845-443-2781 | Fax 845-698-4078

CITY OF WAYZATA, MN

2012-2013 OUTSTANDING FRANCHISE FEES

	FF PAYMENTS	CPSM 318	VARIANCE	Franchise Fee %	OUTSTANDING FRANCHISE FEE	INTEREST 18 %	TOTAL PAYMENT DUE
1st Quarter 2012	\$263,194.22	\$277,356.62	\$14,162.40	5%	\$708.12	\$259.92	\$968.04
2nd Quarter 2012	\$263,613.28	\$279,092.95	\$15,479.67	5%	\$773.98	\$253.05	\$1,027.03
3rd Quarter 2012	\$265,815.01	\$280,045.89	\$14,230.88	5%	\$711.54	\$191.39	\$902.93
4th Quarter 2012	\$265,813.59	\$280,478.65	\$14,665.06	5%	\$733.25	\$156.59	\$889.84
1st Quarter 2013	\$257,193.55	\$272,869.70	\$15,676.15	5%	\$783.81	\$112.39	\$896.20
2nd Quarter 2013	\$263,701.68	\$282,516.98	\$18,815.30	5%	\$940.76	\$87.91	\$1,028.68
3rd Quarter 2013	\$261,580.07	\$283,779.06	\$22,198.99	5%	\$1,109.95	\$50.70	\$1,160.65
4th Quarter 2013	\$277,490.25	\$280,057.60	\$2,567.35	5%	\$128.37	\$0.00	\$128.37
TOTAL OUTSTANDING FRANCHISE FEES AND INTEREST FOR 2012 AND 2013					\$5,889.79	\$1,111.95	\$7,001.74

881036/04-08

MEDIACOM COMMUNICATIONS CORP.

SUBSIDIARY DISBURSEMENT
ONE MEDIACOM WAY
MEDIACOM PARK, NY 10918

JPMORGAN CHASE BANK, N.A.
SYRACUSE, NEW YORK
50-937-213

CHECK
NUMBER

501391

PAY

DATE

May 14, 2014

\$

*****7,001.74

Seven Thousand One Dollars And Seventy-Four Cents *****

VOID AFTER 90 DAYS

TO THE
ORDER
OF

City of Wayzata
600 E. Rice Street
Wayzata, MN 55391-1799

AUTHORIZED SIGNATURE

⑈501391⑈ ⑆021309379⑆ 6301518126509⑈

501391

City of Wayzata-1-WAYZATA

May 14, 2014

Check No. 501391

Document
Number

2012-2013 FF Audit

Document
Date

May 12, 2014

Invoice Amount

7,001.74

Discount Taken

0.00

Net Payment

7,001.74

MEDIACOM COMMUNICATIONS CORP.SUBSIDIARY DISBURSEMENT
ONE MEDIACOM WAY
MEDIACOM PARK, NY 10918JPMORGAN CHASE BANK, N.A.
SYRACUSE, NEW YORK
50-937-213CHECK
NUMBER

498687

PAY

DATE

May 01, 2014

\$ *****1,149.80

One Thousand One Hundred Forty-Nine Dollars And Eighty
Cents *****

VOID AFTER 90 DAYS

TO THE
ORDER
OFCity of Wayzata
600 E. Rice Street
Wayzata, MN 55391-1799

AUTHORIZED SIGNATURE

⑈498687⑈ ⑆024309379⑆ 6301518126509⑈

498687

City of Wayzata-1-WAYZATA

May 01, 2014

Check No. 498687

Document Number	Document Date	Invoice Amount	Discount Taken	Net Payment
2010-2011 FF Audit Balance	Apr 24, 2014	1,149.80	0.00	1,149.80



Security features. Details on back.



Alisa Quaglietta
Regulatory Analyst

April 22, 2014

Ms. Heidi Nelson
City Manager
City of Wayzata
600 Rice Street
Wayzata, MN 55391

RE: Franchise fee desk review report - City of Wayzata, Minnesota

Dear Ms. Nelson:

We have reviewed the findings of Moss & Barnett mentioned in your letter of October 30, 2013. We agree with the findings for 2010 and 2011. However, we are not in agreement with the percentage of interest that was assessed by the firm on the outstanding franchise fees owed to the City of Wayzata. Therefore we've processed a payment of \$3,984.41 as detailed in the attached worksheet. This should suffice all the outstanding payments for Franchise Fees due to the City Wayzata, MN as of 12/31/2011.

We are reviewing and recalculating 2012 and 2013 and we will let you know of our findings in the next two weeks.

Please feel free to contact me if you have any more questions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Alisa", with a long, sweeping flourish extending to the right.

Alisa Quaglietta

Year	Cable Service Revenue used to calculate FF paid	Total Video revenue from Monarch	Difference	Rate	FF owed on the difference
2010	\$ 1,030,109.68	\$ 1,065,298.32	\$ 35,188.64	5%	\$ 1,759.43
2011	\$ 1,085,735.71	\$ 1,118,906.00	\$ 33,170.29	5%	\$ 1,658.66
Total FF owed					\$ 3,418.09
Interest on late payment 6%					\$ 566.32
Total Owed					\$ 3,984.41

MEDIACOM COMMUNICATIONS CORP.

SUBSIDIARY DISBURSEMENT
ONE MEDIACOM WAY
MEDIACOM PARK, NY 10918

JPMORGAN CHASE BANK, N.A.
SYRACUSE, NEW YORK
50-937-213

CHECK
NUMBER

496035

PAY

DATE

Apr 18, 2014

\$ *****3,984.41

Three Thousand Nine Hundred Eighty-Four Dollars And Forty-One
Cents *****

VOID AFTER 90 DAYS

TO THE
ORDER
OF

City of Wayzata
600 E. Rice Street
Wayzata, MN 55391-1799


AUTHORIZED SIGNATURE

 Security features. Details on back.

⑈196035⑈ ⑆021309379⑆ 6301518126509⑈

496035

City of Wayzata-1-WAYZATA Apr 18, 2014 Check No. 496035

Document Number	Document Date	Invoice Amount	Discount Taken	Net Payment
2010-2011 FF Audit	Apr 17, 2014	3,984.41	0.00	3,984.41

June 17, 2013

Ms. Heidi Nelson
City Manager
City of Wayzata
600 Rice Street East
Wayzata, MN 55391

Re: Franchise Fee Desk Report (the "Report") for the City of Wayzata, Minnesota
for the Years Ended December 31, 2010 and 2011
Our File No. 23109.7

Dear Ms. Nelson:

We have completed this Franchise Fee Desk Report on the Mediacom Communications Corporation ("Mediacom") franchise fee revenue for the City of Wayzata, Minnesota (the "City") for the years ended December 31, 2010 and 2011 (the "Desk Review Period"). The objective of our Report is to summarize our analysis of Mediacom's franchise fee gross revenue and the franchise fees paid by Mediacom to the City as required under the Cable Television Franchise Agreement dated May 28, 1998 and effective June 2, 1998 by and between the City and Triax Midwest Associates, L.P., a predecessor to Mediacom, (the "Franchise Agreement") and the Cable Television Regulatory Ordinance No. 602A (the "Ordinance"). This Report is being furnished to the City solely for the City's use. This Report should not be disseminated to anyone other than the City.

The activities performed in preparation of our Report included the following:

1. Analyze and review the Franchise Agreement and Ordinance.
2. Confirm the receipt of and timeliness of the franchise fee payments by Mediacom to the City.
3. Review Mediacom's "Franchise Fee Payments 2010-2011" and "CPSM-318 Financial Summary Report" worksheets for the City for the Desk Review Period.
4. Analyze Mediacom's allocations of nonsubscriber revenue to the City for the Desk Review Period.
5. Review Mediacom Broadband LLC's and Mediacom LLC's 2011 Form 10-K Annual Reports as filed with the United States Securities and Exchange Commission on March 22, 2012, that includes Consolidated Balance Sheets as of December 31, 2010 and 2011, and Consolidated Statements of Operations, Consolidated Statements of Changes in Members' (Deficit) Equity, and Consolidated Statements of Cash Flows for the years ended December 31, 2009, 2010 and 2011 (the "Financial Statements").

6. Correspond with Mediacom personnel regarding the allocations, accounting treatment, and financial information associated with the franchise fee revenue earned by Mediacom and the franchise fees remitted to the City.
7. Review a sample of Mediacom's customer invoices for the Desk Review Period.

The documents used in preparation of our Report were limited to the following:

1. The Ordinance and Franchise Agreement.
2. Mediacom's franchise fee calculation worksheets titled "Franchise Fee Payments 2010-2011" and "CPSM-318 Financial Summary Report" for the City for the Desk Review Period.
3. Mediacom's Financial Statements for the year ended December 31, 2011.
4. Mediacom's schedule of subscribers.
5. Mediacom's franchise fee payment information for the Desk Review Period.
6. Mediacom's nonsubscriber revenue worksheets for the Desk Review Period.
7. A sample of Mediacom's customer invoices for the Desk Review Period.

In preparation of this Report, we have not reviewed any of the accounting source documents including billing invoices to customers, deposit slips, copies of payments, copies of credit card payments, debit memos, credit memos specifically writing off accounts receivable, nonsubscriber revenue source documents, or any other source documents specifically received by or exchanged between Mediacom and the customers of Mediacom located in the City subject to the Ordinance and Franchise Agreement or other individuals or entities responsible for the generation of revenue by Mediacom with respect to the franchise with the City. **We acknowledge that we have relied exclusively on the information provided by Mediacom and, to that extent, do not consider this Report to rise to the level of a review or audit under generally accepted accounting principles or any other accounting standards.**

FINDINGS

As a result of our analysis of Mediacom's revenue generated by the operation of the cable system in the City and the franchise fees remitted to the City, we have made and are reporting the following Findings with respect to Mediacom under the Franchise Agreement and Ordinance within the limited scope of our analysis in this Report. Based upon the statements in the preceding paragraph and the scope of our Report, we believe the information in this Report could be subject to additional adjustments as specifically discussed below in Finding #1 and may not be fully indicative of the actual franchise fees due from Mediacom to the City in the period covered by this Report.

1. **Revenue Reporting Variance.** In our review of the revenue reports provided by Mediacom, we noted a variance between the revenue amounts reported on the CPSM-318 Financial Summary Report worksheets and the Franchise Fee Payments 2010-2011

revenue reports that are used to calculate the franchise fee. In 2010 and 2011, the total revenues for LOB:Video in the CPSM-318 Financial Summary Reports were \$1,065,298.32 and \$1,118,906.00, respectively. In 2010 and 2011, the Cable Subscriber Revenue less Franchise Fees, FCC User Fees and Bad Debt Expense in the Franchise Fee Payments 2010-2011 reports were \$1,030,109.68 and \$1,085,732.71, respectively.

We asked Mediacom for an explanation of this variance between the revenue amounts in its reports. Mediacom's response was "That the variance is due to minor accounting allocations during our normal monthly closing process." We were not provided with any additional explanation regarding this item.

In calculating the potential franchise fee adjustment under this Finding, we have used the variances between the CPSM-318 Financial Summary Report and the Franchise Fee Payment 2010-2011 worksheets. Based upon this information, the total potential additional revenue subject to the City's franchise fee for the year ended December 31, 2010 and 2011 were \$35,188.64 and \$33,173.29, respectively. This potential under-reporting of revenue results in an understatement of the franchise fees calculated and paid by Mediacom to the City in the amount of \$1,759.43 (five percent (5%) franchise fee rate times \$35,188.64 of unreported revenue) for the year ended December 31, 2010; and \$1,658.66 (five percent (5%) franchise fee rate times \$33,173.29 of unreported revenue) for the year ended December 31, 2011. The total potential unreported and unremitted franchise fees with respect to this unreported franchise fee revenue are \$3,418.09.

In addition, the Ordinance provides for the imposition of interest on the late payment of the franchise fee to the City. Specifically, Section 1.20(d) of the Ordinance provides "In the event that any Franchise Fee payment or recomputed amount is not made on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the lesser of the maximum rate permitted by Applicable Laws or 18% per annum during the period for which payment was due." Based upon the late payment of these franchise fees by July 1, 2013, the interest incurred (using the eighteen percent (18%) rate) with respect to these franchise fees equals \$1,716.12. The total potential amount of the unpaid franchise fees with interest due to the underreporting of franchise fee revenue based upon the information in this Finding is \$5,134.21. (See attached Schedule A for a detailed calculation of this amount and the related interest as required under Section 1.20(d) of the Ordinance.)

2. **Advertising.** The Ordinance defines Gross Revenues in Section 1.2(n) as follows:

- n. "Gross Revenues" means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries, parents, or any Person in which Grantee has a financial interest of five percent (5%) or more arising from or

attributable, to the provision of Cable Service by the Grantee within the City including, but not limited to, monthly fees charged to Subscribers for Basic Cable Service; monthly fees charged to Subscribers for any optional service; monthly fees charged to Subscribers for any tier of service other than Basic Cable Service; Installation, disconnection and reconnection fees; leased Channel fees; converter and remote revenues; advertising revenues; and revenues from home shopping Channels. Gross Revenues shall be the basis for computing the Franchise Fees imposed pursuant to Section 1.20 hereof. Grantee shall not be required to pay a franchise fee on gross revenues derived from any Person receiving free Cable Service pursuant to a Franchise Agreement. Gross Revenues shall include franchise fees collected by Grantee on behalf of the City.

Gross revenues are broadly defined to include all revenue from cable subscribers in the City as well as revenue generated by Mediacom from advertising and certain other activities related to the operation of the cable system in the City.

Mediacom appears, based upon the information provided by Mediacom, to allocate advertising revenue to the City based upon the number of subscribers in the City as compared to the number of Mediacom subscribers. This allocation method does not account for numerous assumptions or variables in the basic cable subscriber allocation calculation, including changes in basic cable subscribers through each period, changes in the number of basic subscribers in other franchises throughout each period, and the impact of non-basic and extended cable services. Mediacom is a national company that receives advertising revenue from many advertisers on national, regional, and local levels. This advertising revenue is difficult for the City to trace as the revenue is derived through many outlets. The advertising revenue allocation method utilized by Mediacom appears to be reasonable and any potential adjustments with respect to the allocation of the advertising revenue would likely be minimal and is outside the scope of our review.

We have evaluated the advertising revenue reported by Mediacom based upon the average advertising revenue per basic cable subscriber as described below. The advertising revenue allocated by Mediacom to the City averaged \$2.34 per basic cable subscriber a month in 2010 (\$36,359.92 of allocated advertising revenue for 2010 divided by 12 months and divided by 1,297 basic cable subscribers, the City's monthly average for 2010) and \$3.10 per basic cable subscriber a month in 2011 (\$47,123.05 of allocated advertising revenue for 2011 divided by 12 months and divided by 1,266 basic cable subscribers, the City's monthly average for 2011). The monthly average advertising revenue per basic cable subscriber expected by this author based upon similar desk review reports is higher than the amounts reported by Mediacom. However, the average revenue per subscriber increased by approximately 33% between 2010 and 2011.

Mediacom didn't provide any explanation regarding its lower than expected advertising revenue, but stated that all advertising revenue is included in the franchise fee calculations. We have not provided further analysis regarding the lower than expected advertising revenue amounts. There could be numerous factors why the advertising revenue is lower than expected, including the size and marketing power of Mediacom, the general economic conditions in the City, and its population and geographical location.

3. Home Shopping Revenue. Shopping channel commissions are reported by the shopping channel providers, such as the Home Shopping Network, based upon the geographic area where their products or services are sent or provided. It is my understanding that Mediacom allocated Home Shopping Revenue in the same manner as Mediacom allocates Advertising Revenue (by subscriber within a geographic area.) We do not have a national average of shopping channel commission revenue per subscriber, but based upon other reports prepared by the author for other franchises, the Home Shopping commissions recognized by Mediacom in the City are below expectations. There could be many factors that contributed to this lower than expected shopping commission revenue, including the changing economic environment.

4. Payment of Franchise Fees to the City. As part of our review process, we examine whether the franchise fees have been timely paid to the City. Section 3.2 of the Franchise Agreement requires that:

Franchise Fee. In consideration of the renewal of the Franchise provided for herein, the Grantee shall, at all times during the term of this Agreement, pay to Grantor a Franchise Fee of five percent (5%) of Grantee's Gross Revenues as defined in the Ordinance but excluding any Access Operating Fee funds collected. The Franchisee Fee shall be payable quarterly within thirty (30) days of the expiration of the preceding calendar quarter.

Except with respect to the potential underpayment of franchise fees discussed in Finding #1 and based upon our review of the Mediacom payment statements, Mediacom appears to have timely remitted its franchise fees to the City in the Desk Review Period.

5. Bad Debt Expense. According to our review of the bad debt expense as shown on the franchise fee worksheets, Mediacom deducted bad debt expenses from the gross revenue amounts used to calculate the franchise fee for the City. Mediacom's position and calculations are consistent with the definition of Gross Revenues as found in the Ordinance. The bad debt percentage based on total revenue is less than one percent (1%), and is in line with other cable operators.

6. Franchise Fee Rate Calculation. According to the franchise fee information provided by Mediacom, it appears that Mediacom is using a franchise fee rate of five percent (5%) to calculate the franchise fees on its customers' invoices for 2010 and 2011. Most cable operators use a franchise fee rate slightly greater than five percent (5%) to account for non-subscriber revenue (such as advertising and home shopping revenues that are not received

from subscribers, but are subject to the franchise fee). Mediacom is actually permitted to collect more franchise fees from subscribers in the City than it is collecting at the current time.

7. **Reports.** Section 3.2 of the Franchise Agreement provides that:

Each payment shall be certified by Grantee's controller or chief financial officer and shall be accompanied by a report in such form as the City may reasonably request showing the computation of the Franchise Fee as it relates specifically to the Wayzata franchise area (CUID # MN0569) for the preceding calendar quarter and such other relevant facts as may be required by the City, including the completion of a Franchise Fee Payment Worksheet in the form attached hereto as Exhibit B. Grantee shall annually provide a "Report of Independent Public Accountants" in a form substantially the same as attached hereto as Exhibit B.

Based upon our review, it appears that Mediacom has failed to provide the City with the certified financial reports and the annual "Report of Independent Public Accountants" as required by the Franchise Agreement.

8. **Other Revenue.** The Franchise Agreement provides for the imposition of the franchise fee on all revenue earned by Mediacom and any of its affiliates under the terms of the Ordinance and Franchise Agreement. We specifically inquired as to whether all other revenue, including revenue related to its affiliates, had been reported. The response was that "There are no revenues generated by Mediacom affiliates."

9. **Review Fees.** Section 1.20(b) of the Ordinance provides that "Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such an audit and shall remit to Grantor all applicable Franchise Fees due and payable together with interest thereon at the lesser of the maximum rate permitted by Applicable Laws or 18% per annum."

As part of this review process, Mediacom appears not to have exceeded the threshold for reimbursement for this review as set forth in the Ordinance.

RECOMMENDATIONS

Based upon the above Findings, we make the following recommendations:

1. Demand that Mediacom provide a response regarding the discrepancy between the revenue in its CPSM-318 Financial Summary Report and its Franchise Fee Payment 2010-2011 worksheets as discussed in Finding #1 or remit \$5,134.21 to the City for the under reported franchise fee revenue.
2. Obtain, on a quarterly basis from Mediacom as required in the Franchise Agreement, a copy of Mediacom's financial information certified by Mediacom's controller or chief financial officer that includes a calculation of the City's franchise fees and franchise fee revenue as set forth in Finding #7.

3. Obtain, on an annual basis from Mediacom as required in the Franchise Agreement, a "Report of Independent Public Accountants" as set forth in Finding #7.
4. Consider, to the extent Mediacom fails to provide information regarding the revenue discrepancy as provided in Recommendation #1, a formal audit of the financial records of Mediacom with respect to all revenues generated in the City under the Ordinance.
5. For 2012 and 2013, demand that Mediacom recalculate and remit the appropriate amount of franchise fees related to the items addressed in Recommendation #1 if a reasonable response is not provided by Mediacom regarding the revenue variance.

The analysis in this Report was performed on a limited scope and, as such, we provide no confirmation as to any amounts, payments, or the collection of any revenue or fees made by, to, or for Mediacom with respect to the Ordinance. The enforcement of the Franchise Agreement and Ordinance is solely the responsibility of the City and, as such, the use of any Findings or Recommendations in this Report is the sole responsibility of the City, and we do not and have not sought to rectify any Findings or act on any Recommendations provided in this Report. We do not suggest that our Report includes all of the potential reporting deficiencies regarding the revenues earned by Mediacom under its franchise with the City.

This Report has been provided at the request of the City and we do not express any opinions with respect to the information within this Report, and we are not liable for any damages for any reason to the City, Mediacom or any other party with respect to this Report.

If you have any questions or would like to discuss the contents of this report further, please do not hesitate to contact our office.

Very truly yours,



Yuri B. Berndt

Attorney At Law

P: (612) 877-5267

BerndtY@moss-barnett.com

cc: Brian T. Grogan, Esq.

Schedule A

City of Wayzata Franchise Fee Desk Report

2010 Revenue Variance

Revenue Variance	\$35,188.64
Franchise Fee Rate - 5% (per Franchise Agreement)	5.00%
Unreported and Unremitted Franchise Fees	<u>\$1,759.43</u>
Interest on Late Payment of Franchise Fees* 07/31/10 - 07/01/13**	<u>\$1,094.62</u>
Total Franchise Fees and Interest	<u><u>\$2,854.05</u></u>

* - Assumes entire underreported amount was due on July 31, 2010 (Mid-point for 2010 Payments).

** - Compounded annually based upon the interest rate as set forth in Section 1.20(d)
of the Ordinance.

2011 Revenue Variance

Revenue Variance	\$33,173.29
Franchise Fee Rate - 5% (per Franchise Agreement)	5.00%
Unreported and Unremitted Franchise Fees	<u>\$1,658.66</u>
Interest on Late Payment of Franchise Fees* 07/31/11 - 07/01/13**	<u>\$621.50</u>
Total Franchise Fees and Interest	<u><u>\$2,280.16</u></u>

* - Assumes entire underreported amount was due on July 31, 2011 (Mid-point for 2011 Payments).

** - Compounded annually based upon the interest rate as set forth in Section 1.20(d)
of the Ordinance.

TOTAL UNPAID FRANCHISE FEES AND INTEREST	<u><u>\$5,134.21</u></u>
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EXHIBIT B
Review of Mediacom's Technical Performance

Attachment 1 - Wayzata Mediacom Physical Plant Audit Issues
Physical Plant Audit Issues

	Address	Issue	Comments	Codes	
				NESC	NEC
1	Peavey Road	Aerial drop tied to fence	1 pole south of Shoreline Dr	239D3	
2	Rice Street E @ Barry Avenue S	Broken lashing wire		214	
3	1608 Crosby Road	Cable hardline is 4" from power at pole, power is touching cable hardline		235	
4	16255 Holdridge Road West	Drop hanging from messenger to ground, not properly attached at house		239D3	
5	497 Ferndale Road S	Drop is not buried at the pole		352	
6	425 Ferndale Road S	Drop is not buried at the pole		352	
7	15700 Aldridge Road	Drop on pole not properly attached to pole		239D3	
8	493 Ferndale Road S	Drop on pole not properly attached to pole		239D3	
9	497 Ferndale Road S	Drop on pole not properly attached to pole		239D3	
10	412 Ferndale Road S	Drop on pole not properly attached to pole		239D3	
11	581 Ferndale Road S	Drop on pole not properly attached to pole		239D3	
12	607 Ferndale Road S	Drop on pole not properly attached to pole		239D3	
13	503 Harrington Road	Drop on pole not properly attached to pole		239D3	
14	740 Park Street E	Drop on pole not properly attached to pole		239D3	
15	105 Grand Avenue S	Drop on pole not properly attached to pole	Drop not buried 4 feet from pole	239D3	
16	419 Rice Street E	Drop on pole not properly attached to pole	Needs to be buried 1 foot from pole	239D3	
17	412 Rice Street E	Drop on pole not properly attached to pole		239D3	
18	263 Bushaway Road	Drop on pole not properly attached to pole		239D3	
19	808 Chicago Avenue S	Drop on pole not properly attached to pole, interfering with pole steps		239D3	
20	Park Street E & Chicago Avenue	Ground rod is sticking out of ground 3+ inches		094B2c	250.53
21	Wayzata Boulevard E & Glenbrook Road N	Ground rod is sticking out of ground 8+ inches		094B2c	250.53

Attachment 1 - Wayzata Mediacom Physical Plant Audit Issues
Physical Plant Audit Issues

	Address	Issue	Comments	Codes	
				NESC	NEC
22	Park Street E & Chicago Avenue	Ground wire on pole not attached to pole properly		239D3	
23	Wayzata Boulevard E & Glenbrook Road N	Ground wire on pole not attached to pole properly		239D3	
24	206 Manitoba Avenue S	Grounded with no bond, ground rod is sticking out of ground 8"		094B2c	250.53
25	421 Bushaway Road	Hardline cable and phone are touching		235H	
26	1460 Hollybrook Road	Hardline cable not properly attached to pole	Approximate address	239D3	
27	1518 Hollybrook Road	Hardline cable not properly attached to pole	Approximate address	239D3	
28	231 Manitoba Avenue	Hardline cable on pole not properly attached to pole, no cable guard protecting cable		239D3	
29	291 Glenbrook Road N	Hardline span is 5 feet above ground	Without phone drops holding up cable it would be lower to the ground	235	
30	487 Ferndale Road S	Lashing wire is broken		214	
31	Barry Avenue S @ Rice Street E	Loose down guy		264	
32	Rice Street E @ Barry Avenue S	Loose down guy	2 poles east of intersection	264	
33	15864 Aldridge Road	Loose downguy		264	
34	110 Grand Avenue S	MDU - Drops not properly buried		352	
35	110 Grand Avenue S	MDU - Drops on pole not properly attached to pole		239D3	
36	110 Grand Avenue S	MDU - Ground wires not properly attached to building			820.24
37	101 Glenbrook Road N	MDU - Grounded with no bond			250
38	Grand Avenue @ Rice Street E	Missing down guy		264	
39	Rice Street E @ Barry Avenue S	Missing down guy		264	
40	209 Manitoba Avenue S	Missing down guy		264	

Attachment 1 - Wayzata Mediacom Physical Plant Audit Issues
Physical Plant Audit Issues

	Address	Issue	Comments	Codes	
				NESC	NEC
41	1518 Hollybrook Road	Missing down guy	Approximate address	264	
42	740 Park Street E	Missing down guy and messenger not attached to pole		264	
43	Peavey Road	Missing down guys (2 guys needed to relieve stress at pole)	1 pole south of Shoreline Dr	264	
44	130 Chicago Avenue S	No bond at house			250
45	1525-1537 Hollybrook Road	No bonds on drops			250
46	Peavey Road & Peavey Lane	Open amplifier pedestal		NESC - 381/Good engineering practice	
47	1537 Hollybrook Road	Open amplifier pedestal	Approximate address	NESC - 381/Good engineering practice	
48	1426 Holdridge Circle	Open pedestal		NESC - 381/Good engineering practice	
49	330 Peavey Lane	Open tap pedestal		NESC - 381/Good engineering practice	
50	Peavey Road	Power supply and disconnect box not locked	1 pole south of Shoreline Dr	224B2c	
51	1460 Hollybrook Road	Power supply and disconnect box not locked	Approximate address	224B2c	
52	1408 Holdridge Circle	Power supply and disconnect box not locked		224B2c	
53	Rice Street E & Grand Avenue S	Power supply and disconnect box not locked		224B2c	
54	425 Ferndale Woods Road S	Smashed pedestal		NESC - 381/Good engineering practice	
55	16604 Holdridge Road	Tree is used to hold hardline cable up over road	Approximate address	214	
56	215 Ferndale Road S	Hardline cable on pole not properly attached to pole		239D3	
57	Shoreline Drive (north of Peavey Drive)	Broken down guy		264	



communications, inc.

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www.cbgcommunications.com

Final Report

on the

CABLE SYSTEM TECHNICAL REVIEW

FOR

THE CITY OF WAYZATA, MINNESOTA

CBG Communications, Inc.

Dick Nielsen, Senior Engineer

Thomas G. Robinson, President

November, 2013

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Introduction

As part of the past performance review conducted by the City of Wayzata (“City”), MN, CBG Communications, Inc. (“CBG”) has completed our technical audit evaluating Mediacom’s residential cable television network.

CBG’s overall goals were to evaluate Mediacom’s compliance with the City’s franchise documents, and applicable laws and regulations, and to determine the condition of Mediacom’s equipment and infrastructure and the operation of this infrastructure.

CBG conducted evaluation tasks, document review, system physical infrastructure driveout and review, facility tours and discussions with Mediacom staff, discussions with City staff, and other processes to determine the existing condition of Mediacom’s residential network. The network review included the headend, fiber optic and coaxial infrastructure and their ability to deliver services to residents of the City, reliably and in a safe manner, consistent with the requirements of the franchise and applicable laws and regulations.

The major findings and recommendations of CBG’s review and evaluation are outlined below in this Report.

Findings related to Mediacom’s Residential Network

The beginning of a technical audit or system review is to seek various information from the cable TV system operator in order to establish a baseline and make informed determinations related to the system’s performance. This request is in the form of a “Request For Information” (“RFI”) and was sent to Mediacom in March, 2013. In April, 2013, Mediacom said it would not send most of the information requested and would not work with CBG to perform over-the-shoulder testing. Over the course of the next several months, the City worked with Mediacom to get them to cooperate, to some degree, with CBG and to provide some of the information as requested. Based on the

difficulty encountered during this process, we recommend that the City have requirements in a renewed Franchise that Mediacom provide technical documentation required to determine the technical capabilities and capacity of the system as well as documentation showing the maintenance of the system and system reliability.

- **System Design and Architecture**

Mediacom is operating a Hybrid Fiber Coaxial cable (“HFC”) network that is designed to make video (Cable TV), Internet and data services and telephone services available to most addresses within the City’s service area.

Mediacom’s system architecture begins at the regional headend located in St Peter, MN which feeds signals to and from a hub in Chanhassen, MN. From the hub, fiber optic cables carry signals to/from nodes that are located in neighborhoods throughout the City. From the hub, Mediacom uses fiber optic cable to send and receive signals to/from nodes located in neighborhoods, throughout the City’s service area, where forward (or downstream) signals are transformed from light, on the fiber optic infrastructure, to Radio Frequencies (RF) for insertion onto the coaxial cable infrastructure for ultimate transmission and distribution to residents and businesses served by the particular node. Forward (or downstream) services include all standard definition (“SD”) digital and high definition (“HD”) digital channels including Video-On-Demand (“VOD”) channels. Additionally, Internet data, traveling from Mediacom’s hub to subscribers, and telephone or voice service to subscribers is carried on the forward/downstream portion of the network. In addition, the nodes receive RF signals from subscribers via the coaxial cable infrastructure which feeds these signals into the node. The node converts these signals to light for transmission, via the fiber optic infrastructure, to Mediacom’s hub and headend. Some return signals include upstream data, ordering information for VOD and other video services as well as telephone traffic.

- **Spectrum or Bandwidth**

The total spectrum utilized by a system dictates the level of services that can be provided by the network. System spectrum can also be described as the bandwidth of

the system which is important to understand. Mediacom's system, as designed and operated today, has a total usable spectrum of 5 MHz to 750 MHz (5 million to 750 million Hertz). Simply stated, the system is a 750 MHz system. Further defined, the return (or upstream) system is designed for signals between 5 MHz and 40 MHz. Mediacom transmits signals between 54 MHz and 750 MHz on the forward or downstream portion of their system.

Systems being upgraded today are using equipment capable of between 860 MHz and 1,000 MHz (1 GHz). Although this system is not the most advanced system constructed, it is consistent, in terms of bandwidth, with many systems in service today throughout the country.

The system spectrum described above translates into system bandwidth or capacity. It is difficult, even with the channel map provided by Mediacom, to describe the maximum number of channels, or services, that can be provided on the subscriber network, as the bandwidth utilized for specific channels and services can be determined at the system level. For instance, compression technologies allow for Standard Definition digital TV channels to commonly utilize one 6 MHz channel to transmit between 7-15 SD channels. Furthermore, 2-3 High Definition digital channels occupy one 6 MHz channel. In addition, the system is configured and used to provide non-cable TV services, including telephone and Internet service which occupy a portion of the system's bandwidth.

Based on the channel map provided by Mediacom and publically available channel line-ups, the system, as constructed, equipped and operated today, can provide many of the services desired by Mediacom's customers. In addition, Mediacom has some available capacity on the system and can discontinue providing analog based channels in the future to reclaim more bandwidth. However, as more services become available (particularly high definition video programming services) and as subscribers' needs and desires change and increase, Mediacom may need to upgrade its current system,

depending on the length of any franchise renewal term, to gain additional bandwidth in order to provide these new services. Such upgrades could include using new electronic equipment to increase the system capacity to 1,000 MHz (1 gigahertz or 1 GHz), deploying fiber to the premises or home (FTTP or FTTH) as well as utilizing technologies that conserve bandwidth such as Switched Digital Video (SDV). The City should, in a renewed Franchise with Mediacom, at a minimum, require a Triennial review of the system to determine if it is still capable of meeting the communities' cable-related needs and interests, and providing the needed bandwidth for new services that become available in the future.

- **System Facilities**

Mediacom serves the City from its hub in Chanhassen, MN. CBG toured the hub facility in October, 2013. In addition, Mediacom provided information describing the headend and hub and discussions have been held with Mediacom personnel as additional data or information was required. Our findings are that the overall condition of these facilities was clean and well kept with room in both the headend and hub for future equipment expansion.

Grounding of equipment in various locations throughout the hub is adequate for protection of the equipment and personnel having to perform maintenance.

The headend and hub facilities have backup power provided by a large permanent generator, as well as large Uninterruptable Power Supplies (UPS) in the headend that produce 120VAC power to power equipment in the headend. This combination of backup power should allow for seamless transfer between commercial power and backup or standby power in the event of a power failure at the hub.

Headends and hubs in cable TV systems across the country also typically have a system to suppress fires that may occur. Rather than using a sprinkler system where water is used to put out a fire, as would be the case in an office setting, in rooms where reliability is critical for electronic equipment, systems are installed that extinguish fires without

water and therefore no damage to equipment occurs in the case of a small fire or accidental deployment.

Mediacom does not have a fire suppression system in the hub and staff report there is not a system installed in their St. Peter, MN headend facility either. This hub is the first hub of this significance that we have toured in recent years that does not have a professionally installed fire suppression system. Not having a fire suppression system installed could result in a small fire expanding to a catastrophic level resulting in the hub and all of its contents being destroyed. If this were to occur, the entire City of Wayzata, and many of the neighboring communities, would be without Cable TV, Internet and phone service provided by Mediacom. Furthermore, it would likely take Mediacom at least several days and potentially weeks to replace the hub even in a temporary fashion. CBG strongly recommends that the City require that fire suppression be installed in the hub to remedy this problem.

- **System Performance**

CBG began its analysis of Mediacom's system performance by reviewing the most recent Federal Communication Commission (FCC) Proof-of-Performance (POP) test documents (Winter 2013). These documents are required to be stored in Mediacom's Public File and to be available for inspection by the Federal Communications Commission or the local franchisor. These POP tests are performed on a representative number of analog channels on the system. CBG determined that the recorded results within the City service area, as documented in Mediacom's POP documentation, appeared to be within FCC specifications.

The FCC also has requirements in place, §47CFR76.640, that a Cable TV provider must maintain certain standards on digital channels on its system. However, the FCC's rules do not dictate where testing should be done or how often the tests must be performed. Additionally, there is no requirement for cable providers to document or archive findings related to these tests.

Mediacom has not been heretofore documenting these tests as they were not specifically testing for digital performance parameters specified by the FCC. Mediacom should be required to perform all FCC testing that is required by the FCC and as may change over the course of a renewed franchise. These tests should be performed regularly in the future and documentation should be provided to the City showing the results.

As part of CBG's site visit, we oversaw Mediacom personnel performing tests at 4 locations within the City to show compliance with the POP requirements and FCC 47 C.F.R. § 76.640 (Digital Standards). The results of these tests were all well within the requirements of the FCC.

- **Subjective Viewing of SD and HD Channels on the System**

As part of our testing, CBG also subjectively viewed SD and HD channels on a television set at the 4 locations within the City, where the above mentioned testing was performed, to also determine through subjective testing what, if any, signal quality problems currently exist. Digital signals are typically either on or off with few if any distortions added by the network outside of undesired attributes that can be introduced as a result of significant compression of channels to conserve bandwidth. However, when distortions and noise are significant enough, pixelation and picture freeze-ups can occur.

Our observations found that, in general, the HD channels on the system are very crisp with little, if any pixelation or other undesired attributes noted. Our observation of the SD channels showed a varying degree of unwanted attributes that appear as noise in the pictures. Because pictures often include action or moving images, this isn't always seen by customers on their TV sets. This type of distortion is frequently due to problems that some set-top receivers and television receivers have dealing with the compression in digital signal transmissions. In addition, this distortion is more readily observed on larger TV sets of 40 inches or larger, where the picture impairment becomes more objectionable to the viewer. The problem appears less objectionable on older picture tube screens (which also tend to be smaller than 40 inches) and Plasma screens

compared to LCD and LED televisions. This distortion is most easily seen around graphics or bugs (small digital graphics often in the lower corner of the screen used to identify the channel being watched) appearing on the TV screen but it becomes more apparent throughout the TV picture as it becomes more severe. It is our experience that although we performed our subjective viewing at 4 locations, these results will likely be seen throughout the system and in some cases appear more prominently than we observed.



¹ This particular image is from “Embedded’s website. The white arrows point to “Mosquito Noise” in a Digital TV picture.

In reviewing data provided by Mediacom there were a significant number of trouble calls for tiling of the picture. Tiling, or pixilation, appears as small boxes of color

¹ <http://www.embedded.com/design/embedded/4013028/Video-compression-artifacts-and-MPEG-noise-reduction>

within the picture. As tiling worsens it can deteriorate most of the picture and even freeze or lock up the picture for a fraction of a second or several seconds at a time. Tiling can originate at the headend or hub but most commonly is caused by a problem on the distribution system or in the subscriber's drop to and inside the home. This is the case as shown on Mediacom's Trouble Call log as supplied for this Review. Most of the trouble calls that were coded as having a tiling problem had fix codes including fixing or replacing drop cables, connectors and passives such as splitters in the subscriber drop.

The Mediacom Trouble Call report also has less definitive codes such as (as listed): "Lines in Pic", "CNV/DCT Problem", "DTA Problem", "Snowy Picture", "Audio Problem", "High Channel PBL", "Low Chan PBL" and "Flashing Pictur". When combined, these problems account for 265 trouble calls in a 14 month period from June 4th, 2012 to July 26, 2013.

The City performed a survey dated December 2, 2012. In the survey, 42% of respondents said their picture quality was fair or poor (47% said their picture quality is good or excellent and 5% didn't know) with 43% saying their sound quality is either fair or poor (45% saying their sound quality is good or excellent and 4% didn't know). This means that nearly 50% of respondents that rated their service, rate their video and audio quality as fair or poor. This is a significant number of subscribers and warrants a response from Mediacom as to what is contributing to such a large number of reported problems, whether they see the problems as systemic and what remedies they intend to implement going forward to improve their customers' perception of their service.

- **City Channel 8**

During our visit to City Hall in October, 2013 we viewed the City's channel 8. Channel 8 was grainy and noisy (snowy picture and flashing) and worse in video quality than adjacent channels on the system. We looked at the picture at the hub location and also at testpoints in the City. The video quality was always poor at best. The picture was grainy and flashing in the analog format and was of a low quality in the digital format with very significant flashing in the picture.

We viewed the picture in the City's control room and found less than ideal picture quality. Because City staff that are familiar with the system at City Hall were not available at the time of our site visit, we did not troubleshoot the problem, but there appeared to be a problem prior to the signal handoff to Mediacom. Subsequently, the City had the company that installed the new HD video equipment come out and troubleshoot the problem. They have said the video quality being provided to Mediacom is of satisfactory quality and the problems seen on the cable system are not the result of the equipment operated by the City. Mediacom will need to work with the City and potentially the City's video contractor to ensure this handoff is indeed of high video quality.

Mediacom needs to significantly improve the signal quality of channel 8 on the subscriber system. This can begin to be accomplished with the existing analog technology used by Mediacom to transport the signal back to the hub and onto its subscriber system. Although this equipment will provide less than desirable video quality, it can be improved from its current performance. However, the analog equipment in place for transportation today dates back to the mid 1980s. This equipment needs to be upgraded to digital format equipment in the short term and will need to be capable of transporting a high quality HD signal to the hub when the City adds its channel onto the subscriber system in an HD format.

- **Standby Power**

Standby power provides the system with the capability to remain operational when commercial power is lost for any period of time. Mediacom employs backup power methodologies, from the headend and hubs to the power supplies located on the distribution system in the field.

Mediacom has backup generator systems located at their headend and hub that are capable of backing up these facilities if a commercial power failure occurs. These generators are designed to provide enough power to keep the headend and hub operational in the event of a power outage at these locations. In addition, because there is a lagtime of several seconds between the loss of power and the generators coming

fully on-line, for all critical equipment that operates on 120VAC power, Uninterruptable Power Supplies (UPS) are in place to run this equipment until the back-up generators are operational.

Mediacom has power supplies located on the distribution plant to provide power to the nodes and amplifiers used in the field. Mediacom reported that they are in the process upgrading the power supplies used in the distribution system to add status monitoring to the power supplies. The power supplies, are equipped with batteries that provide backup power in the event of a commercial power outage. Based on information provided by Mediacom, these power supplies are capable of running, without commercial or other power sources, for a minimum of three (3) hours. This run time will increase based on lower power needs at some power supply locations. Most systems we have reviewed or audited in the past few years, have backup capabilities of a minimum of 4 hours and as much as 6 hours of standby capabilities. 3 hours is on the low end of what is seen in systems today. The implementation of status monitoring into the power supplies will allow Mediacom to know the status of all power supplies on the system. This will tell Mediacom when a power supply loses commercial power and how long the batteries in the power supply will last. This will allow Mediacom to dispatch portable generators to a power supply location prior to the system going down due to the lack of sufficient power.

- **Outages and Outage Documentation**

CBG, as part of the information provided by Mediacom in response to the RFI, received documentation showing outages experienced by subscribers in the City's service area. Mediacom's documentation does not indicate a large number of outages or an overall pattern of longer than acceptable repair times when outages occur. More than half of the outages reported by Mediacom were coded as "Commercial Power". This may well be because the power supplies in the City are not all status monitored. When Mediacom completes its project to upgrade the power supplies, the occurrence of outages due to loss of commercial power should be significantly reduced if Mediacom monitors the system as is done in most other cable systems CBG has reviewed in the past 4-5 years.

Documentation provided by Mediacom shows that in addition to the 265 trouble calls for picture and sound problems, 110 trouble calls were completed in the 14 month period for "NP" or no picture. No picture means at least one TV in the home is without any cable TV service. Although not reported as outages by Mediacom, these are effectively outages to the subscriber. Furthermore, 2 of these trouble calls were completed with a "Plant Outage" code, but do not show up on Mediacom's outage report.

Discussions with City staff and random discussions with residents during our driveout process, however, indicate that perceptions are that the system has more outages than are indicated by the outage report provided by Mediacom. Also, in the survey performed by the City, nearly half of the respondents reported between 6 and 50 outages of 15 minutes or more during the past two years. An additional nearly 30% of respondents reported 5 or less outages of 15 minutes or more during the past 2 years (approximately 25% didn't know how many outages they have experienced).

A determination of a problem with reliability cannot be made based on the information provided by Mediacom, however, one appears to exist. Accordingly, we recommend that the City be provided outage reports on a monthly basis, from Mediacom, so the City can review these reports on a regular basis and follow-up with Mediacom when excessive problems are reported or when known problems are not reported.

- **Compliance with the National Electrical Code (NEC) and National Electrical Safety Code (NESC)**

CBG performed an independent system drive-out to note any problems with the system plant and drops to residences and businesses pertaining to the condition of underground and aerial cable and appurtenances, grounding and bonding, as well as clearance and attachment issues. If a system is not properly maintained, problems will arise with the aesthetics of the system, but more important, such issues result in potential safety problems. In addition to appearance and safety issues, the integrity of the cable plant is

important for proper operation of the network and its ability to deliver high quality signals in a reliable manner.

CBG inspected the system in approximately 10% of the City. The sample included a diverse representation of dwelling units in the City from single family housing to duplexes, quad-homes and larger apartment buildings. Furthermore, the sample included a geographically dispersed representation of addresses in both aerial and underground portions of Mediacom's system.

All identified drops to residences or businesses were inspected for compliance of NEC and NESC codes. Both codes require that cables and infrastructure must be maintained even when abandoned or unused. Therefore, drops were inspected in the same manner whether active, disconnected or abandoned. Cable companies regularly leave drops in place when a customer disconnects service and reuses the drop if the address becomes an active account in the future. Mediacom must maintain these drops in order to meet all applicable codes.

Mediacom needs to regularly inspect and repair problems that arise on its system in order to maintain a network that is safe to the public and Mediacom employees working on or around the system, as well as personnel from other tenants of the Right of Way in the City who must work in close proximity to Mediacom's facilities. Furthermore, NESC Code 214 requires that "lines and equipment shall be inspected at such intervals as experience has shown to be necessary."

CBG performed an inspection of a representative sampling of areas throughout the City. It must be noted that this driveout should be viewed as a representation of issues that exist throughout the system. The list of issues and code violations attached to this Report as Attachment 1 is not to be viewed as an all-inclusive list of issues throughout the City's service area. During this sampling, we identified approximately 57 issues that

are either violations of NEC or NESC codes or are simply outside of good engineering practices.

Examples of our findings include:

Cable TV drops and hardline cables not properly attached to poles. – Cable drops and hardline cables that are not properly attached to poles create aesthetic problems as the drops are hanging away from the pole, in some cases several feet, but more importantly these drops can create a tripping or entanglement hazard to the general public as they come in contact with the cables. Furthermore, these cables often times are in what is referred to as the climbing area or climbing space of the pole. This area is to remain clear in order to provide a safe area of the pole for cable TV and other technicians to climb up to equipment fastened to the pole. Having this clear area on the pole is a safety concern and also a performance issue as someone climbing the pole can become entangled in the cables causing them to fall and/or causing them to damage the drop. We found 6 instances of drops that were not properly attached to poles.



493 Ferndale Road S – Drops not properly attached to the pole



740 Park Street E – Drop not properly attached to the pole

This creates a tripping hazard for the public and utility workers that climb the pole

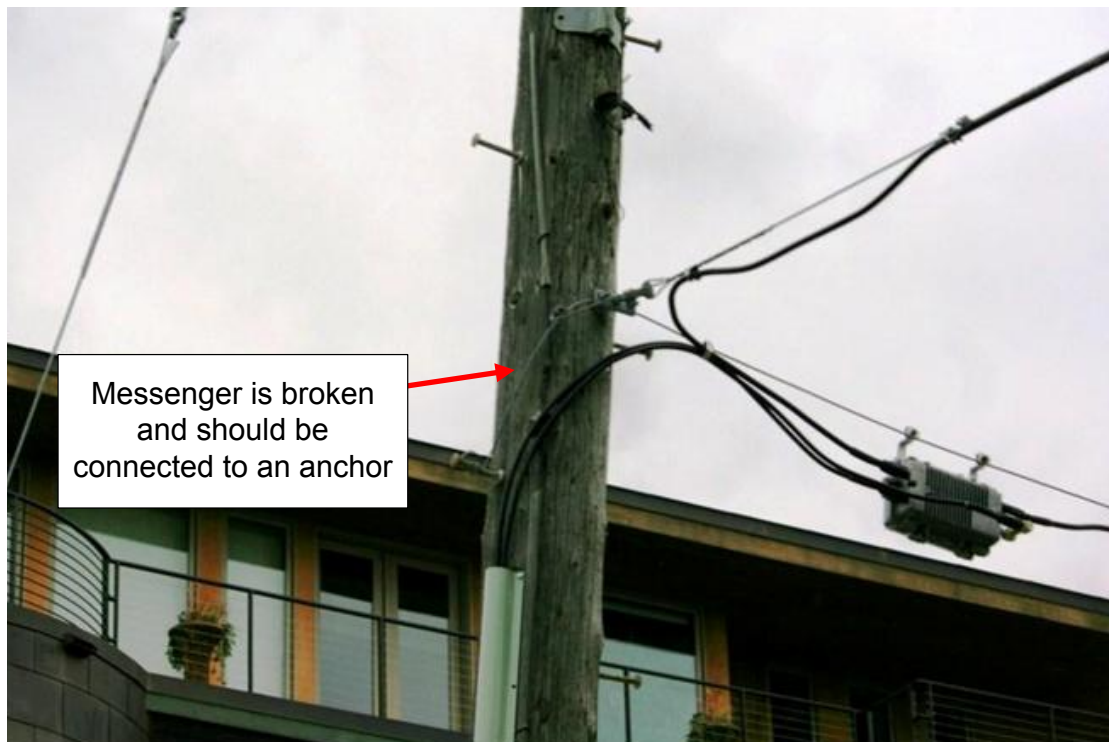
Broken lashing wire and down guys that are missing or loose on the pole - Aerial (overhead) cable TV infrastructure is constructed by attaching a messenger strand cable from pole to pole and attaching it to the poles with heavy duty bolts, nuts and other hardware components. Once the messenger cable is in place, the cable television coaxial

and fiber optic cables are strapped or lashed to the messenger cable by wrapping a thin wire or multiple wires around both the cables and the messenger cable. The lashing wire is then secured or tied off at each pole by use of a bug nut that is fastened to the messenger cable.

When lashing wire breaks it must be repaired before the cables become damaged by drooping down into phone facilities or the weight of the cables pulls the cables out of connectors. Furthermore, if the cables sag enough, there can be issues with clearance between the cables and the ground.



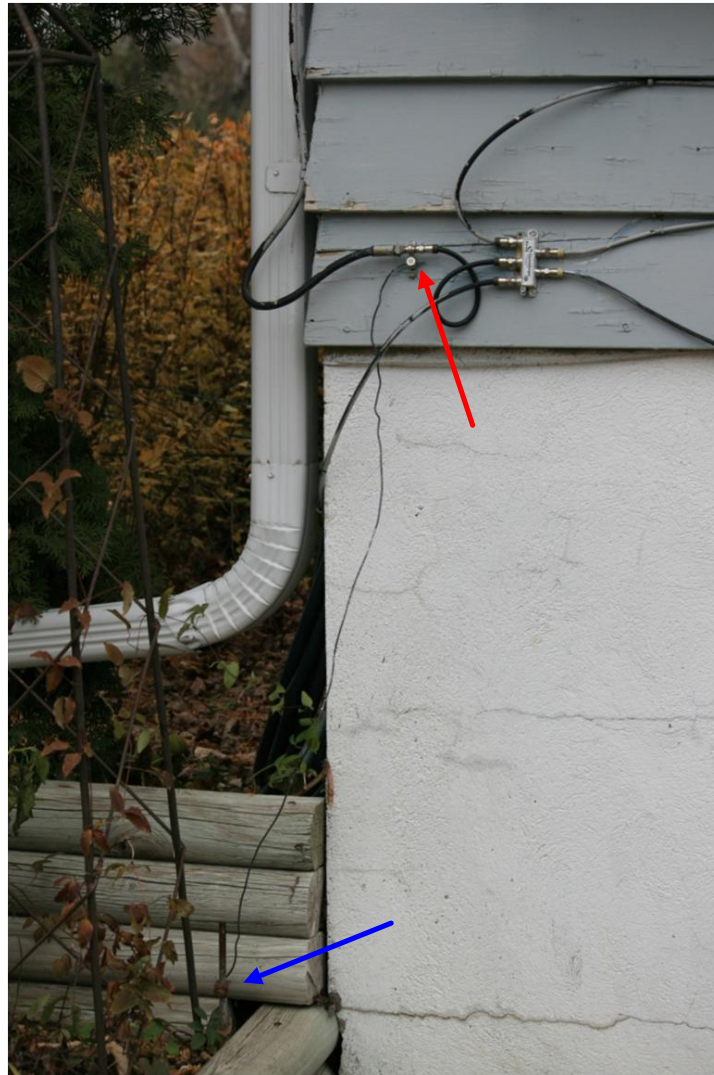
487 Ferndale Road S – Lashing wire is broken and cable is sagging from the messenger



Rice Street E @ Barry Avenue S – Messenger is cut and no down guy is present where needed

System Grounding and Bonding - A system must be grounded properly to provide a path to ground for stray voltages such as lightning or power conductors coming into contact with the cable system. In a similar manner, the distribution system and drops must be bonded to other utilities in order to ensure that there is not a voltage difference between them. If they are not properly bonded, there will most likely be a difference in electrical potential between the systems, thereby producing a shock hazard if both utilities are touched at the same time. Code requirements for grounding and bonding of cable TV networks and drops are required by the NEC and NESC and provide that a communication system can effectively be grounded by attaching or bonding to the house ground with the electrical and other communication systems such as phone networks. Bonding to the cold water pipe can be an option. However, this cannot occur outside and an inspection must be performed on the water pipe to ensure there is not a break in the electrical path to the electrical ground or the outside such as would be introduced by

plastic or non-metallic pipes in the house (this practice has become more prevalent in the past 25-30 years) or through some water softeners that use plastic piping and valves.



206 Manitoba Avenue S – Ground rod is in place but no bond is made prior to entering the building. Ground rod is also sticking out of the ground 8”



130 Chicago Avenue – No ground or bond (wires are not connected to anything)

Pedestals that are damaged and/or are not secured properly. – Pedestals that house cable television equipment such as amplifiers, splitters, taps and distribution and drop cables, should be secured to ensure the public cannot easily open the pedestal and thus have access to the equipment and cables. When there is power on the equipment, such as when an amplifier is within the pedestal or when the cable plant downstream of the pedestal has an amplifier needing power, failure to secure the pedestal is a violation of the NESC Code Section 380. When power is not present within a pedestal, good engineering practice would still provide that the pedestal be secured to minimize theft of service and vandalism to the plant and drops within the pedestal, therefore reducing the likelihood of outages due to unauthorized access to the equipment within the pedestal.



Peavey Lane and Peavey Road – Open pedestal



1426 Holdridge Circle – Open (unsecure) pedestal

Underground drop cables exposed above ground – When an underground drop is first put into service, often times it is not immediately buried. Prior to burying the drop, other utilities must locate their facilities and a crew must be engaged to perform the task of burying the drop. In addition, once the ground has frozen for the winter, drop burying ceases until the spring thaw. These delays in burying drops are understandable, but should not continue once conditions are conducive to burying the drop.

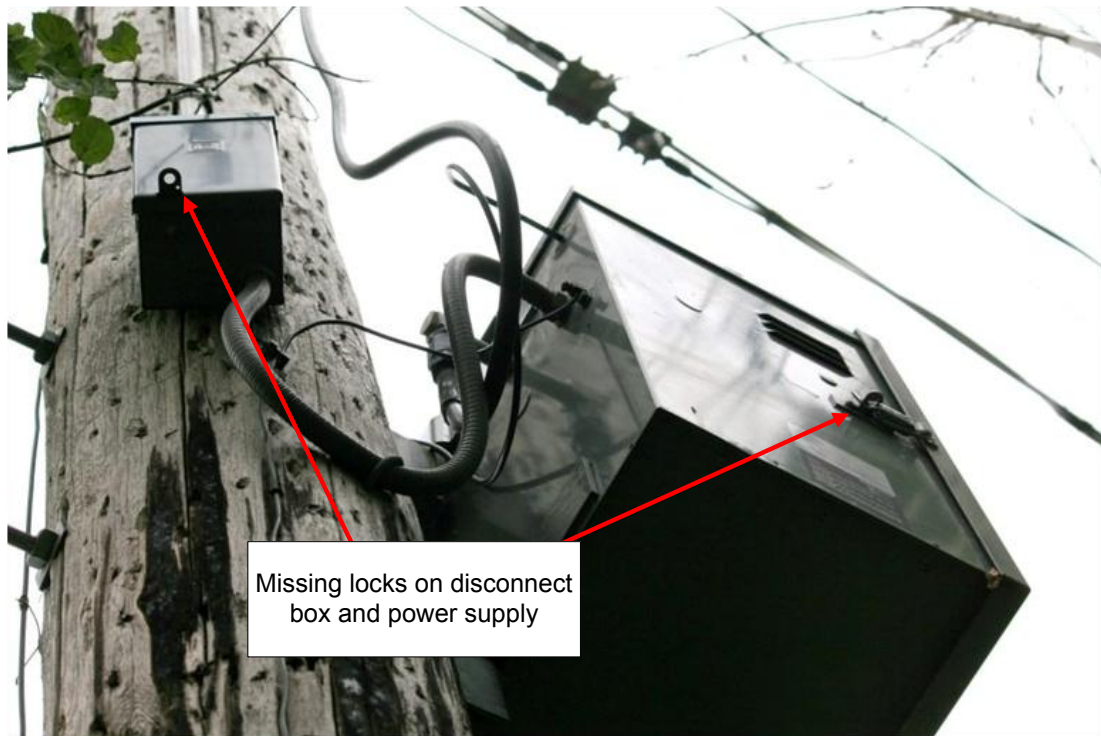
Having drops lying above ground creates a tripping hazard for people walking in the area. In addition, if the drop is caught on a person's leg and pulled or is tangled in a

lawnmower or snow thrower and cut, the customer fed by the drop will likely lose service until the drop is repaired. Furthermore, where a drop is exposed in an area that gets foot and machine traffic, the drop will likely fail over time as the cable becomes crushed.



110 Grand Avenue S – Drops and ground wire partially exposed above ground near the building

Power supply and service boxes not locked – All power supplies and the service boxes (fuse or breaker boxes) must be locked. Many of the power supplies and disconnect or service boxes are not locked as is required by code. One purpose of having power supplies enclosed in a cabinet is to keep water and debris out. In addition, these cabinets keep unauthorized people out of harm's way by blocking access to power that is harmful or fatal if a person comes in contact with it. Furthermore, the batteries housed in the power supplies are very costly and are prone to theft, which also “invites” people not qualified or authorized into a potentially hazardous situation. Providing locks on the access doors further deters people from accessing the potentially dangerous contents of the power supply.



1460 Hollybrook Road – Power supply and disconnect box (service box) not locked

There are other, less frequent violations of codes that are listed and described in Attachment 1 to this Report. It is important for the City to require regular system inspections by Mediacom and timely repair of issues and code violations that are found.

The City should require Mediacom to provide a detailed inspection and repair plan which addresses these and all issues and code violations in the City service area.

Specific issues that should be regularly inspected for include, but are certainly not limited, to:

- Drops properly buried in a timely manner (all the way from the pedestal to the home or business)
- Ground rods sticking out of the ground
- Hardline cables properly attached to the pole and protected
- Down guys and guys over roads properly installed and tensioned
- Power supplies locked

- Pedestals in good condition, properly placed and secure from unauthorized entry, replace faulty doors, smashed covers, etc.
- Proper grounding and bonding at the poles and pedestals
- Proper grounding and bonding at the residence or business
- Proper clearances between facilities and providers on poles and from the pole to the residence
- Proper clearance of aerial cables to the ground
- Drops properly attached to poles

Documentation of these inspections and repairs needs to be provided to the City on a regular basis; perhaps quarterly.

Residential Network Evaluation, Conclusions and Recommendations

System Design and Bandwidth - As subscribers' desires and needs increase over time, the system's bandwidth or capacity may need to increase. It is difficult to predict what bandwidth needs will be in just a few years, let alone over the course of a 10 year or longer franchise term. For instance, DOCSIS cable modem technology now allows the operator to expand available Internet access speeds and throughputs by utilizing additional channels or space on the system. Although this improves subscribers' Internet speeds, which is a positive outcome, it also decreases the bandwidth for Cable TV services. Furthermore, new services will come along and the number of high definition or other advanced services or channels will continue to increase as these become even more the preferred, if not demanded, means of TV watching.

As previously mentioned, possible methods of minimizing the impact of additional bandwidth needs include upgrading the system to 1,000 MHz, upgrading the system to FTTP architecture and deployment of SDV. These and other options should be reviewed and considered as part of franchise renewal, at a minimum during a required Franchise triennial technical review.

System Reliability - The outage documentation provided by Mediacom does not indicate a significant number of outages in Wayzata from November 2012 to July 2013. However, based on feedback from City staff, the general public, and the survey performed by the City, the City should require Mediacom to respond to the issue of reliability and picture quality issues as reported by their subscribers.

The City should require regular reports from Mediacom showing all outages, regardless of size, that impact subscribers in the City. This documentation should include the time of the outage, the time Mediacom staff were on-site to repair the problem, the fix time and total duration of the outage as well as the number of subscribers that were impacted. Furthermore, The City should require Mediacom to provide documentation that all

power supplies in the City are standby capable, with a minimum of 3 hours of standby capability, and regularly maintained by Mediacom as reported in maintenance logs.

FCC Testing Documentation – Mediacom should be required to test a minimum of 4 locations in the City for POP testing while analog channels remain on the system. In addition, Mediacom should be required to perform testing at 4 locations within the City to show compliance with FCC §47CFR76.640. The City should require Mediacom to document the results of this testing and provide copies to the City as part of its FCC POP testing. Then, after all analog channels are removed from the system, this should occur in place of their regularly scheduled FCC POP testing which will no longer be required, until the FCC may issue new digital standards and associated testing requirements.

Picture Quality – The City should review our findings related to SD channel picture quality with Mediacom and perform additional subjective testing, on a regular basis, in cooperation with Mediacom to further understand what issues subscribers may have. This testing can be done with Mediacom converters and a television with a screen size of at least 40 inches.

City Channel 8 - The City's Channel 8 needs significant improvement in video quality from what was seen during our visit to City Hall and during system tests within the City in October, 2013. Mediacom needs to troubleshoot the existing analog equipment to improve the signal to its hub location and onto the subscriber system. As soon as the signal quality is vastly improved, Mediacom needs to offer a longer term solution to the transportation of the City channel from City Hall to the Chanhassen hub and onto the subscriber system. This solution will need to be a digital based solution and will need to allow the City to have both an SD and HD format channel on the cable system. The City should be involved in designing this solution to ensure its needs are met over the next several years.

Regular Inspection of Infrastructure - Mediacom must be required to maintain its system infrastructure in a safe manner and ensure they protect the public as well as technicians and others that must enter the areas around cable TV infrastructure.

Mediacom should first respond to and resolve all the problems noted in Attachment 1. Then the City should require a maintenance program designed to regularly inspect all cable TV infrastructure from the headend and hub locations, up to and including at the subscribers' residences or business locations. Documentation should be provided to the City detailing problems found, dates found and repaired and the ultimate resolution.

These inspections and repairs should include, but not be limited to:

- Drops properly attached to poles
- Drops properly buried in a timely manner (all the way from the pedestal to the home or business)
- Ground rods properly buried
- Hardline cables properly attached to the pole and protected
- Down guys and guys over roads properly installed and tensioned
- Power supplies locked
- Pedestals in good condition, replace faulty doors, smashed covers, etc.
- Proper grounding and bonding at the poles and pedestals
- Proper grounding at the residence or business
- Proper clearances between facilities and providers on poles
- Proper clearance of aerial cables to the ground

In addition, the City should perform spot checks on a regular basis to determine if the system is being maintained as required by both the NESC and NEC and as required in the current and future franchises.

CABLE TELEVISION FRANCHISE ORDINANCE

City of Wayzata, Minnesota

June 30, 2015

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ORDINANCE NO. 754

AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA LLC TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF WAYZATA, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The City Council of the City of Wayzata ordains.

STATEMENT OF INTENT AND PURPOSES

The City of Wayzata intends, by the adoption of this Franchise, to bring about the development of a Cable System, and the continued operation of it. Such a development can contribute significantly to the communications needs and desires of the residents and citizens of the City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable State statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

SECTION 1 SHORT TITLE AND DEFINITIONS

1.1 Short Title. This Franchise shall be known and cited as the Cable Television Franchise Ordinance.

1.2 Definitions. For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any

other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

(a) “Applicable Laws” means any local law, City Code or federal or State statute, law, regulation or other final legal authority governing any of the matters addressed in this Franchise.

(b) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 522(3).

(c) “Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

(d) “Cable Service” or “Service” means:

(i) The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and

(ii) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) “Cable System,” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

(i) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(ii) A facility that serves Subscribers without using any public rights-of-way;

(iii) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) to the extent such facility is used in the transmission of video programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services;

(iv) An open video system that complies with Section 653 of the Cable Act; or

- (v) Any facilities of any electric utility used solely for operating its electric utility system.
- (f) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.
- (g) “City” means the City of Wayzata, Minnesota.
- (h) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
- (i) “Council” means the City Council of the City of Wayzata, Minnesota.
- (j) “Demarcation Point” shall have the meaning set forth in FCC regulations 47 C.F.R. § 76.5 (mm) as may from time to time be amended. Generally it shall mean a point agreed upon by Grantee and the City up to twelve (12) inches outside of the building wall.
- (k) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest Feeder Cable of the System.
- (l) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (m) “Feeder Cable” means coaxial cables that run along Streets within the served area and connects between the individual Taps which serve the Drops.
- (n) “Franchise” means this Franchise and the regulatory and contractual relationship established hereby.
- (o) “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.
- (p) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

(q) “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.

(r) “Grantee” is Mediacom Minnesota LLC, its lawful successors, transferees or assignees.

(s) “Gross Revenues” means any and all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, late fees, guides, home shopping revenue, Installation and reconnection fees, revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise upgrade and downgrade fees, advertising revenue, Converter rental fees and lockout device fees. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. “Gross Revenues shall not include any bad debt, refundable deposits, investment income, FCC fees, taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority including any PEG Fee. A Franchise Fee is not such a tax, fee or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

(t) “Installation” means the connection of the System from feeder cable to the point of connectivity.

(u) “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one (1) night per week and/or some weekend hours.

(v) “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

(w) “PEG” means public, educational and governmental.

(x) “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

(y) “Public, Educational or Government Access Facilities” or “PEG Access Facilities” means:

(i) Channel capacity designated for public, educational or governmental use; and

(ii) Facilities and equipment for the use of such Channel capacity.

(z) “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in this Franchise.

(aa) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

(bb) “Standard Installation” means the first one hundred twenty-five (125) feet of a residential Drop.

(cc) “State” means the State of Minnesota.

(dd) “Street” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(ee) “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

(ff) “Tap” means a device installed in the Cable System which connects a Drop to the Feeder Cable.

(gg) “Wireline MVPD” means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.

1.3 Written Notice. The Grantee shall designate an agent upon whom process against it may be served on behalf of the City. All notices, reports or demands required or permitted to be given under this Franchise shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to City: City Manager
600 Rice Street
Wayzata, MN 55391

If to Grantee: Mediacom Minnesota LLC
1504 Second Street SE
PO Box 110
Waseca MN 56093

Non-binding Courtesy Copy to: Bruce Gluckman, Esq.
Vice President and Deputy General Counsel
Mediacom Communications Corporation
One Mediacom Way
Mediacom Park, NY 10918

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

SECTION 2 GRANT OF AUTHORITY

2.1 Franchise Required. It shall be unlawful for any Person, unless specifically required by Applicable Laws, to construct, install, operate or maintain a Cable System or to offer Cable Service in the City, unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise.

2.2 Grant of Franchise. This nonexclusive Franchise is granted pursuant to the terms and conditions contained herein. The City hereby authorizes Grantee to occupy or use the City's Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.3 Grant of Nonexclusive Authority.

(a) The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described herein. If any other Wireline MVPD enters into any agreement with the City to provide multi channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct

and/or operate its Cable System and provide multi channel video programming or its equivalent to Subscribers in the City under a substantially similar agreement as determined in City's reasonable discretion, as applicable to the new MVPD. Within one hundred eighty (180) days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the substantially similar terms and conditions, as determined in City's reasonable discretion, as are applicable to the new Wireline MVPD.

(b) The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent commercially reasonable. Nothing in this section authorizes the Grantee to construct poles in the City without prior City consent consistent with the City Code.

(c) Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or with the present use of the Street.

(d) Grantee shall have the authority to use Streets for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(e) The Grantee specifically agrees to comply with the generally applicable and lawful provisions of the City's Right-of-Way Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City's Right-of-Way Code or applicable regulations of the City and B) this Franchise, the express provisions of the City's Right-of-Way Code shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves any rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

(f) Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

(g) This Franchise complies with the Minnesota franchise standards set forth in Minnesota Statutes Section 238.084. The City and the Grantee shall conform to

Minnesota laws promulgated subsequent to the date of this Franchise. The City and the Grantee shall conform to federal laws and regulations as they become effective.

2.4 Term. The term of this Franchise shall be for the period of ten (10) years from the date of acceptance by Grantee, unless renewed, revoked or, terminated sooner as herein provided ("Initial Term"). Upon mutual agreement by City and Grantee, the Initial Term may be extended for an additional five (5) years.

2.5 Previous Franchise. Upon acceptance of this Franchise by Grantee as required in Section 11.2 herein, this Franchise shall supersede and replace any previous Franchise granting a franchise to Grantee to own, operate and maintain a Cable System within the City. Franchise Ordinance No. 916B is hereby repealed.

2.6 Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the City Code or Applicable Law.

2.7 Territorial Area Involved. This Franchise is granted for the Service Area.

(a) Grantee shall design, construct and maintain the Cable System to have the capability to pass every dwelling unit and commercial building in the Service Area, subject to any Service Area line extension requirements of this Franchise. Grantee shall extend plant to all areas of the City where the density reaches or exceeds seven (7) homes per on-quarter (1/4) linear strand mile of cable as measured from the nearest Tap required to deliver a signal that complies with the FCC Technical Standards, if applicable. After Service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure access to all rights-of-way necessary to extend Service to such Subscriber within such thirty (30) day period on reasonable terms and conditions and Grantee can provide Cable Service using a Standard Installation.

(b) If a Subscriber requires a non-Standard Installation (*e.g.* a Drop in excess of 250 feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year. For residential Installations only, Grantee shall be responsible for all costs of the Standard Installation and the Subscriber shall be responsible for one half (1/2) of the Actual Cost of any construction required beyond the cost of the Standard Installation; Grantee shall be responsible for the balance of the costs for the non-Standard Installation.

(c) Grantee shall promptly bury all Drops to Subscribers' dwellings when required by local construction standards. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, Grantee shall be permitted to delay such burial

until the ground becomes suitable for burial and shall complete said burial no later than June 1st of each year.

2.8 Governing Requirements and Non-waiver of Rights. City and Grantee shall comply with all lawful requirements of this Franchise and Applicable Law. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and has the right to enter into, execute and perform its obligations under this Franchise and that Grantee believes that said terms and conditions are not unreasonable and are valid and binding obligations. Subject to the foregoing, nothing in this Franchise shall be construed as a waiver of any rights of the City or Grantee.

SECTION 3 CONSTRUCTION STANDARDS

3.1 Grantee's Facilities and Equipment.

(a) In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(b) Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

(c) In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground in accordance with the City Code. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures; however, the City specifically reserves all of its rights to approve above-ground or underground locations for pedestals subject to Applicable Laws. Grantee shall be responsible for any costs associated with these obligations to the same extent other users of the Streets in accordance with Applicable Laws.

3.2 System Extensions. Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall strictly adhere to all generally applicable, Applicable Law regarding the construction, operation or maintenance of the System in City in accordance with Applicable Law.

3.3 Repair of Streets and Property. Consistent with any generally applicable Applicable Law, any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee.

3.4 Conditions on Street Use.

(a) Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

(b) The Grantee shall furnish to and file with City Manager strand maps of the System, including the location of any underground plant and Grantee shall file with City updates of such map annually if changes have been made in the System. City shall have the right to travel to Grantee's office, which shall be located no further than the Lake Minnetonka region or the City of Chanhassen, to review as-built maps to be made available by the Grantee in accordance with Section 7.5 of this Franchise.

(c) The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

3.5 Tree Trimming. Grantee shall have the authority, pursuant to the City Code, to trim trees upon and hanging over Streets and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

3.6 Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

3.7 Use of Grantee's Facilities. The City shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits owned by Grantee, any wires and fixtures desired by the City only to the extent and under such terms and conditions as are mutually agreed upon by City and Grantee.

SECTION 4 DESIGN PROVISION

4.1 Minimum Channel Capacity.

(a) As of the effective date of this Franchise, Grantee currently operates a System utilizing a 750 MHz fiber/coaxial hybrid Cable System which shall be capable of delivering a minimum of eighty (80) video program Channels.

(b) All programming decisions remain the sole discretion of Grantee subject to City's rights pursuant to 47 U.S.C. § 545. Grantee shall comply with federal law

regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments.

4.2 Technical Standards. The System shall at all times meet the technical standards established by the FCC as they may be amended from time to time and shall be operated so as to minimize disruption of signal to Subscribers. The System specifications are outlined in Exhibit A for information purposes.

4.3 Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

4.4 FCC Reports. The results of tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) days of the conduct of the date of the test.

4.5 Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee's obligations beyond that which is required by the EAS Plan and Applicable Law.

4.6 Parental Control Lock. Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by Grantee.

4.7 Right of Inspection. City shall have the right to inspect all construction, reconstruction or installation work performed by Grantee pursuant to all applicable provisions of the City Code.

SECTION 5 SERVICE PROVISIONS

5.1 **Rate Regulation.** The City reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent not prohibited by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time.

5.2 **Leased Channel Service.** Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with Applicable Laws.

5.3 **Consumer Protection and Service Standards.** Grantee shall maintain a convenient local customer service or bill payment location for receiving Subscriber payments; provided, however, this section does not require Grantee to maintain an office in the City. Grantee shall also maintain or arrange for a location where equipment can be dropped off or exchanged as is necessary or, in the alternative, establish a system for having Subscriber equipment picked up at the Subscriber residence free-of-charge. Grantee shall also comply with the following consumer protection standards for Cable Service under Normal Operating Conditions:

(a) **Cable System office hours and telephone availability.**

(i) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

1. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

2. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

(ii) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(iii) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(b) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

(iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(iv) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(c) Communications between Grantee and Subscribers. Grantee shall comply with the provisions of 47 CFR §76.1601-1604 regarding communications with Subscribers in the City:

(i) Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

2. The return of the equipment supplied by Grantee if Cable Service is terminated.

(ii) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(d) Billing:

(i) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(e) Subscriber Information. Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(i) Products and Services offered;

(ii) Prices and options for programming services and conditions of subscription to programming and other services;

(iii) Installation and Service maintenance policies;

(iv) Instructions on how to use the Cable Service;

(v) Channel positions of programming carried on the System; and

(vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by this Section 5.3(e).

(f) Notice or Rate Programming Change. In addition to the requirement of this subparagraph (f) regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change consistent with applicable federal law. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the

rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(g) **Subscriber Contracts.** Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

(h) **Refund Policy.** If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

(i) **Late Fees.** Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

(j) **Disputes.** All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or Commission of the City.

(k) **Failure to Resolve Complaints.** Grantee shall resolve a complaint within thirty (30) days. In addition, Grantee shall respond to written complaints from the City in a timely manner, and provide a copy of each response to the City within fifteen (15) days.

(l) **Notification of Complaint Procedure.** Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 5.3(e), the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

(m) **Grantee Identification.** Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate

picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 6 PUBLIC ACCESS PROVISIONS

6.1 Public, Educational and Government Access. City or its designee is hereby designated to operate, administer, promote, and manage public, educational, and governmental programming (hereinafter “PEG Access”) to the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG Access except as expressly stated in this Section 6 and Exhibit B attached hereto and hereby incorporated by reference as if fully set forth herein.

6.2 Grantee Support for PEG Usage. In accordance with the provisions of the Cable Act and Minnesota Statutes Section 238.084, Grantee shall provide and make available for PEG Access usage within the Service Area the following:

- (a) Provision and use of the grant funds and Channels designated in Exhibit B of this Franchise for local educational and governmental programming and access use at no charge in accordance with the requirements of Exhibit B.
- (b) Maintenance of the PEG Access Facilities and Channels, and support of educational and governmental programming to the extent specified in Exhibit B of this Franchise.
- (c) Provision of free public building Installation and Cable Service and the provision of two-way capability as more clearly specified in Exhibit B.
- (d) PEG Access Facilities shall be operated by the City.

SECTION 7 OPERATION AND ADMINISTRATION PROVISIONS

7.1 Franchise Fee.

(a) During the term of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee of five percent (5%) of Gross Revenues. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(b) Each Franchise Fee payment shall be paid quarterly not later than thirty (30) days following the end of a given quarter and each payment shall be accompanied by

a Franchise Fee Payment Worksheet substantially in the form attached hereto as Exhibit E.

(c) Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee.

(d) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater. Enforcement of unpaid Franchise Fees shall be handled in accordance with Section 9.6; however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

(e) Upon ten (10) days prior written notice, City shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such an audit and shall remit to City all applicable Franchise Fees due and payable together with interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

7.2 Not Franchise Fees.

(a) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to Section 7.1 hereof shall take precedence over all other payments, contributions, Services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to this Franchise and that the Franchise Fees provided for in Section 7.1 of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which the Grantee shall be required to pay to the City and/or to any other Governmental Authority, all of which shall be separate and distinct obligations of Grantee.

(b) Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise and shall be deducted from or credited or offset against any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.

(c) Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or

against any of the Franchise Fees each of which shall be deemed to be separate and distinct obligations of the Grantee

7.3 Periodic Evaluation, Review and Modification. City and Grantee acknowledge and agree that the field of cable television is rapidly changing and one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for the maximum degree of flexibility in this Franchise, and to help achieve a continued, advanced and modern Cable System, the following evaluation provisions will apply:

(a) Grantee shall be subject to the procedures and the subjects described in this Section 7.3.

(b) The City may require, in its sole discretion, that the Grantee participate in evaluation sessions with the City at any time and from time to time during the term of this Franchise; provided, however, there shall not be more than one (1) evaluation session during any three (3) year period.

(c) Topics which may be discussed at any evaluation session include, but are not limited to, rates, Channel capacity, the System performance, programming, PEG Access, municipal uses of the System, Subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Grantee may deem relevant.

(d) During an evaluation session, Grantee shall fully cooperate with the City and shall provide without cost and in a timely manner such information and documents as the City may request to perform the evaluation.

(e) As a result of an evaluation session, the City or Grantee may determine that an amendment in the terms of this Franchise may be mutually agreed upon.

7.4 Reports.

(a) All reports and records required under this Franchise shall be furnished at the sole expense of Grantee, except as otherwise provided in this Franchise.

(b) Grantee shall provide City with an annual statement, within ninety (90) days of the close of each calendar year end, certified by an officer of the Grantee, reflecting the total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year.

(c) Grantee shall, upon written request of the City Manager, provide City with a quarterly customer service compliance report which shall, at a minimum, demonstrate Grantee's compliance with the terms and provisions of Section 5.3 of this Franchise.

(d) Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall make available to City such reports, maps and information or data with respect to Grantee's compliance with this Franchise.

Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant to this section.

7.5 Records Required and City's Right to Inspect

(a) Grantee shall at all times maintain the following records and information relating specifically to the Cable System serving the City as identified by the FCC Community Unit Identifier ("CUID") as opposed to a regional cable system or other operating unit of Grantee and shall provide such information to City upon no less than thirty (30) days advance written request:

(i) A full and complete set of plans, records and "as-built" drawings and/or maps which shall be updated annually showing the location of the Cable System installed or in use in the City, exclusive of Subscriber service Drops and equipment provided in Subscribers' homes.

(ii) a summary of service calls, identifying the number, general nature and disposition of such calls, in a form reasonably acceptable to the City; and

(iii) a summary of Grantee's compliance with the terms and provision of the customer service requirements set forth in Section 5.3 of this Franchise.

(b) Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

(c) The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of this Franchise.

7.6 Recovery of Processing Costs. To aid in the analysis and resolution of any future disputed matters relative to this Franchise, the City and Grantee may, by mutual written agreement (both as to whether to hire and whom to hire), employ the services of technical, financial and/or legal consultants, as mediators. All reasonable fees of the consultants incurred by the City and/or the Grantee in this regard shall, unless the parties otherwise agree, be borne equally by City and Grantee.

7.7 Confidentiality. Subject to Applicable Law, Grantee may choose to provide any confidential or proprietary records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the records at a conference room in City Hall or at Grantee's office located in the City or a location no further than the Lake Minnetonka region or the City of Chanhassen, without City obtaining its own copies of such records. Grantee may also choose to provide any confidential or proprietary records pursuant to a mutually acceptable non-disclosure agreement with a City designated agent. The intent of the parties is to work cooperatively to insure that those records reasonably

necessary for City's monitoring and enforcement of Franchise obligations are provided to City. City agrees to keep said records confidential and proprietary to the fullest extent permitted by Applicable Law. Grantee shall be responsible for clearly and conspicuously identifying the records confidential or proprietary. Grantee acknowledges that the Minnesota Data Practices Act ("MDPA") places limitations on the ability of the City to protect certain information unless such information meets the statutory requirements set forth in the MDPA. If the City believes it must release any such confidential or proprietary records in the course of enforcing this Franchise, or for any other reason including compliance with the MDPA, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. The City agrees that, to the extent permitted by the MDPA and Applicable Law, it shall deny access to any of Grantee's Records marked confidential, as set forth above, to any Person and that it shall furnish only that portion of the Grantee's records required under the MDPA and Applicable Law.

7.8 Administration of Franchise. The City Manager or its designee shall have continuing regulatory jurisdiction and supervision over the Cable System and the Grantee's operation under the Franchise. The City Manager shall have authority to issue notice of franchise violations to Grantee under this Franchise; provided, however, the Council shall have sole authority to conduct any required hearings regarding such alleged violations and issue any decisions regarding enforcement the Franchise.

SECTION 8

GENERAL FINANCIAL AND INSURANCE PROVISIONS

8.1 Security Fund.

(a) Upon acceptance of this Franchise, Grantee shall establish and provide to City a security fund, as security for the full and timely payment and performance by Grantee of all of its obligations under this Franchise in the amount of Ten Thousand and No/100 Dollars (\$10,000) in the form of an irrevocable letter of credit, established in a local bank and maintained throughout the term of this Franchise. City may, in its sole discretion, reduce the amount of the letter of credit. If, at any time during the term of this Franchise, Grantee seeks consent to a transfer or assignment of its rights hereunder, City may unilaterally increase the security fund up to Twenty Thousand Dollars (\$20,000) if it so chooses.

(b) The security fund may be drawn upon by City for those purposes specified in Section 8.1(d) hereof. Grantee's recourse, in the event Grantee believes that City's actions in taking any security funds is improper, shall be through legal action after the security has been drawn upon. Actions brought by Grantee hereunder may be subject to 47 U.S.C. §555A – Limitations of Franchising Authority Liability – which is hereby incorporated by reference as if fully set forth herein.

(c) Nothing herein shall be deemed a waiver of the normal permit requirements made of all contractors working within the City's rights-of-way.

(d) In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in

compliance with this section may charge to and collect from the letter of credit the following penalties:

(i) For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(ii) For failure to comply with construction, operation or maintenance standards the penalty shall be One Hundred Twenty-five and No/100 Dollars (\$125) per day for each day, or part thereof, such failure occurs or continues.

(iii) For failure to provide the services Grantee has proposed including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(iv) For failure to comply with any of the provisions of this Franchise, or other City ordinance related to Franchise operations for which a penalty is not otherwise specifically provided pursuant to this subparagraph (d), the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(e) Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

(f) Whenever City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subparagraph (d), above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the sole determination of City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more terms, conditions or provisions of this Franchise, in the opinion of City, City may draw from the letter of credit all penalties and other monies due City from the date of the local receipt of notice. Nothing herein is intended to modify the standard of review applicable to the City's determination.

(g) Upon receipt of the violation notice from the City, the Grantee may within thirty (30) days of such receipt, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. Such notice by Grantee shall toll the accrual of all penalties from the security fund and the timeframe allowed for cure until the City issues a decision following the required hearing in Section 8.1(g) (i) herein. If Grantee does not dispute the alleged violation set forth in the violation notice, Grantee

shall have thirty (30) days from the receipt of the violation notice to cure the alleged default before the City may impose damages as set forth Section 8.1(d) herein.

(i) City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.

(ii) Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the letter of credit by reason of the alleged violation.

(h) If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires during the term of this Franchise, it shall be renewed or replaced during the term of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (a) of this section.

(i) If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement letter of credit or certification of replenishment for the full amount stated in Section 8.1(a) as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit.

(j) The failure to replace or replenish any letter of credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the letter of credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

(k) The collection by City of any damages, monies or penalties from the letter of credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the letter of credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

8.2 Liability Insurance.

(a) Grantee shall with its acceptance of this Franchise, and at its sole expense, take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, the City and their officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million

Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

(i) The policy shall provide coverage on an “occurrence” basis.

(ii) The policy shall cover personal injury as well as bodily injury.

(iii) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.

(iv) Broad form property damage liability shall be afforded.

(v) The City shall be named as an additional insured on the policy.

(vi) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

(vii) Standard form of cross-liability shall be afforded.

(viii) An endorsement stating that the policy shall not be canceled without thirty (30) days’ notice of such cancellation given to the City.

(b) Grantee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

8.3 Indemnification.

(a) Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney’s fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the grant of this Franchise, the operation of Grantee’s System, the breach by Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee’s employees, including compliance with Social Security and withholdings.

(i) The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers’ Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under

this Franchise, or the terms, applicability or limitations of any insurance held by Grantee.

(ii) City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

(iii) The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(iv) Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in Minnesota Statutes Chapter 466, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG Access Channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

(a) In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

(i) Promptly notify Grantee within ten (10) business days in writing of any claim or legal proceeding which gives rise to such right;

(ii) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(iii) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

8.4 Grantee's Insurance. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

8.5 Workers' Compensation Insurance. Grantee shall obtain and maintain Workers' Compensation Insurance for all of Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with State laws, and to fully indemnify the City from and against any and all claims arising out of occurrences on the work. Grantee hereby indemnifies

City for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by City as a result of any failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage upon its acceptance of this Franchise.

SECTION 9

SALE, ABANDONMENT, TRANSFER AND REVOCATION

9.1 Franchise Non-transferable.

(a) Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior written consent of the Council and then only upon such terms and conditions as may be prescribed by the Council with regard to the proposed transferee's legal, technical and financial qualifications, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the Franchise and/or Cable System or Grantee's rights therein without the prior written consent of the Council shall be null and void and shall be grounds for termination of the Franchise pursuant to Section 9.6 hereof and the applicable provisions of any Franchise.

(b) Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee or any of its parents with or into another Person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee or any of its parents with any other Person; (iv) the creation of a subsidiary corporation or other entity; (v) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; (vi) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new Controlling Interest in Grantee; and (vii) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee, any of Grantee's parents and/or the System or the subsequent amendment thereof. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

(c) Grantee shall notify City in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by City as notice

that a change in control or ownership of the Franchise has taken place and the provisions under this section governing the consent of City to such change in control or ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, City may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist City in any such inquiry. In seeking City's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to City, which application shall include the information required under this Franchise and Applicable Laws. The transferee shall be required to establish to the satisfaction of the City that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of this Franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the City finds that such transfer is acceptable, the City shall permit such transfer and assignment of the rights and obligations of this Franchise as may be in the public interest. The consent of the City to such transfer shall not be unreasonably denied.

(e) Any financial institution having a security interest in any and all of the property and assets of Grantee as security for any loan made to Grantee or any of its affiliates for the construction and/or operation of the Cable System must notify the City that it or its designee satisfactory to the City shall take control of and operate the Cable System, in the event of a default in the payment or performance of the debts, liabilities or obligations of Grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the System within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution or its designee exercises control over the System. The financial institution or its designee shall not exercise control over the System for a period exceeding one (1) year unless extended by the City in its discretion and during said period of time it shall have the right to petition the City to transfer the Franchise to another Grantee.

(f) In addition to the aforementioned requirements in this Section 9.1, the City and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section 238.083 regarding the sale or transfer of a franchise and with all other Applicable Laws.

9.2 City's Right to Purchase System.

(a) The City shall have a right of first refusal to purchase the Cable System in the event the Grantee receives a bona fide offer to purchase the Cable System from any Person. Bona fide offer as used in this section means a written offer which has been accepted by Grantee, subject to the City's rights under this Franchise. The price to be paid by the City shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its

decision to purchase within sixty (60) days of the City's receipt from Grantee of a copy of the written bona fide offer and such other relevant and pertinent information as the City shall deem appropriate.

(b) Consistent with Section 627 of the Cable Act and all other Applicable Laws, at the expiration, cancellation, revocation or termination of this Franchise, the City shall have the option to purchase, condemn or otherwise acquire and hold the Cable System.

9.3 Abandonment or Removal of Franchise Property.

(a) Grantee may not abandon the Cable System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the Cable System or any portion thereof without compensating the City for damages resulting from the abandonment.

(b) In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that property.

(c) City, upon such terms as City may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Franchise, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from City and shall restore any affected Street consistent with Applicable Law. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by or on behalf of Grantee and shall leave all Streets and other public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. City shall have the right to inspect and approve the condition of the Streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Franchise and any security fund provided for in this Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this section.

(d) Upon abandonment of any Franchise property in place, the Grantee, if required by the City, shall submit to City a bill of sale and/or other an instrument, satisfactory in form and content to the City, transferring to the City the ownership of the Franchise property abandoned.

(e) At the expiration or termination of the term for which this Franchise is granted, or upon its earlier revocation or termination, as provided for herein, in any such case without renewal, extension or transfer, the City shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System

from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(f) Notwithstanding anything to the contrary set forth in this Franchise, the Grantee may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable operator.

(g) Nothing herein shall require the removal of any portion of the System lawfully used to provide non-Cable Services in the City.

9.4 Extended Operation and Continuity of Services.

(a) Upon termination or forfeiture of this Franchise, Grantee shall remove its cable, wires, and appliances from the Streets, alleys, or other public places within the Service Area if the City so requests. Failure by the Grantee to remove its cable, wires, and appliances as referenced herein shall be subject to the requirements of Section 9.3 of this Franchise.

9.5 Receivership and Foreclosure

(a) The Franchise granted hereunder shall, at the option of City, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under this Franchise or provided a plan for the remedy of such defaults and violations which is satisfactory to the City; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(b) In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, City may give notice of termination of this Franchise upon Grantee and the successful bidder at such sale, in which the event this Franchise and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after such notice has been given, unless (1) City shall have approved the transfer of the Franchise in accordance with the provisions of this Franchise; and (2) such successful bidder shall have covenanted and agreed with City to assume and be bound by all terms and conditions of this Franchise.

9.6 Procedures for Revocation, Termination or Cancellation.

(a) City shall provide Grantee with written notice of a cause for revocation, termination, or cancellation and the intent to revoke, terminate or cancel and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, City shall provide Grantee with the basis of the revocation, termination or cancellation.

(b) Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, termination, or cancellation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) Only after the public hearing and upon written notice of the determination by City to revoke, terminate or cancel the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

(d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

9.7 Reservation of Rights. City and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 Franchise Renewal. Any renewal of this Franchise shall be in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

10.2 Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7.3 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Applicable Laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

10.3 Right of Individuals.

(a) Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination. Access to Cable Service shall not be denied to any group of potential Subscribers because of the income of the residents of the local area.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time including 47 U.S.C. § 554.

(c) Subscriber Privacy. To the extent required by Minn. Stat. § 238.084 Subd. 1(s) Grantee shall comply with the following:

(i) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(ii) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available.

(iii) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (ii) of this section.

(iv) "Class IV Cable Communications Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

(d) Grantee shall at all times comply with 47 U.S.C. § 551 regarding protection of Subscriber's personally identifiable information.

10.4 **Rights Reserved to City.** In addition to any rights specifically reserved to the City by this Franchise, the City reserves to itself every right and power which is required to be reserved by a provision of this Franchise.

10.5 **Severability.** If any provision of this Franchise is held by any Governmental Authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Applicable Laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such

laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on City and Grantee, provided that City shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

10.6 Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof provided Grantee has notified City in writing within a reasonable time of its discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all necessary permits to utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits.

SECTION 11

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

11.1 Publication; Effective Date. This Franchise shall be published in accordance with Applicable Law. This Franchise shall take effect upon publication subject to Grantee's acceptance.

11.2 Acceptance.

(a) Grantee shall accept this Franchise within thirty (30) of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(c) Grantee shall accept this Franchise in the following manner:

(i) This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

(ii) With its acceptance, Grantee shall also deliver any performance bond, security fund and insurance certificates required herein that have not previously been delivered.

CITY OF WAYZATA, MINNESOTA

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

1st Reading: July 7, 2015

2nd Reading: _____, 2015

Publication Date: _____, 2015

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

MEDIACOM MINNESOTA LLC

Dated: _____, 2015

By: _____

Its: _____

SWORN TO BEFORE ME this
_____ day of _____, 2015

Notary Public

EXHIBIT A
DESCRIPTION OF SYSTEM
For Information only

1. The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations.

2. General Description. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall have at least 750 MHz of bandwidth capacity, capable of delivering approximately 80 analog Channels of programming.

3. Design. The design of the System shall be based upon a "Fiber to the node" architecture that will deliver the signals by fiber optics directly to each neighborhood. Grantee's initial design includes a minimum of six (6) fibers to each node site having a neighborhood group average of approximately three hundred (300) homes. If Grantee splits nodes into smaller sizes, fewer fibers will extend to such smaller nodes. There shall be no more than seven (7) active amplifiers in a cascade from each node to the residential dwelling. The incorporation of stand-by power supplies, strategically placed throughout the system including all hubs, will further reduce the likelihood of Service Interruptions.

3. Technical Standards. The System shall meet or exceed FCC requirements. In no event shall the System fall below the following standards:

- a. The System shall be capable of meeting the following distortion parameters:
 - 1. Carrier to RMS Noise 48 dB
 - 2. Carrier to Second Order 53 dB
 - 3. Carrier to Cross Modulation 51 dB
 - 4. Carrier to Composite Triple Beat 53 dB
- b. The frequency response of a single Channel as measured across any 6 MHz analog Channel shall not exceed +/- 2 dB.
- c. The frequency response of the entire passband shall not exceed $N/10 + 2$ dB for the entire System where N is the number of amplifiers in cascade.
- d. The System shall be designed such that at a minimum all technical specifications of this Franchise are met.
- e. The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.

EXHIBIT B
PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS.

a) Grantee shall continue to provide two (2) channels for use by the City to provide educational and governmental access ("PEG Channels"). In the event access channels programmed by the Lake Minnetonka Cable Commission ("LMCC") are made available to the City and the City elects to provide such LMCC access channels, Grantee shall, upon 120 days advance written notice from City, carry up to two (2) of the LMCC access channels on the Basic Cable Service tier in the City for a total of four (4) PEG channels.

b) Whenever the PEG Channels are in use during eighty percent (80%) of the weekdays, Monday to Friday, for eighty percent (80%) of the time for any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional Channel for the same purpose, the Grantee shall then have six (6) months in which to provide a new PEG Channel for the same purpose, provided that provision of the additional Channel or Channels must not require the Cable System to install Converters.

c) The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may, utilize any portions of the PEG Channels not scheduled for PEG use. City shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

d) Grantee shall designate the standard Channel 6 for uniform regional channel usage currently provided by "Metro Channel 6" as required by Minnesota Statutes Section 238.43. Programming on this regional channel shall include a broad range of informational, educational, and public service programs and materials to cable television subscribers throughout the Twin Cities metropolitan area.

2. ANALOG, DIGITAL AND HD PEG CARRIAGE REQUIREMENTS.

a) Grantee shall provide the Access Channels on the Basic Cable Service tier or the lowest tier of service offered by Grantee in accordance with the Cable Act. At such time as Grantee no longer offers Basic Cable Service in an analog format, Grantee shall carry all PEG Access Channels in a standard digital format in Grantee's Basic Cable Service package, unless the parties agree to an earlier conversion date. Thereafter, but no earlier than April 1, 2016, and upon ninety (90) days' notice from the City, which notice may be sent by City on or before October 31, 2015, Grantee shall make one (1) PEG Access Channel available in high definition (HD) format and discontinue carriage on that same PEG channel in SD format, provided that Grantee receives a satisfactory HD signal from the program originator and provided City understands HD Channels may not be available on the Basic Cable tier of service. Grantee shall have no obligation to carry any PEG Access Channels in more than one format; i.e. dual carriage. Grantee shall be responsible for all costs associated with the transport and distribution of the PEG HD Channel on its side of the Demarcation Point including any required Head end equipment or hubs/node

equipment or similar distribution facilities necessary to deliver the PEG HD Channel(s) to Subscribers. The City shall be responsible for all costs associated with the creation and production of the PEG HD Channel on its side of the Demarcation Point.

b) The City acknowledges that receipt of an HD format Access Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services.

3. ACCESS CHANNEL LOCATIONS.

a) Grantee shall make every reasonable effort to coordinate the cablecasting of PEG Access programming on the Cable System on the same Channel designations as such programming is currently cablecast within the City. In no event shall any PEG Access Channel reallocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control. The PEG Access Channels will be located in the channel neighborhood within reasonable proximity (4-7 channel slots) to other commercial video or broadcast Channels in Grantee's reasonable discretion, excluding pay-per-view programming offered by Grantee in the City.

b) Grantee agrees not to encrypt the PEG Access Channels differently than other commercial Channels available on the Cable System.

c) In conjunction with any occurrence of any Access Channel(s) relocation, Grantee shall provide a minimum of Three Thousand Dollars (\$3,000) of in-kind air time per event on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's, or its designees', pre-produced thirty (30) second announcement explaining the change in location.

4. ANCILLARY EQUIPMENT. Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee's fiber paths or Cable System, whether referred to switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the Demarcation Point and the City or school is responsible for all other production/playback equipment.

5. PEG TECHNICAL QUALITY.

a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of PEG Access Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System.

i) Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.

ii) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

b) Grantee shall cablecast the entire programming stream of each PEG channel including any Program Related Material, as defined below in this Paragraph 6(d)), "Program Related Material" shall mean (i) closed-captioning information, (ii) program identification codes, (iii) program ratings information, (iv) such other material as may be essential, necessary or appropriate for the delivery or distribution of the signal, and (v) information and material that is directly related to the subject matter of the programs on the PEG channels, if such information or material is transmitted concurrently or substantially concurrently with its associated program content.

6. CHANGE IN TECHNOLOGY. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires new equipment in order to transport PEG Channel programming, Grantee shall be responsible for any equipment, free of charge to the City, required on its side of the Demarcation Point.

7. RELOCATION OF GRANTEE'S HEADEND. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

8. PEG OPERATIONS. City may in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the operating expenses of the PEG Channels. City and Grantee may negotiate an agreement for management of PEG Access Facilities, if so desired by both parties.

9. TITLE TO PEG EQUIPMENT. City shall retain title to all PEG equipment and facilities purchased or otherwise acquired.

10. PROMOTION OF PEG ACCESS. Grantee shall allow the City to place bill stuffers in Grantee's Subscriber statements at a cost to the City as specified by Grantee's third party vendor, no less frequently than twice per year upon the written request of the City and at such times that

the placement of such materials would not materially and adversely affect Grantee's cost for the production and mailing of such statements. The City agrees to pay Grantee or Grantee's third party vendor in advance for the actual cost of such bill stuffers. Grantee shall also make available access information provided by City in Subscriber packets at the time of Installation and at the counter in the System's business office within the Service Area. Grantee shall also identify the PEG Access Channels in or on any program guide of services for the Cable System.

11. PEG ACCESS OPERATING SUPPORT.

- a) Upon Grantee's acceptance of this Franchise, Grantee shall collect on behalf of City a per Subscriber fee of One Dollar and 20/100 (\$1.20) per month solely to fund public, educational and governmental access expenditures (hereinafter "PEG Fee").
- b) The City Council may vote to increase the PEG Fee at any time five (5) years after the effective date of this Franchise up to a per Subscriber fee of One Dollar and 50/100 (\$1.50) per month.
- c) The PEG Fee shall be used by City in its sole discretion to fund PEG Access expenditures in a manner consistent with federal law.
- d) The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 7.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.
- e) Any PEG Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater. Enforcement of unpaid PEG Fees shall be handled in accordance with Section 9.6 of the Franchise; however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

12. SERVICE TO PUBLIC BUILDINGS.

- a) Subject to subparagraph 12(d) of this Exhibit B, throughout the term of this Franchise Grantee shall provide, free of charge, one (1) service Drop, one (1) Converter, if necessary and requested, and Basic Cable Service and the next highest penetrated level of Cable Service generally available to all Subscribers (as of the effective date referred to as Expanded Basic Cable Service) ("Complimentary Service"), to all of the sites listed on Exhibit C attached hereto.

b) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional outlets beyond the one (1) complimentary Converter referenced in paragraph a) above, the institution shall be required to pay the same monthly rate that Subscribers pay.

c) Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible.

d) Notwithstanding subparagraph 12(a) of this Exhibit B, Grantee may implement fees or charges for Complimentary Service or additional outlets in the City (or seek to offset or deduct from Franchise Fees) only if Grantee also imposes the same fees or charges in other municipalities located within the Lake Minnetonka region.

e) Grantee shall, in any public building hereinafter built, provide all materials, design specifications and technical advice to provide Complimentary Service to such building. If the Installation to such building exceeds three hundred fifty (350) feet, Grantee will accommodate the Installation up to three hundred fifty (350) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency shall pay the incremental cost of such Installation in excess of two hundred fifty (250) feet for an aerial service Installation or in excess of one hundred fifty (150) feet for an underground service Installation. For purposes of this paragraph, "incremental cost" means Grantee's actual cost to provide the Installation beyond the applicable distances, with no mark-up for profit. The recipient of the service will secure any necessary right of entry.

f) Dedicated Fiber Return Lines for PEG. Grantee shall provide and maintain, free of charge, throughout the life of this Franchise all existing fiber return lines and other return lines and associated equipment that are in place as of the effective date of this Franchise in order to enable the distribution of PEG Access programming to Grantee's Subscribers. Additional two-way capability allowing for live transmission of PEG programming upstream to Grantee's Headend shall be provided in accordance with the terms of Exhibit D attached hereto. The City shall ensure PEG Channels and signals leaving the playback facilities are in compliance with applicable FCC technical standards.

EXHIBIT C
SERVICE TO PUBLIC FACILITIES

	FACILITY NAME	ADDRESS
1.	City Council Chambers	600 Rice Street
2.	Wayzata West Junior High	149 Barry Avenue North
3.	Fire Station	600 Rice Street
4.	Wayzata Public Works	299 Wayzata Boulevard West
5.	Wayzata Public Library	620 Rice Street
6.	Historic Depot	402 East Lake Street
7.	Water Treatment Plant 3	408 Gardner Street
8.	Water Treatment Plant 2	499 Lake Street West

EXHIBIT D
PUBLIC BUILDINGS TO BE PROVIDED WITH TWO-WAY CAPABILITY

1. As of the effective date of this Franchise, the Wayzata West Junior High (149 Barry Avenue North) and City Hall (600 Rice Street) have been activated and equipped with two-way capability. Grantee shall have no obligation to provide any additional or replacement equipment to these locations after the effective date of this Franchise.

2. At the below listed sites, two-way capability shall be satisfied by establishing a cable modem connection allowing upload speeds of 5 mbps or faster. Grantee and the City shall enter a separate agreement establishing the terms and conditions for such cable modem service or other means and System extension if required as mutually agreed upon at the below listed locations. The parties agree that the purpose of such agreement shall be to facilitate live PEG programming from such locations to avoid the need for the installation of costly infrastructure to accomplish the same purpose using capital dollars. The parties further agree that any periodic costs associated with the System extension or provision of such cable modem equipment and cable modem service to facilitate live PEG programming may be paid for by the City out of the PEG Fee and such use of the PEG Fee for this purpose shall not be deducted from or credited or offset against the Franchise Fee.

	FACILITY NAME	ADDRESS
1.	Fire Station	600 Rice Street
2.	Wayzata Public Works	299 Wayzata Boulevard West
3.	Wayzata Public Library	620 Rice Street

EXHIBIT E
FRANCHISE FEE PAYMENT WORKSHEET

TRADE SECRET/CONFIDENTIAL - TO THE EXTENT PERMISSIBLE UNDER
APPLICABLE LAW

	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Equipment rental				
Other Revenue				
REVENUE				
Fee Calculated				
Franchise Fees				

Fee Factor: 5%

ORDINANCE NO. 755

**AN ORDINANCE REPEALING THE
CABLE TELEVISION REGULATORY ORDINANCE**

WHEREAS, the Cable Television Regulatory Ordinance No. 602A ("Ordinance No. 602A") governs the provision of cable services by cable operators in the City of Wayzata, Minnesota ("City"); and

WHEREAS, on _____, 2015 the City adopted Ordinance No. 754 granting a Cable Television Franchise Ordinance ("Franchise") to Mediacom Minnesota LLC to provide cable services and maintain and operate a cable communications system within the City; and

WHEREAS, the Franchise incorporates all of the key provisions of Ordinance No. 602A thereby eliminating the need to maintain Ordinance No. 602A.

NOW THEREFORE, the City of Wayzata, Minnesota hereby ordains:

Section 1. The Cable Television Regulatory Ordinance No. 602A is hereby repealed in its entirety.

Section 2. This ordinance is effective immediately upon passage and publication.

First Reading: _____, 2015

Second Reading: _____, 2015

Published: _____, 2015

Ken Willcox, Mayor

ATTEST: _____
Heidi Nelson, City Manager



**Planning Report
Wayzata City Council
July 7, 2015**

Project Name: Frenchwood Third Addition
File Number: PR 2015-5
Applicant/Owner: Zev and Kristi Oman
Address of Request: 250 Bushaway Road
Property ID #s: 05-117-22-34-0018
Prepared by: Bryan Gadow, Director of Planning and Building
Planning Commission Review: June 1, 2015
City Council Review: July 7, 2015
"120 Day" Deadline: July 29, 2015

PROJECT SUMMARY

Section 1. Development Application

- 1.1. General. The applicant and property owners, Zev and Kristi Oman (collectively, the "Applicant") have submitted a Development Application (the "Application") requesting concurrent preliminary and final plat subdivision approval (the "Subdivision" or the "Preliminary/Final Plat"), a variance from the Subdivision Ordinance for public street frontage for proposed Lot 3 (the "Frontage Variance"), and a variance from the Subdivision Ordinance for lot area under two acres (the "Lot Area Variance") for a three (3) lot subdivision (the "Project") at 250 Bushaway Road (the "Property"). Access to the Project would be through an existing private easement driveway that provides access to multiple parcels off of Bushaway Road. The existing residence on Lot 1 would remain. Building plans for the new structures on Lots 2 and 3 are not available at this time, so any approval recommendation should include a condition requiring the future owners of Lots 2 and 3 to provide building plans for review by the Planning Commission and City Council, and obtain Council approval, prior to building permit submittal.

Along with the Development Application, the following plans are included with the Application and attached to this Report as Attachment A:

- Narrative Letter
- Certificate of Survey and Preliminary Plat
- Final Plat
- Grading and Utility Plan

- Significant Tree Inventory Plan

1.2 Application Requests.

As part of the submitted Application, the Applicant is requesting approval of the following items:

- A. Concurrent Preliminary and Final Plat Subdivision to create three (3) lots (Section 805)
- B. Variances from Subdivision Ordinance to allow use of existing private driveway to serve Lot 3 (collectively, the "Frontage Variance"):
 - 1. Use of Private Roadways (Section 805.27.K)
 - 2. Lot Frontage on a Public Street (Section 805.26.E)
 - 3. Street Width Less Than Twenty-Six (26) feet (Section 805.29.A)
 - 4. Construction of Roadways Without Curbs and Gutters (Section 805.29.L)
- C. Variance from Subdivision Ordinance to allow for two (2) lots that do not conform with Comprehensive Plan guidance of Two (2) acre minimum in the Bushaway Conservation District (Section 805.14.E.1) (the "Lot Area Variance")

1.3 Project Location.

The proposed Subdivision would be on property located east of Bushaway Road/ CR 101.

Map 1: Project Location.



The property identification numbers and owners for the Property involved in the proposed Application is as follows:

250 Bushaway Road	05-117-22-34-0018	Zev and Kristi Oman
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1.4 Area Land Uses.

Land uses along Bushaway Road are single family residential with larger residential estates flanking the east side and R-2A residential on the west. The following table shows lot sizes of lots on the east side of Bushaway Road.

Address	Lot Size (acres)	Square Feet (SF)
200 Bushaway Road	5.1	223,993
218 Bushaway Road	1.7	72,779
240 Bushaway Road	2.32	101,068
250 Bushaway Road	4.78	208,265
270 Bushaway Road	3.29	143,116
100 Bushaway Road	5.61	244,245
258 Bushaway Road	2	87,273
260 Bushaway Road	2.15	93,757
262 Bushaway Road	1.88	81,779
264 Bushaway Road	2	87,331
266 Bushaway Road	2.03	88,333
268 Bushaway Road	1.83	79,829
310 Bushaway Road	1.91	83,602
314 Bushaway Road	1.84	80,394
318 Bushaway Road	1.94	84,912
322 Bushaway Road	2.18	94,832
324 Bushaway Road	1.99	87,006

1.5 Property Background.

The landscape features include upland deciduous trees, mainly maple, basswood and oak. A tree inventory identifies tree type and size for the proposed Lots 2 and 3 on the preliminary plat. A small wetland area is located in the northwest corner of the property on the proposed lot 1.

The existing home sits atop a knoll on the northeast corner of the property. Topography is steep, sloping to the west and south from the home site. Proposed Lots 2 and 3 slope to the south.

Access to the property is via a private easement over the neighboring property to which the City is not a party.

Bushaway Road is a Hennepin County (101) controlled roadway. Any new access points to the roadway would be controlled by a permit authorized by the County.

1.6 Previously Subdivision Proposal

The Applicant previously submitted an application for a preliminary plat for a two (2) lot subdivision in 2008, which the Planning Commission recommended approval 4-2 with conditions. The Application was withdrawn before City Council action in 2009.

1.7 Public Hearing Notice.

Zoning Ordinance Section 805.14 requires the Planning Commission to hold a public hearing on the Subdivision Application. The Notice of Public Hearing was published in the *Lakeshore Weekly* on May 19, 2015. A copy of the Notice of Public Hearing was also mailed to all property owners located within 350 feet of the subject Property on May 22, 2015.

1.8 Planning Commission Meeting Summary.

The Planning Commission reviewed the Application and held a Public Hearing on June 1, 2015. After conclusion of the Public Hearing, the Planning Commission voted six (6) in favor and zero (0) opposed to direct staff to prepare a draft *Planning Commission Report and Recommendation* for denial of the Application for review at the next meeting. On June 15, 2015, the Planning Commission reviewed the draft *Planning Commission Report and Recommendation* for denial of the Application, and voted six (6) in favor and zero (0) opposed to adopt the *Report*. A copy of the June 1, 2015 and June 15, 2015 Planning Commission meeting minutes are included as Attachments D and E. A copy of the *Planning Commission Report and Recommendation* is included as Attachment F. A draft Resolution based upon the *Planning Commission Report and Recommendation* is included as Attachment G.

Section 2. Analysis of Application

2.1 Lot Arrangement.

The Project would consist of three (3) parcels, together totaling 4.78 acres. The proposed lot sizes would be 123,122 SF (Lot 1), 40,066 SF (Lot 2), and 45,054 SF (Lot 3). Lots 2 and 3 would require approval of a variance from the Subdivision Ordinance to be less than the two (2) acre guidance for the Bushaway Conservation District in the City's Comprehensive Plan.

Table 1: Proposed Lot Sizes

Lot	Lot Size (SF)	Acre(s)
1	123,122	2.82
2	40,066	0.92
3	45,054	1.03

2.2 Housing Unit Density.

The Subdivision consists of 3 single-family homes on a 4.78 acre site. This yields a total project density of 1 dwelling unit per 1.59 acres, which would not meet the two (2) acre minimum density requirements of the Bushaway Conservation District guidance in the Comprehensive Plan. The Subdivision request would require approval of a variance from the Subdivision Ordinance requirement to confirm with Comprehensive Plan guidance.

2.3 Comprehensive Plan Guidance.

The Property is located within the Bushaway Conservation District land use category in the City's Comprehensive Plan. The Bushaway Conservation District land use category has the following description:

The properties east of Hwy 101 in the Bushaway neighborhood are generally larger lots that contain important natural resources, such as mature tree

coverage, wetlands, and steep slopes. Lot sizes should be a two (2) acre minimum. However, the City may on an individual case basis grant a variance to the lot area requirement in order to preserve trees, steep slopes, and/or wetlands. A special overlay district may be appropriate for this area to address the City's desire to preserve important natural resources.

As the proposed lot sizes for Lots 2 and 3 are less than two (2) acres, the proposed Subdivision would require City Council approval of a variance to allow less than two (2) acre lot sizes.

2.4 Zoning.

The Property is located in the R-1, Low Density Single Family District. The R-1 District prescribes minimum design criteria for the creation of lots and platting of land, in addition to Comprehensive Plan land use requirements for the Bushaway Conservation District noted above. The following minimum standards for the R-1 District apply to this Preliminary/Final Plat:

Table 4: R-1 Zoning District Requirements

R-1 District	Standard
Minimum Lot Area	40,000 square feet
Minimum Lot Width	150 feet
Minimum Lot Depth	150 feet
Front Yard Setback (min.)	45 feet
Side Yard Setback (min.)	20 feet
Rear Yard Setback (min.)	50 feet
Lot Coverage	15%
Impervious Surface	25%

As shown on the submitted Plat, the proposed division would result in two (2) buildable parcels that would meet minimum standards of the R-1 District and therefore would be conforming lots.

Table 5: Proposed Development Plan

	R-1 Requirements	Lot 1	Lot 2	Lot 3	Notes
Lot Area	40,000 SF, but Bushaway Conservation District requirement is two (2) acres.	123,122 SF	40,066 SF	45,054 SF	Lots 2 and 3 do not conform with Comprehensive Plan guidance. Requires approval of a Variance.
Lot Width (Public Street Frontage)	150 ft	164 ft	150 ft	304 ft, but not on a public street	Lot 3 requires approval of a Variance
Lot Depth	150 ft	567 ft	270 ft	150 ft	Conforms to Code
Front Yard	45 ft	250 ft	64 ft	50 ft	Conforms to

Setback					Code
Side Yard Setback	20 ft	26 ft and 73.7 ft	30 ft and 44 ft	48 ft and 150 ft	Conforms to Code
Rear Yard Setback	50 ft	93 ft	90 ft	54 ft	Conforms to Code
Potential Lot Coverage	15%	5.4% (6,627 SF)	8.0% (3,535 SF)	8.0% (3,600 SF)	Conforms to Code
Proposed Hardcover	25%	12.3% (15,128 SF)	15.3% (6,135 SF)	11.5%	Conforms to Code

Building plans for Lots 2 and 3 have not been provided at this time. Thus, the Planning Commission should consider recommending a condition of any approval be that any future owners of these Lots provide building plans for review by the Planning Commission and City Council prior to applying for a building permit. The Applicant has provided example building pads to highlight potential locations for future residential structures. All residential structures would need to conform to applicable setback, lot coverage, and hardcover requirements.

2.5 Access to Project.

The Project proposes to utilize the location of the existing private easement road to access the Property. This private easement road serves multiple properties within the eastern portion of Bushaway Road. As noted above, Lot 3 would not have direct public street frontage, and would require approval of a variance from the Subdivision Ordinance.

2.6 Tree Inventory.

The Application materials include a tree inventory of the Property, which shows a total of 349 significant trees on the property having a minimum diameter of 6 inches. The property includes a wide variety of species: Maple, Basswood, Oak, Ash, and Spruce.

The amount of trees proposed to be removed for the Project is:

Portion of Site	Number of Trees Proposed for Removal
Lot 1	0
Lot 2	23
Lot 3	32
Total	55 trees (out of 349) or 15.8

The amount of trees to be removed for the proposed subdivision is 55 trees, or 15.8% of the site.

2.7 Traffic.

Based on data from the Institute of Transportation Engineers (ITE) *Trip Generation, Ninth Edition*, a single family detached housing unit has approximately 9.5 trips per day. For a three lot single family development, the average daily trips would be approximately twenty nine (29) trips.

Section 3. **Applicable Code Provisions for Review**

3.1 Approval of Subdivisions and New Plats

Section 805.14(e) provides criteria for the Planning Commission to evaluate when reviewing a Preliminary Plat. In this review, the Planning Commission should determine if the proposed subdivision would have an adverse impact on the site or surrounding area. The following are the factors from this section for consideration. Included are Staff's comments on each of the factors.

- A. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.

The Property is guided for Bushaway Conservation District land use category within the Comprehensive Plan, which has a two acre minimum, unless a variance is granted by the City Council. Proposed Lots 2 and 3 would not meet the two acre minimum, at 0.92 acres and 1.03 acres, respectively. The Subdivision would require approval of a variance from the Subdivision Ordinance in order to proceed.

- B. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.

The Applicant's submittal materials show that approximately fifty five (55) trees will need to be removed as a result of the Project. The Planning Commission and City Council should evaluate the impact of the amount of tree loss and preservation proposed as part of the Project.

- C. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filing or grading.

The proposed building pads for Lots 2 and 3 are located on an area for slope of twelve percent (12%) or greater. A grading plan was submitted as part of the Application and will need final approval by the City Engineer prior to any construction work so that land disruption is minimized.

- D. Existing stands of significant trees shall be retained where possible. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.

The Applicant's submittal materials show that approximately fifty five (55) trees will need to be removed as a result of the Project. The Planning Commission and City Council should evaluate the impact of the amount of tree loss and preservation proposed as part of the Project.

- E. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- F. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- G. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding neighborhood or commercial area.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- H. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.

Cannot comment at this time. The Applicant does not have building elevations or plans available for the proposed three lots at this time. As a condition of any approval this Application, the Planning Commission and City Council should consider requiring that the Applicant and/or future homeowner to submit plans for review and approval by the Planning Commission and the City Council depicting architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of the buildings proposed to demonstrate similarity to the characteristics and quality of the existing homes in the neighborhood as required under Section 805.14.e.8 and 805.14.e.9.

- I. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the Downtown Architectural District, Commercial and Institutional Architectural Districts, and Residential Architectural Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.

Not applicable, as the City does not have single family residential design standards.

- J. The proposed lot layout and building pads shall conform with all performance standards contained herein.

As noted above, due to the existing layout of the lot and the Applicant's proposal to utilize the existing private easement road to access the Property, the Project would need approval of a variance from the Subdivision Ordinance for public street frontage and use of a private easement road for proposed Lot 3.

- K. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- L. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

The Project has access to City sanitary sewer and water services through a connection to Bushaway Road, and would not over-burden these systems.

- 3.2 Concurrent Preliminary/Final Plat. Section 805.15 of the Subdivision Ordinance allows the City to review the preliminary and final plat simultaneously. The final plat shall incorporate all changes, modifications, and revisions required by the City. Otherwise, it shall conform to the approved preliminary plat.

- 3.3 Variance Standards from Subdivision Ordinance. As noted above, the Applicant is requesting the following variances from the Subdivision Ordinance to allow for lot sizes less than two (2) acres for Lots 2 and 3, and the use of the existing private easement road to serve as access to the Property:

- A. Variance from Subdivision Ordinance to conform with Comprehensive Plan guidance of Two (2) acre minimum in the Bushaway Conservation District (Section 805.14.E.1)
- B. Use of Private Roadways (Section 805.27.k)
- C. Lot Frontage on a Public Street (Section 805.26.E)
- D. Street Width Less Than Twenty Six (26) feet (Section 805.29.a)
- E. Construction of Roadways Without Curbs and Gutters (Section 805.29.I)

Section 805.60 allows the City Council to approve variances from the minimum standards of the Subdivision Ordinance, when, in its opinion, undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable for the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A variance shall only be approved when the City Council finds:

- (1) That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of his land.
- (2) That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.

- (3) That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
 - (4) Hardship relating to economic difficulties shall not be considered for the purpose of granting a variance.
 - (5) That the hardship is not a result of an action or actions by the owner, applicant, developer or any agent thereof.
- 3.4 Parkland Dedication Fee. Section 805.37 of the Subdivision Ordinance requires a parkland dedication of land or fee in lieu for new single family lots at the time of recording of the Final Plat. As the proposed Subdivision creates two (2) new lots, the Applicant would be required to dedicate land or pay a fee in lieu for the two (2) new lots.
- 3.5 Premature Subdivision. The Subdivision Ordinance requires the City Council to deny any preliminary plat of a proposed subdivision deemed premature for development. Section 805.16. The burden is on the applicant to show that the proposed subdivision is not premature. Section 805.18. Under Section 805.17 of the Subdivision Ordinance, a subdivision may be deemed premature should any of the conditions listed in Section 805.17 exist, including inadequate drainage, inadequate water supply, inadequate roads, inadequate waste disposal systems, and inconsistency with the Comprehensive Plan, in ability to provide public improvements, and MEQB policies.

Section 4. Staff Input.

City Staff has reviewed the proposed Project. Comments are as follows.

4.1 City Planner

- As the Application does not include architectural plans for each of the new single family residences that would be built on the lots, the Applicant should be aware that the Planning Commission and City Council are likely to place a condition on any approval of the proposed Subdivision, such that any future owners of the lots would be required to submit the proposed building plans and landscaping plans for review by the Planning Commission and approval by City Council prior to any building permits being issued for the Property.

4.2 Fire Marshal

- Lots 1 & 3 of the proposed addition are more than 150 ft from a public road (Bushaway), therefore I will require that the fire access road be widened to 20 ft to within 150 ft of the Lot 3 building as per Minnesota Fire State Code (MSFC) Section 503.1.1.
- Since Lots 1 & 3 of this addition are more than 400 ft from a fire hydrant on a public access road (Bushaway), a fire hydrant shall be added as per Section 508.5.1 of the MSFC. Location to be determined by the Wayzata Fire Marshal.

Section 5. Action Steps.

After considering the items outlined in this Report, the City Council should pursue one of the following actions:

1. Adopt the draft denial Resolution No. 27-2015 included as Attachment G of this Staff Report.
2. If the Council wishes to significantly modify the draft denial Resolution, direct staff to prepare a revised denial Resolution for review and adoption at the next Council meeting.
3. If the Council wishes to approve the Application, direct staff to prepare a new approval Resolution for review and adoption at the next Council meeting, based upon the Council's discussion at this meeting, including identification of factual findings to support approval of the Application.

Attachments:

- Attachment A: Applicant Submittals:
 - o Project Narrative
 - o Certificate of Survey and Preliminary Plat
 - o Proposed Grading and Utility Plan
 - o Tree Inventory Plan
- Attachment B: Received Public Comment
- Attachment C: Letter from Wayzata Fire Marshal
- Attachment D: Planning Commission Meeting Minutes – June 1, 2015
- Attachment E: Planning Commission Meeting Minutes – June 15, 2015
- Attachment F: Planning Commission Report and Recommendation
- Attachment G: Draft Resolution 27-2015

Attachment A

5/8/2015

To: Wayzata City Council

From: Zev and Kristi Oman
250 Bushaway Road
Wayzata, MN 55391

Re: Proposed Subdivision- VARIANCE REQUEST

We purchased our home at 250 Bushaway Road, Wayzata in April 2003. At that time the surrounding properties all contained large acreage and our property, which has 4.75 acres was one of the smaller parcels. Now, 12 years later all of our surrounding properties have been subdivided and we now feel like we live in a urban development. Our property used to have a private estate like feel to it, now it does not fit in with the neighboring homes.

To be consistent with the neighboring properties we are looking to subdivide into 3 lots. Because of the topography and access, our home would remain as the largest parcel and the two other lots are just shy of the 80,000sf minimum. It doesn't make sense to do a single lot split because the new lot/house would look out of place standing alone, and would not esthetically conform with the surrounding homes.

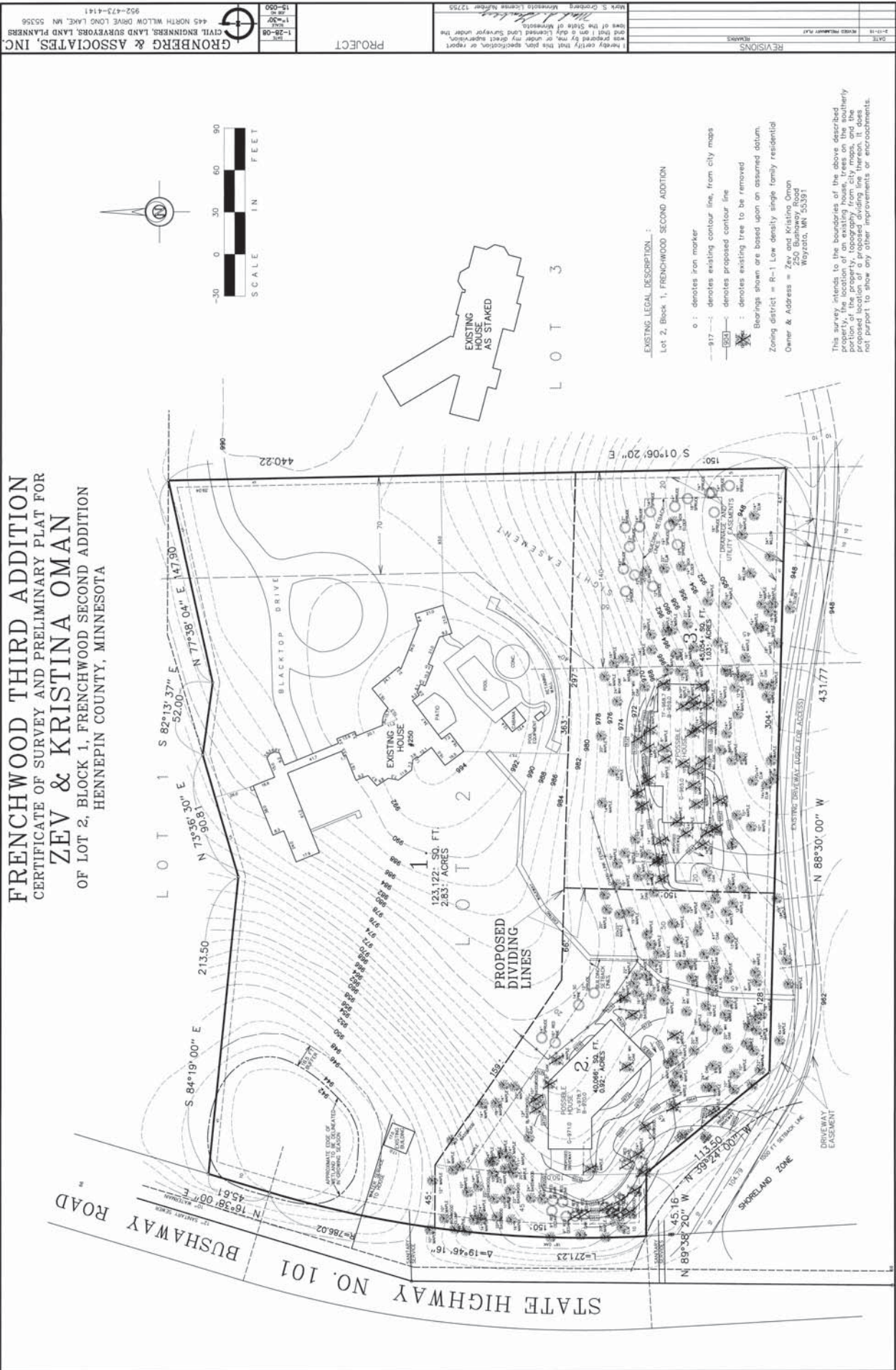
Also I would like point out some issues/mistakes made with neighboring properties which have negatively effected our property. In 1999 when 240 Bushaway Road was subdivided the city eliminated access to our lower level garages making it impossible to access them. Two years ago city allowed our neighbor at 270 Bushaway Road to install a pool at his property, even though the subdivision bilaws do not allow it, the pool was installed on the side of this home, not the back yard, so now every time I walk out my front door I see a swimming pool and the serene, quiet atmosphere is gone.

The Lecy Bros. development at 262 Bushaway Road contains two lots that do not conform with the 80,000sf lot minimum, our proposed two lots are similar in size with these lot sizes.

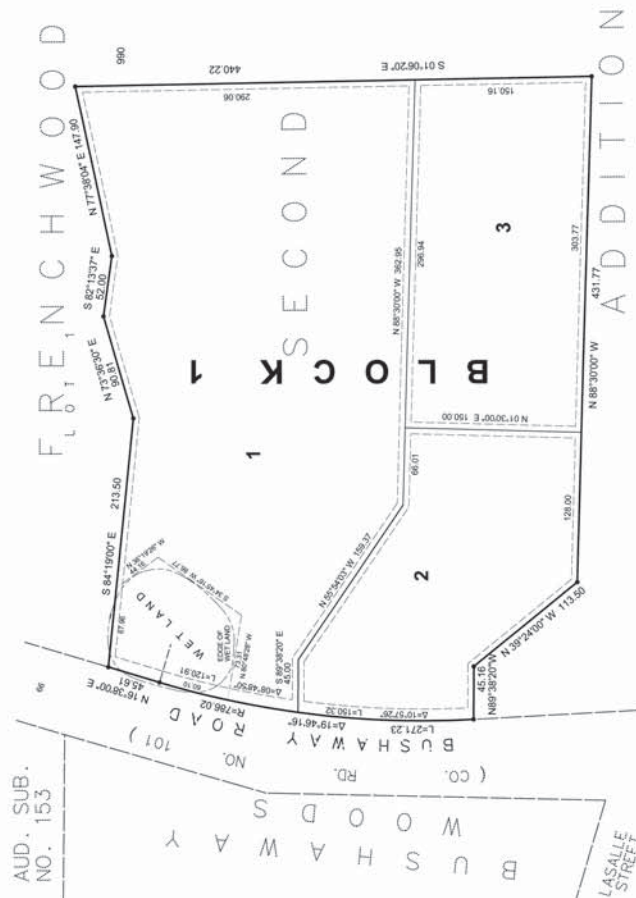
Lastly, I would like to point out that selling these proposed two additional lots would help me recoup some of the economic loss I have sustained; which was due to no fault of ours.

A handwritten signature in black ink, appearing to read 'K Oman', with a long horizontal flourish extending to the right.

FRENCHWOOD THIRD ADDITION
CERTIFICATE OF SURVEY AND PRELIMINARY PLAT FOR
ZEV & KRISTINA OMAN
OF LOT 2, BLOCK 1, FRENCHWOOD SECOND ADDITION
HENNEPIN COUNTY, MINNESOTA



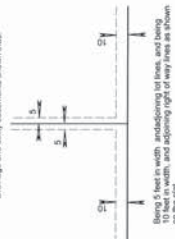
FRENCHWOOD THIRD ADDITION



• • • DENOTES IRON MARKER FOUND
• • • DENOTES IRON MARKER SET; MARKED
BY MN. LIC. NO. 12755
FOR PURPOSES OF THIS SURVEY, THE SOUTH
LINE OF LOT 2, BLOCK 1, FRENCHWOOD SECOND
ADDITION HAS AN ASSUMED BEARING OF
88°30' W



drainage and utility easements shown that:



C.R.DOC.NO.

Know all persons by these presents that Zew Oman and Kristina M. Oman, husband and wife, fee owners of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

Lot 2, Block 1, FRENCHWOOD SECOND ADDITION

has caused the same to be surveyed and platted as FRENCHWOOD THIRD ADDITION, and does hereby dedicate to the public for public use forever the drainage and utility easements as shown on the plat.

is witness whereof said Zey Oman and Kristina M. Oman, husband and wife, have hereunto set their hands this _____ day of _____ 20____

REV OMAN

KRISTINA M. OMAN

STATE OF

STATE OF _____) The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
COUNTY OF _____
Key Oman and Kristina M. Oman, husband and wife.

Notary Public.	County.	Notary's printed name

the commission expires

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

Mark S. Gronberg Licensed Land Surveyor

STATE OF _____)
Minnesota License Number 12755

[illegible]

Secretary Public, _____

My commission expires _____

WAYZATA, MINNESOTA

This plat of FRENCHWOOD THIRD ADDITION was approved and accepted by the City Council of Wayzata, Minnesota, at a regular meeting held this _____ day of _____, 20____. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City, or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 508.03, Subd. 2.

CITY COUNCIL OF THE CITY OF WAYZATA, MINNESOTA

Marine

Client:	
---------	--

RESIDENT AND REAL ESTATE SERVICES, HENNEPIN COUNTY, MINNESOTA hereby certify that taxes payable in 20____ and prior years have been paid for land described on this plat. Dated this ____ day of _____, 20____.

MARK V. CHAPIN, HENNEPIN COUNTY AUDITOR

By _____, Deputy

INEPIN COUNTY, MINNESOTA

Forwarded to MINN. STAT. Sec. 383B.545, (1969), this plat has been approved this _____ day of _____, 20____.

CHRIS F. MAVIS, HENNEPIN COUNTY SURVEYOR

By _____

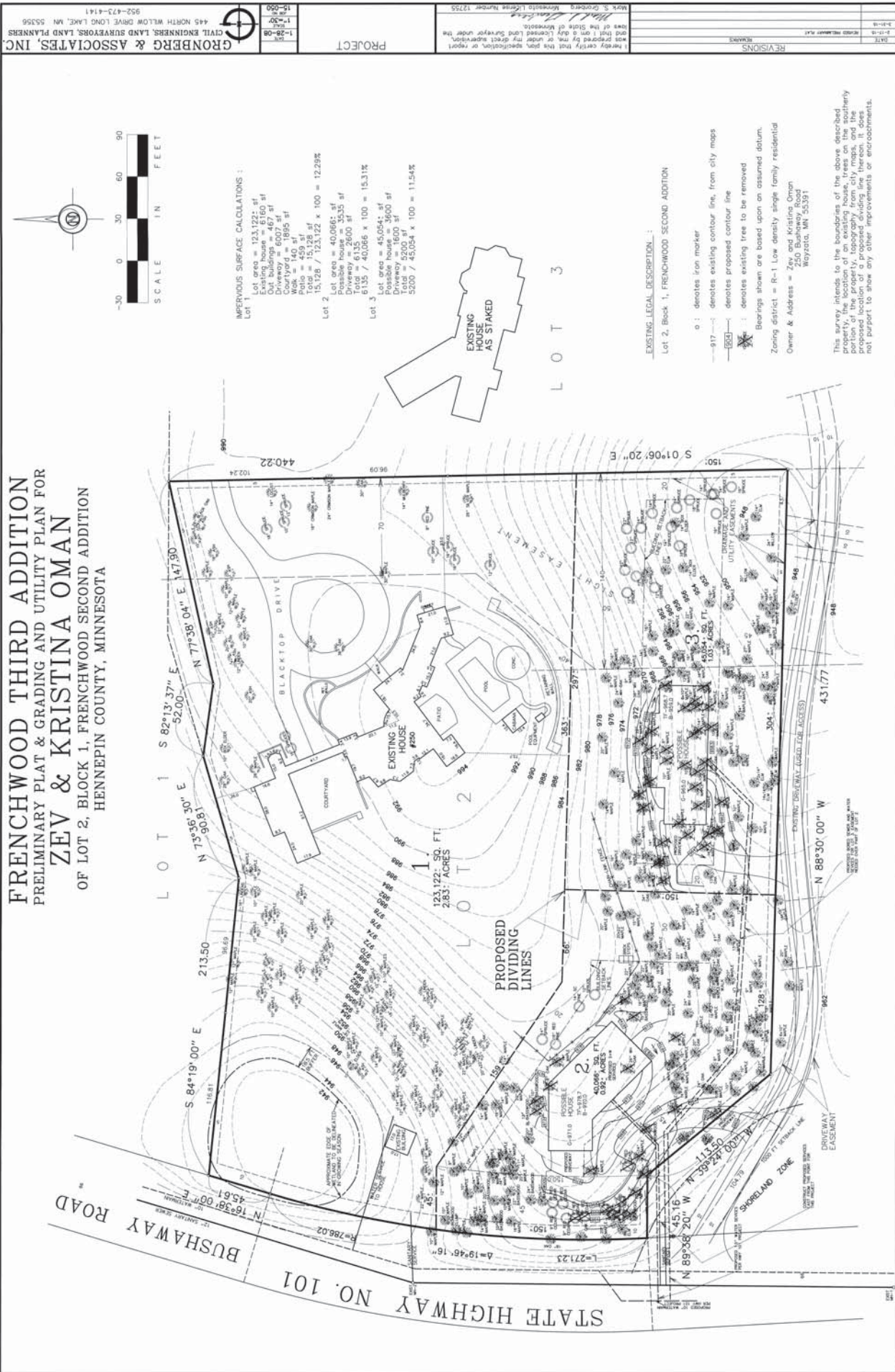
COUNTY RECORDER, HENNEPIN COUNTY, MINNESOTA

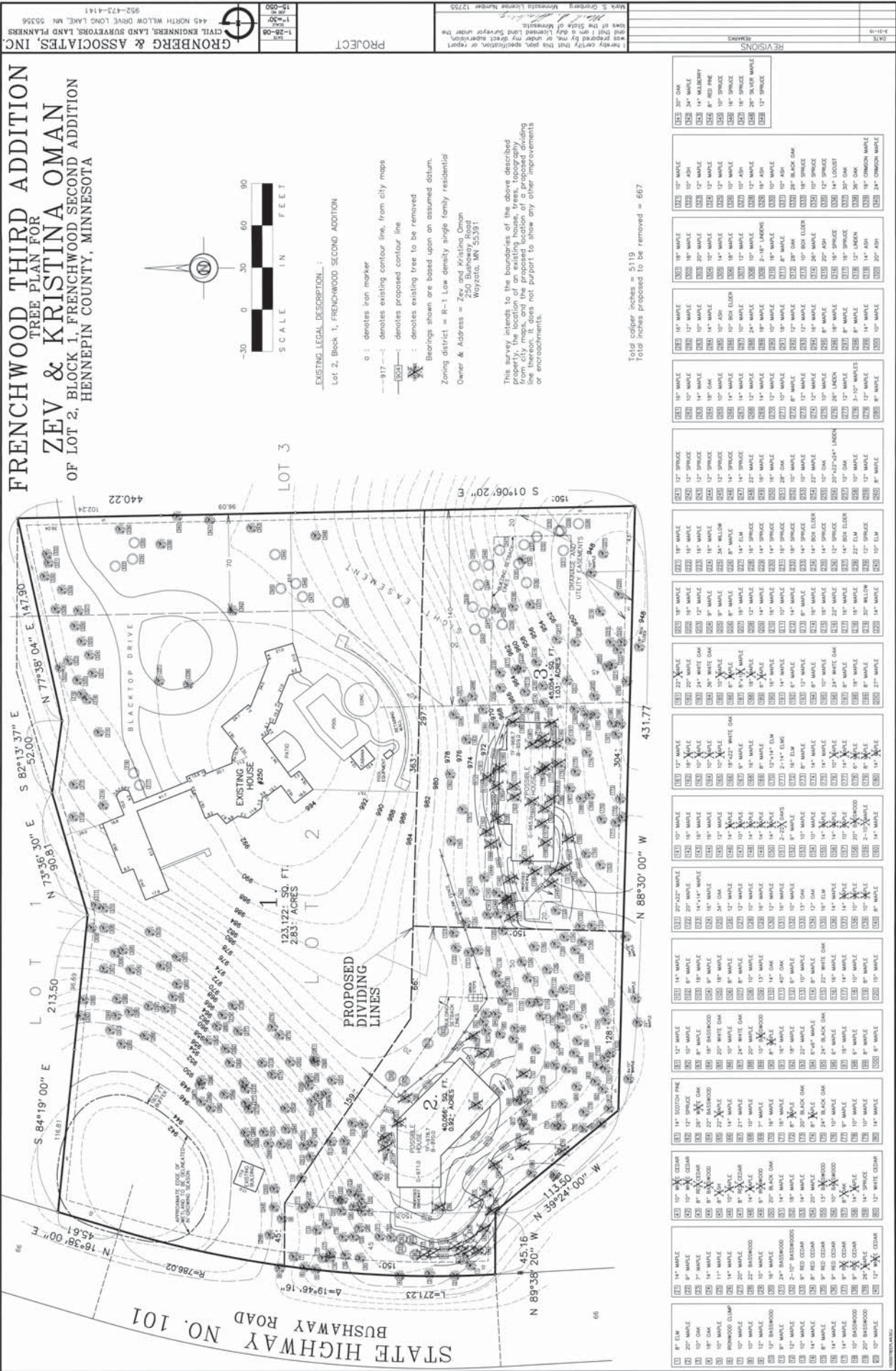
hereby certify that the within plat of FRENCHWOOD THIRD ADDITION was recorded in this office this _____ day of _____, 19____.

100

MARTIN MCCORMICK, HENNEPIN COUNTY RECORDER

FRENCHWOOD THIRD ADDITION PRELIMINARY PLAT & GRADING AND UTILITY PLAN FOR ZEV & KRISTINA OMAN OF LOT 2, BLOCK 1, FRENCHWOOD SECOND ADDITION HENNEPIN COUNTY, MINNESOTA





Attachment B

Bryan Gadow

From: Robert Keith <rkeith@hunter-keith.com>
Sent: Wednesday, May 20, 2015 1:41 PM
To: Bryan Gadow
Subject: The 250 Bushaway Road variance

Hello Bryan:

My wife, Michele, and I reside at 100 Bushaway Road. We were recently made aware of the request for a variance by the residents at 250 Bushaway Road. We desire to make you, the Planning Commission and the City Council aware of our hope that the request to reduce the lot size below two acres not be approved. We feel a precedent for the two acre size has been established on our area of Bushaway Road by the Lecy Brothers and Stonecrest developments. It is our belief that allowing more dense development would negatively impact our area both aesthetically and financially.

Thank you and the various committees for considering this input.

Robert Keith

Attachment B

Bryan Gadow

From: Steven Tyacke
Sent: Monday, July 06, 2015 1:53 PM
To: Bryan Gadow
Subject: Fw: Resolution No. 27-2015 250 Bushaway Subdivision and Variances

Letter received; please place in file. Thanks for letting us know about postponement to 7-21.

Sent from Windows Mail

From: [Doug Shiell](#)
Sent: Monday, July 6, 2015 10:48 AM
To: [Ken Willcox](#)
Cc: [Bridget Anderson](#), [Johanna McCarthy](#), [Andrew Mullin](#), [Steven Tyacke](#)

Dear Mayor Willcox and Councilmembers:

My wife Mary and I own the lot located at 258 Bushaway Road, Wayzata. We are building a home there and it will be completed by this September. We bought the lot for its natural beauty and in reliance on the City of Wayzata's commitment to conservation and controlled development for the neighborhood.

We have read Draft Resolution No. 27-2015 denying the request for variances needed in connection with the proposed subdivision of 250 Bushaway. We urge adoption of the Resolution for the reasons set forth there.

Thank you for taking the time to review our comment.

Doug & Mary Shiell

WAYZATA PLANNING DEPARTMENT

Lecy Bros. Homes developed Enchanted Woods, the six-home subdivision east of the proposed Oman subdivision. The six homes in Enchanted Wood, the Oman's and the home at 270 Bushaway all use the private road as access. As part of the developer's agreement, Lecy Bros. Homes widened and resurfaced the entire private road from Bushaway to the Enchanted Woods development.

Lecy Bros. Homes has sold or is under contract for five lots. Roy and Ruth Lecy individually own the sixth lot, Lot 2, Block 1, Enchanted Woods. Ruth and Roy Lecy do not represent the other five owners in Enchanted Woods. These are our questions, concerns and observations.

- 1) Where will construction trucks and heavy earth moving equipment turn around – The Enchanted Woods Homeowner's Association will not allow their trucks to drive through our development and turn around in our private cul-de-sac causing damage.
- 2) Where will construction workers park?
- 3) Road Damage During Construction – The private road, in our development, has been damaged by home construction – Lecy will repair the damage. There will be construction damage to the private road when homes are built on the Oman's proposed lots. How will the applicant or a new owner(s) be held accountable for damages to the private road?
- 4) How are New Lot(s) Owners going to pay their Fair Share for snow plowing; future upgrades and maintenance of the private road?
- 5) Each Enchanted Woods lot has a tree conservation area and each lot has a rain garden.
- 6) Emergency Vehicles - The Enchanted Woods development was required to build a 20' emergency vehicle only access road and a 90' cul-de-sac turnaround for firetrucks. Currently the Oman's home and the home at 270 Bushaway have only 16' access for emergency vehicles and there does not appear to be a turnaround area for firetrucks. With limited access, can the private road support emergency services for one or two additional homes?
- 7) 2-Acre lots were an absolute condition for Enchanted Woods. What is justification for 1-acre lots?

Attachment B

- 8) Lecy Bros. were sued by the Oman's claiming adding six additional homes would overburden the easement (private road). Lecy Bros. had to hire a traffic engineer and prove to a judge that six additional homes would not overburden the easement. The Oman's need to demonstrate that adding 1 or 2 additional homes and increasing traffic by up to 20% will not overburden the easement. The City Council would not approve Lecy Bros. project until the overburdening issue was resolved.
- 9) Approving one lot with access from Bushaway or very close to Bushaway would resolve several issues.

Roy and Ruth Lecy



Attachment C

WAYZATA FIRE DEPARTMENT

600 RICE STREET
WAYZATA, MN 55391
(952) 404-5337
FAX (952) 404-5336
fire@wayzata.org

5/19/2015

To; Brian Gadow
City of Wayzata Planner

Re; Proposed Frenchwood addition
Review,
Bushaway/Hwy101

Brian,

The proposed Frenchwood Third Addition is approved by the Wayzata Fire Department officer's with the following changes as per the Minnesota State Fire Code. (MSFC)

A- Lots 1&3 of the a proposed addition are more than 150 from a public road, (Bushaway) therefore I will require that the fire access road be widened to 20 feet to within 150 feet of the lot 3 building as per MSFC Sectin503.1.1. (Enclosed)

B- Since lot 1&3 of this addition are more than 400 feet from a fire hydrant on a public access road, (Bushaway) a fire hydrant shall be added as per Section 508.5.1 of the MSFC. (enclosed)
Location to be determined by the Wayzata Fire Marshal.

If you have any questions, I can be contacted at 612-490 2307

Sincerely

Bill Meyer,
Fire Marshal,
City of Wayzata

Cc; Kevin Klapprich, Wayzata Fire Chief

CHAPTER 5

FIRE SERVICE FEATURES

SECTION 501 GENERAL

501.1 Scope. Fire service features for buildings, structures and premises shall comply with this chapter.

501.2 Permits. A permit shall be required as set forth in Sections 105.6 and 105.7.

501.3 Construction documents. Construction documents for proposed fire apparatus access, location of fire lanes and construction documents and hydraulic calculations for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.

501.4 Timing of installation. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2.

SECTION 502 DEFINITIONS

502.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

FIRE APPARATUS ACCESS ROAD. A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as fire lane, public street, private street, parking lot lane and access roadway.

FIRE COMMAND CENTER. The principal attended or unattended location where the status of the detection, alarm communications and control systems is displayed, and from which the system(s) can be manually controlled.

FIRE DEPARTMENT MASTER KEY. A limited issue key of special or controlled design to be carried by fire department officials in command which will open key boxes on specified properties.

FIRE LANE. A road or other passageway developed to allow the passage of fire apparatus. A fire lane is not necessarily intended for vehicular traffic other than fire apparatus.

■ **KEY BOX.** A secure device with a lock operable only by a fire department master key, and containing building entry keys and other keys that may be required for access in an emergency.

SECTION 503 FIRE APPARATUS ACCESS ROADS

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.

* **503.1.1 Buildings and facilities.** Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

Exception: The fire code official is authorized to increase the dimension of 150 feet (45 720 mm) where:

1. The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.
2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.
3. There are not more than two Group R-3 or Group U occupancies.

503.1.2 Additional access. The fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

503.1.3 High-piled storage. Fire department vehicle access to buildings used for high-piled combustible storage shall comply with the applicable provisions of Chapter 23.

503.2 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.7.

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

503.2.2 Authority. The fire code official shall have the authority to require an increase in the minimum access widths where they are inadequate for fire or rescue operations.

503.2.3 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of

506.1.1 Locks. An approved lock shall be installed on gates or similar barriers when required by the fire code official.

506.2 Key box maintenance. The operator of the building shall immediately notify the fire code official and provide the new key when a lock is changed or rekeyed. The key to such lock shall be secured in the key box.

SECTION 507 HAZARDS TO FIRE FIGHTERS

507.1 Trapdoors to be closed. Trapdoors and scuttle covers, other than those that are within a dwelling unit or automatically operated, shall be kept closed at all times except when in use.

507.2 Shaftway markings. Vertical shafts shall be identified as required by this section.

507.2.1 Exterior access to shaftways. Outside openings accessible to the fire department and which open directly on a hoistway or shaftway communicating between two or more floors in a building shall be plainly marked with the word SHAFTWAY in red letters at least 6 inches (152 mm) high on a white background. Such warning signs shall be placed so as to be readily discernible from the outside of the building.

507.2.2 Interior access to shaftways. Door or window openings to a hoistway or shaftway from the interior of the building shall be plainly marked with the word SHAFTWAY in red letters at least 6 inches (152 mm) high on a white background. Such warning signs shall be placed so as to be readily discernible.

Exception: Marking shall not be required on shaftway openings which are readily discernible as openings onto a shaftway by the construction or arrangement.

507.3 Pitfalls. The intentional design or alteration of buildings to disable, injure, maim or kill intruders is prohibited. No person shall install and use firearms, sharp or pointed objects, razor wire, explosives, flammable or combustible liquid containers, or dispensers containing highly toxic, toxic, irritant or other hazardous materials in a manner which may passively or actively disable, injure, maim or kill a fire fighter who forcibly enters a building for the purpose of controlling or extinguishing a fire, rescuing trapped occupants or rendering other emergency assistance.

SECTION 508 FIRE PROTECTION WATER SUPPLIES

508.1 Required water supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

508.2 Type of water supply. A water supply shall consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

508.2.1 Private fire service mains. Private fire service mains and appurtenances shall be installed in accordance with NFPA 24.

508.2.2 Water tanks. Water tanks for private fire protection shall be installed in accordance with NFPA 22.

508.3 Fire flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined by an approved method.

508.4 Water supply test. The fire code official shall be notified prior to the water supply test. Water supply tests shall be witnessed by the fire code official or approved documentation of the test shall be provided to the fire code official prior to final approval of the water supply system.

508.5 Fire hydrant systems. Fire hydrant systems shall comply with Sections 508.5.1 through 508.5.6.

*** 508.5.1 Where required.** Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

Exceptions:

1. For Group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

508.5.2 Inspection, testing and maintenance. Fire hydrant systems shall be subject to periodic tests as required by the fire code official. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired where defective. Additions, repairs, alterations and servicing shall comply with approved standards.

508.5.3 Private fire service mains and water tanks. Private fire service mains and water tanks shall be periodically inspected, tested and maintained in accordance with NFPA 25 at the following intervals:

1. Private fire hydrants (all types): Inspection annually and after each operation; flow test and maintenance annually.
2. Fire service main piping: Inspection of exposed, annually; flow test every 5 years.
3. Fire service main piping strainers: Inspection and maintenance after each use.

508.5.4 Obstruction. Posts, fences, vehicles, growth, trash, storage and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections or fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

508.5.5 Clear space around hydrants. A 3-foot (914 mm) clear space shall be maintained around the circumference of fire hydrants except as otherwise required or approved.

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
JUNE 1, 2015**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Vice Chair Iverson called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Gonzalez, Ramy, Iverson, Gruber, Young, and Gnos. Absent and excused was: Chair Vanderheyden. Director of Planning and Building Gadow and City Attorney David Schelzel were also present.

Vice Chair Iverson asked for approval of the minutes from the May 4, 2015 meeting.

Commissioner Gruber requested the following changes: on page 3, line 44, change "suqare" to "square". On line 17, page 6, change "architecture" to "architect" and on page 9, line 1, is missing the name of the Commissioner who made the motion.

Commissioner Gonzalez stated she had emailed changes to Mr. Gadow.

City Attorney Schelzel stated he had sent grammatical changes to Mr. Gadow.

Commissioner Gruber made a motion, Seconded by Commissioner Gonzalez, to approve the May 4, 2015 meeting minutes as amended. The motion carried unanimously.

AGENDA ITEM 2. Regular Agenda Public Hearing Items:

a. 250 Bushaway Road – Zev and Kristi Oman

- i. Concurrent Preliminary and Final Plat for Three (3) Lot Subdivision**
- ii. Frontage Variance from Subdivision Ordinance**
- iii. Lot Area Variance from Subdivision Ordinance**

Mr. Gadow stated the property owners have submitted a Development Application requesting concurrent preliminary and final plat subdivision approval, a variance from the Subdivision Ordinance for public street frontage for proposed Lot 3, and a variance from the Subdivision Ordinance for lot area under 2-acres. He reviewed the Staff Report, certificate of survey and preliminary plat, the final plat, the grading and utility plan, and the significant tree inventory plan. He explained the Applicant does not have building elevations or plans available for the proposed three (3) lots at this time. He said that as a condition of any approval of this Application, the Planning Commission should consider requiring that the Applicant and/or future homeowner submit plans for review and approval by the Planning Commission and the City Council depicting appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of the buildings proposed to demonstrate similarity to the characteristics and quality of the existing homes in the neighborhood. The Fire Marshall had also reviewed the

1 application and Lots 1 and 3 would be more than 150-feet from a public road and would require
2 the fire access road be widened to 20-feet to within 150-feet of the Lot 3 building and a fire
3 hydrant be added.

4
5 Commissioner Gonzalez asked who owned the easement and had rights to this easement.

6
7 Mr. Gadow explained there were many property owners along this stretch that have various
8 rights and the City is not a party to this easement.

9
10 Mr. Peter Benincasa, Executive Real Estate, representing the Applicant, provided background on
11 the property and explained the Applicant would like to develop their property similar to the rest
12 of the neighborhood. He said the Applicant already has easement rights and the proposed lot
13 sizes meet the R1 District requirement, but the City made changes to the size requirements after
14 Mr. and Mrs. Oman purchased the property. The adverse feedback this Application has received
15 would be due to previous developments that had issues. The new development would be on the
16 first lot in the neighborhood so this would not impact traffic or provide heavy construction
17 equipment traffic throughout the neighborhood.

18
19 Commissioner Ramy asked if there would be a substantial amount of excavation to orient the
20 homes or provide back yards.

21
22 Mr. Benincasa stated there are several home designs that would fit into the property that would
23 not require substantial excavating.

24
25 Mr. Gadow stated the City would need more information when final plans are proposed in order
26 to understand the grading impacts.

27
28 Vice Chair Iverson asked Mr. Gadow if Lecy Brothers had requested variances for their
29 development.

30
31 Mr. Gadow explained Lecy Brothers had asked for variances for issues pertaining to the
32 roadway. The original PUD proposed by Lecy Brothers had been approved under the R1A
33 District standards, with an 80,000 square foot lot requirement. They had asked for variances
34 regarding the length of the cul-de-sac and the street width of less than 20-feet without curb and
35 gutter. Mr. Gadow said that the R1A Zoning District is more compatible with the Comp Plan's
36 Bushaway Conservation District.

37
38 Commissioner Ramy asked if any Wetland Conservation Districts had jurisdiction over the
39 wetland on Lot 3.

40
41 Mr. Gadow explained there would be no proposed impacts to wetlands with this Application as
42 submitted.

43
44 Commissioner Young asked for clarification on whether the requirements east of Bushaway
45 Road are different than the requirements on the west side of Bushaway Road.

1 Mr. Gadow stated the east side of Bushaway is part of the Bushaway Conservation District and
2 the lot size requirement for this district is 2-acres in order to recognize the larger lot estates. The
3 west side of Bushaway Road does have smaller lot sizes because that was the historical
4 development pattern at that time.

5
6 Vice Chair Iverson opened the public hearing at 7:24 p.m.
7

8 Mr. Roy Lecy, Lecy Brothers Homes and Remodeling, 15012 Highway 7, Minnetonka, stated he
9 owns one of the lots in the Enchanted Wood Development and was also the Developer for the six
10 (6) lot Enchanted Wood PUD Development. He stated at the time of the Enchanted Woods
11 Development they had tried to get approval for 1-acre lots but had been told only 2-acre lots
12 would be allowed in this area. They had also been required to increase the width of the existing
13 private roadway from 14-feet to 16-feet in some areas and 20-feet in other areas. He explained
14 the Applicant and two (2) other property owners had sued Lecy Brothers for over burdening the
15 easement. He would like to be sure that this Development is held to the same standards that the
16 Enchanted Woods Development had been held to. He asked where the construction vehicles
17 would turn around. As part of the Lecy Brothers development, the road had been newly
18 constructed from Hwy 101 to their development. He asked who would be responsible for
19 repairing the road damage during construction.
20

21 Commissioner Ramy asked how costs of maintenance of the road was divided among benefited
22 properties.
23

24 Mr. Lecy stated the maintenance was divided equally among the six (6) homes in the Enchanted
25 Wood Development, and they ask the Omans and one other homeowner to contribute to the snow
26 plowing. If there are homes added, then he would like to see a legal requirement or document
27 for these homeowners to pay for the maintenance and snow removal on this road.
28

29 Commissioner Gonzalez stated Lecy Brothers had been granted a variance to have a private
30 street in their development as long as it was widened to meet the requirements of the Fire
31 Marshal. She further noted that private streets are not usually allowed under the Subdivision
32 Ordinance.
33

34 Mr. Gadow stated the existing easement is a 20-foot easement and this does not allow for a full
35 build out of a 20-foot wide street. So, Mr. Lecy had been required to put in a secondary 20-foot
36 access road for the Fire Department. The Fire Marshal is recommending the Applicant work to
37 widen the easement to accommodate a 20-foot wide road.
38

39 Commissioner Gonzalez asked if the City had ever required homes to have sprinkler systems if it
40 is difficult for the Fire Department to access them.
41

42 Mr. Gadow stated the City might not be able to require this unless the home is large enough to
43 require a sprinkler system under the State Fire Code. If the roadway could not be widened, then
44 there are alternatives the Applicant could consider but these would need to be worked out with
45 the City Fire Marshal and potentially the State Fire Marshal.
46

1 Mr. Lecy stated the private street had been required. They had requested a public street that
2 came off of Holdrige and went into the Enchanted Wood Development. The City denied this
3 request due to the opposition from the Holdrige neighborhood. He explained the private road
4 had been widened to 16-feet at the recommendation of the Traffic Engineer.

5
6 Mr. Benincasa stated the Fire Marshal does not have a problem with the road width and the
7 Applicant could put in a fire hydrant. The proposed lots would be the first ones as you entered
8 the neighborhood. He explained Mr. Lecy's development should not be affected by the proposed
9 development.

10
11 There being no further comments, Vice Chair Iverson closed the public hearing at 7:40 p.m.

12
13 Commissioner Young stated the Applicant has commented that the Development would be
14 keeping with the character of the neighborhood. He asked if this would be referring to the lots
15 on the west side of Bushaway Road, which are smaller.

16
17 Mr. Benincasa stated this would be referencing the first home as you come into the
18 neighborhood, on the south or right.

19
20 Commissioner Ramy asked why the Applicant was departing from the previously approved two
21 (2) lot subdivision.

22
23 Mr. Benincasa explained the two (2) lot plan had been in 2009, prior to any development being
24 done. This would have conformed to what had been happening at that time.

25
26 Commissioner Gruber asked if any of the lots in the Enchanted Wood Development were non-
27 conforming.

28
29 Mr. Gadow stated the minimum lot size requirement for the R1A District is 80,000-square feet
30 and the Bushaway Conservation District minimum size requirement is 2-acres or about 86,000-
31 square feet. The 80,000-square foot requirement is more consistent with the Comprehensive
32 Plan guidance for this area. The Comprehensive Plan guides this property for 2-acres but the
33 corresponding Zoning is R1A.

34
35 Vice Chair Iverson asked if the Applicant would be held to the proposed lots and building pads if
36 approved.

37
38 Mr. Gadow explained the Applicant would be held to the lot configuration as shown in the final
39 plat if it were approved. This would be submitted to Hennepin County. The building pads could
40 be shifted within the plats but since there are no architectural renderings of the homes available
41 at this time, Staff would recommend a condition on any approval that any future
42 homeowner/buyer would have to have their building plans and pad layout approved by the
43 Planning Commission and City Council.

44
45 Vice Chair Iverson expressed concerns regarding the number of large trees that would be
46 removed with the proposed building pads and the potential for more if other plans are approved

1 in the future. She stated she would also like to know where the construction traffic would go and
2 how this traffic would not impact the trees. She stated she would like to see a tree preservation
3 plan for those trees that are located close to the proposed building pads. This plan would also
4 have to apply to the future owner of the property.

5
6 Commissioner Gruber asked if this would be considered a premature subdivision. She stated the
7 Commission should know what the criteria are and consider these as part of the Application.

8
9 Mr. Gadow stated there are a number of criteria under Section 805.17 of the Subdivision
10 Ordinance that should be reviewed in order to consider a subdivision premature. The burden is
11 on the Applicant to prove the subdivision is not premature.

12
13 Commissioner Gonzalez clarified the private road was on a private easement and this would not
14 involve the City unless there is a nuisance created for the City.

15
16 City Attorney Schelzel stated the City is not a party to the easement and if there are any issues
17 related to overburdening the easement, then the property owners need to work this out. He stated
18 he would have to look at the section of code on nuisances in order to know whether it would
19 apply in any way. He noted that the background information on the private access is important ,
20 however, because access is one of the criteria to be considered by the City under the Subdivision
21 Ordinance.

22
23 Vice Chair Iverson said would like to see a report that clearly lays out the grading impacts prior
24 to approving the subdivision.

25
26 City Attorney Schelzel stated that staff has suggested including a condition on any approval that
27 future homeowners provide building plans for review and approval to the Planning Commission
28 and City Council. The Planning Commission could add an additional condition to this that
29 when the plans are submitted they must include information on grading and building pads that
30 address Section 3.1.B of the Staff Report.

31
32 Commissioner Ramy stated the Applicant has not provided information showing hardship or
33 unique conditions of the property that would allow for a variance on the lot size.

34
35 Commissioner Young agreed with Commissioner Ramy in that the request for grading
36 information was premature because there are other things to consider prior to this. He stated that
37 when he evaluates this Application, this does not keep with the rhythm of the neighborhood, the
38 lots proposed are significantly smaller than what the Comprehensive Plan guides this property
39 for, the amount of tree loss is not clear and at a minimum is significant, and there is nothing
40 provided by the Applicant to show this is not a premature subdivision. He would like to see
41 these items resolved prior to looking at any grading concerns.

42
43 Commissioner Gonzalez stated page 9 of the Staff Report lays out the Variance Standards of the
44 Subdivision Ordinance. The Applicant would have to demonstrate an undue hardship and that
45 there are circumstances unique to the property that would deprive the Applicant of reasonable
46 use of the land. She said that this is not present in the Application. Granting a variance does not

1 correct inequities resulting from an extreme physical hardship such as topography. Any variance
2 that is granted requires the Applicant comply with the Comprehensive Plan and this Application
3 does not. The variance request for frontage is created by the Applicant and should not be
4 approved. She would not justify granting a variance because the owner is looking to maximize
5 their profit and economic considerations alone do not constitute a hardship.
6

7 Commissioner Gnos stated the Applicant's letter refers to a neighbor putting in a pool and
8 removing the serene, quiet atmosphere. He noted that the proposed subdivision would do the
9 same thing.
10

11 Commissioner Gruber asked if the Applicant had to prove to the Planning Commission that this
12 was not a premature subdivision, and whether this should be resolved prior to looking at the
13 variance requests.
14

15 Mr. Gadow stated that this would be one of the criteria to be considered by the Planning
16 Commission.
17

18 Commissioner Gruber made a motion, seconded by Commissioner Gonzalez, to direct Staff to
19 prepare a draft Report and Recommendation, for consideration at the next Planning Commission
20 meeting, recommending denial based on discussions of the Planning Commission, including the
21 variance standards criteria for the Subdivision Ordinance, the preliminary and final plat criteria,
22 and the premature subdivision standards. The motion carried unanimously.
23
24

25 **AGENDA ITEM 3. Other Items:**

26 **a. Review and adoption of Planning Commission Report and Recommendation on 532** 27 **Ferndale Rd W for Shoreland Conditional Use Permit and Variances** 28 29

30 Mr. Gadow reviewed the Report and recommendation of Approval of Shoreland Conditional Use
31 Permit, Front Yard Setback Variance, Impervious Surface Variance, and Tennis Court Variances
32 at 532 Ferndale Road West. He noted that this Application had been reviewed at the previous
33 Planning Commission and staff had been directed to prepare a draft Report and Recommendation
34 recommending approval on a 3-2 vote. The Planning Commission had indicated a condition of
35 approval should be that a landscape plan be provided to the City Council. He reviewed the
36 landscaping plan and the updated Stormwater Management Plan provided by the Applicant.
37

38 Mr. John Daly, Revision LLC, 153 E. Lake Street, Wayzata, representing the Applicant pointed
39 out updates that had been made to the proposed plans: the corners of the proposed tennis court
40 had been "clipped" to address some of the concerns about surface coverage, and the court had
41 been moved 5-feet further from the lake than originally proposed.
42

43 Commissioner Gruber asked if a grass court had been considered.
44

1 City Attorney Schelzel stated vendors would not have any right to stay in their current locations
2 once the lease expires.

3
4 Commissioner Gnos asked what the terms were for the existing leases.

5
6 Mr. Gadow stated they vary and expire between 2018 and 2021. Staff will continue to work on
7 clarifying the points in the Ordinance.

8
9
10 **AGENDA ITEM 3. Other Items:**

11
12 **a. Review and adoption of Planning Commission Report and Recommendation on 250**
13 **Bushaway Road for Subdivision and Variances**

14
15 Mr. Gadow reviewed the draft Report and Recommendation of denial for the subdivision request
16 to create three (3) lots and related concurrent preliminary and final plat, and denial of variances
17 from Subdivision Ordinance to allow use of private roadways, lot frontage on a public street,
18 street width less than 2-feet and construction of roadways without curbs and gutters. The City
19 Council would review this application at their July 7 meeting.

20
21 Commissioner Gonzalez stated the Applicant had stated they were driven by economic
22 considerations to maximize their profit. She asked if it should be included in Section 3.2.A.3.
23 that the variances being requested are being driven to a great extent by economic considerations.

24
25 Mr. Gadow stated these are variances from the Subdivision Ordinance and this has different
26 criteria than variances from the Zoning Ordinances.

27 Commissioner Gonzalez made a motion, Seconded by Commissioner Gnos to recommend
28 approval of the Planning Commission and Recommendation of Denial for 250 Bushaway Road
29 three (3) lot subdivision, concurrent preliminary and final plat, and denial of variances from
30 Subdivision Ordinance to allow use of private roadways, lot frontage on a public street, street
31 width less than 2-feet and construction of roadways without curbs and gutters. The motion
32 carried unanimously.

33
34
35 **b. Selection of Planning Commission Representative to Lake Effect Selection**
36 **Committee**

37
38 Mr. Gadow stated at the May 18 meeting, the City Council and their consultant, Mary deLaittre,
39 would be advancing the Lake Effect Project through a design request for proposals (RFP)
40 process to develop a signature project for construction along the City's waterfront. To assist
41 with the review of the RFP responses and selection of the winning design team, the City Council
42 is creating a Selection Committee composed of design professionals, City Councilmembers, a
43 representative from the Planning Commission, Park and Trails, HPB/Historical Society, and
44 representatives from area governmental jurisdictions such as Hennepin County, Three Rivers
45 Park District, and the Minnehaha Creek Watershed District.



WAYZATA PLANNING COMMISSION

June 15, 2015

REPORT AND RECOMMENDATION ON APPLICATION FOR CONCURRENT
PRELIMINARY AND FINAL PLAT SUBDIVISION AND RELATED VARIANCES
AT 250 BUSHAWAY ROAD

SUMMARY OF RECOMMENDATION

1. *Denial of Subdivision request to create 3 lots, and related Concurrent Preliminary and Final Plat*
2. *Denial of Variances from Subdivision Ordinance to allow:*
 - a. *Use of Private Roadways*
 - b. *Lot Frontage on a Public Street*
 - c. *Street Width Less Than 26 feet*
 - d. *Construction of Roadways Without Curbs and Gutters*
3. *Denial of Variance from Subdivision Ordinance to allow for 2 lots smaller than the two acre lot minimum in the Bushaway Conservation District*

REPORT AND RECOMMENDATION

Section 1. BACKGROUND

- 1.1. Project. Zev and Kristi Oman (the "Applicant") have submitted a development application (the "Application") requesting approval of a three (3) lot subdivision (the "Project") and related variances at 250 Bushaway Road (the "Property").
- 1.2. Application Requests. As part of the Application, the Applicant is requesting approval of the following items:
 - A. Subdivision to create three (3) lots and related Concurrent Preliminary and Final Plat (Section 805) (collectively, the "Proposed Subdivision")
 - B. Variances from Subdivision Ordinance to allow use of existing private driveway to serve Lot 3 (collectively, the "Roadway Variances"):
 1. Use of Private Roadways (Section 805.27.K)
 2. Lot Frontage on a Public Street (Section 805.26.E)
 3. Street Width Less Than Twenty-Six (26) feet (Section 805.29.A)

Attachment F

4. Construction of Roadways Without Curbs and Gutters (Section 805.29.L)
- C. Variance from Subdivision Ordinance to allow for two (2) lots that do not conform with Comprehensive Plan guidance of two (2) acre lot minimum in the Bushaway Conservation District (Section 805.14.E.1) (the “Lot Area Variance”)

- 1.3 Property. The street address, property identification number and owner of the Property are:

250 Bushaway Road	05-117-22-34-0018	Zev and Kristi Oman
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- 1.4 Land Use. Land uses along Bushaway Road are single family residential with larger residential estates flanking the east side, and R-2A residential on the west. The Property is zoned R-1, Low Density Single Family District (40,000 SF minimum lot sizes). The Property falls within the Comprehensive Plan’s Bushaway Conservation District, which proscribes a two acre lot minimum unless a variance is granted by the City Council.
- 1.5 Notice and Public Hearing. Notice of the public hearing on the Application was published in the *Lakeshore Weekly* on May 19, 2015. A copy of the notice was mailed to all property owners located with 350 feet of the Property on May 22, 2015. The public hearing was held at the June 1, 2015 Planning Commission meeting.

Section 2. STANDARDS

- 2.1 Subdivision and Plat Approval. Chapter 805 of the Wayzata City Code, (the “Subdivision Ordinance”) sets forth the procedure and substantive review criteria for applications for a subdivision. Before any plat can be recorded or of any validity, it must be referred to the City Planning Commission and approved by the City Council as having fulfilled the requirements of the Subdivision Ordinance. Section 805.15 of the Wayzata Subdivision Ordinance allows the City to review a proposed preliminary and final plat simultaneously.
- A. Goals. Under Section 805.2.b of the Subdivision Ordinance, subdivisions approved under the Subdivision Ordinance must be guided by the following:
1. Preserve and enhance Wayzata’s “small town” character (Comprehensive Plan).
 2. Respect the existing scale, character and pattern of the City, recognizing existing neighborhoods and commercial areas (Wayzata Physical Plan).

Attachment F

3. Provide a balanced housing supply available for all people no matter their income, age, race or ethnicity (Comprehensive Plan).
 4. Support a pedestrian environment at a human, not automotive scale (Wayzata Physical Plan).
 5. Relate development/redevelopment to the natural characteristics of the land to enhance the development through the preservation of attractive natural amenities (i.e., lakes, wetlands, creeks, wooded areas, slopes, etc.) (Comprehensive Plan).
- B. Criteria for Approval. Under Section 805.14.e of the Subdivision Ordinance, the Planning Commission must consider the possible adverse effects of a preliminary plat and report its findings and recommendation to City Council. Its judgment must be based upon, but not limited to, the following factors:
1. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.
 2. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.
 3. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filling or grading.
 4. Existing stands of significant trees shall be retained where possible. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.
 5. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.
 6. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.
 7. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding neighborhood or commercial area.

Attachment F

8. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.
9. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the Downtown Architectural District, Commercial and Institutional Architectural Districts, and Residential Architectural Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.
10. The proposed lot layout and building pads shall conform with all relevant performance standards.
11. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.
12. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

2.2 Roadway Standards. The Subdivision Ordinance contains the following standards with respect to roadways associated with a new subdivision:

- A. Private Streets. Private streets, except in the case of planned unit developments, are prohibited. (Section 805.27.k)
- B. Lot Frontage. Every lot must have the minimum frontage on a City approved Public Street. (Section 805.26.E)
- C. Widths. Minimum right-of-way widths and pavement widths (face to face of curb) for local and marginal access streets or roads are 50 feet and 26 feet respectively. (Section 805.29.A)
- D. Curb and Gutter. Concrete curb and gutter must be included as part of the required street surface improvement and shall be designed for installation along both sides of all roadways. (Section 805.29.L)

2.3 Lot Area Standard. Under the Wayzata Comprehensive Plan, lots within the Bushaway Conservation District are guided for a two acre minimum, unless a variance is granted by the City Council.

2.4 Variances from Subdivision Ordinance. Section 805.60 of the Subdivision Ordinance allows the City Council to approve variances from the minimum

Attachment F

standards of the Subdivision Ordinance, when, in its opinion, undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable for the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity.

A variance shall only be approved when the City Council finds:

1. That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of the Subdivision Ordinance would deprive the applicant of the reasonable use of the applicant's land.
2. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.
3. That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
4. Hardship relating to economic difficulties shall not be considered for the purpose of granting a variance.
5. That the hardship is not a result of an action or actions by the owner, applicant, developer or any agent thereof.

2.5 Premature Subdivision. The Subdivision Ordinance requires the City Council to deny any preliminary plat of a proposed subdivision deemed premature for development. Section 805.16. The burden is on the applicant to show that the proposed subdivision is not premature. Section 805.18. Under Section 805.17 of the Subdivision Ordinance, a subdivision may be deemed premature should any of the following conditions exist:

- a. Lack of Adequate Drainage: A condition of inadequate drainage shall be deemed to exist if:
 1. Surface or subsurface water retention and runoff is such that it constitutes a danger to the structural security of the proposed structures.
 2. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
 3. The proposed site grading and development will cause harmful and irreparable damage from erosion and siltation on downstream land.

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Factors to be considered in making these determinations may include: average rainfall for the area; the relation of the land to flood plains; the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.

- b. **Lack of Adequate Water Supply:** A proposed subdivision shall be deemed to lack an adequate water supply if the proposed subdivision does not have adequate sources of water to serve the proposed subdivision if developed to its maximum permissible density without causing an unreasonable depreciation of existing water supplies for surrounding areas.
- c. **Lack of Adequate Roads or Highways to Serve the Subdivision:** A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
 - 1. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or aggravate an already hazardous condition, and when, with due regard to the advice of Hennepin County and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use, or
 - 2. The traffic volume generated by the proposed subdivision would create unreasonable highway congestion or unsafe conditions on highways existing at the time of the application or proposed for completion within the next two (2) years.
- d. **Lack of Adequate Waste Disposal Systems:** A proposed subdivision shall be deemed to lack adequate waste disposal systems if in subdivisions for which sewer lines are proposed, there is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Wayzata Comprehensive Plan, as may be amended.
- e. **Consistency with Comprehensive Plan:** The proposed subdivision must be consistent with goals, standards and objectives of the City's Comprehensive Plan. Those include, but are not limited to, the limitation of development on slopes that are in excess of 12% to ensure that there is preservation of vegetation and other practices to assure soil stabilization and development that would enhance natural amenities.

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- f. Providing Public Improvements: If public improvements, such as recreational facilities, streets and utilities, reasonably necessitated by the subdivision, which must be provided at public expense, cannot be provided for within the next two (2) fiscal years.
- g. MEQB Policies: The proposed subdivision is inconsistent with the policies the Minnesota Environmental Quality Board (MEQB), as may be amended, and could adversely impact critical environmental areas or potentially disrupt or destroy historic areas which are designated or officially recognized by the City Council in violation of Federal and State historical preservation laws.

Section 3. FINDINGS

Based on the Application materials, staff reports, comments presented at the public hearing, and the standards set forth in Wayzata's Subdivision Ordinance, the Planning Commission of the City of Wayzata makes the following findings of fact with respect to the Proposed Subdivision, the Roadway Variances, and the Lot Area Variance:

3.1 Proposed Subdivision and Plats.

- A. Goals. The Proposed Subdivision is not consistent with all of the goals of the Subdivision Ordinance.
 - 1. The lots and building pads associated with the Proposed Subdivision would not respect the scale, character and pattern of the existing neighborhood. As noted elsewhere in this Report, lots 2 and 3 of the Proposed Subdivision would not conform with the minimum lot size in the Comp Plan's Bushaway Conservation District, and would not be reflective of the size and layout of adjacent properties and the surrounding neighborhood.
 - 2. While the Applicant would be required to make a Parkland dedication pursuant to the Subdivision Ordinance, there would nonetheless be a significant loss of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.
- B. Criteria for Approval.
 - 1. Lots 2 and 3 of the Proposed Subdivision would not meet the two acre minimum for the Bushaway Conservation District, at 0.92 acres and 1.03 acres, respectively.

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2. The building pads associated with the Project would negatively impact sensitive areas of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.
3. Existing stands of significant trees and natural vegetation would be lost. The Application materials show that approximately fifty five (55) trees would need to be removed as a result of the Project.
4. The Proposed Subdivision would adversely impact the scale, pattern or character of the surrounding neighborhood, as it would result in the loss of natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood. It would also not be consistent with the surrounding area in terms of creating 2 new smaller lots which do not fit the scale, pattern and character of the surrounding neighborhood.
5. The design of the lots, the proposed building pads, and the site layout of the Proposed Subdivision is not reflective of the surrounding lots and neighborhood character, as noted elsewhere in this Section.

3.2 Roadway Variances and Lot Area Variance.

- A. With respect to the Roadway Variances and Lot Area Variance requested in the Application:
 1. There are no special circumstances or highly unique conditions affecting the Property such that the strict application of the provisions of the Subdivision Ordinance would deprive the Applicant of the reasonable use of the Applicant's land.
 2. Granting of the Roadway Variances and Lot Area Variance would be detrimental to other property in the territory in which Property is situated, as noted elsewhere in this Report.
 3. That the Roadway Variances and Lot Area Variance are not to correct inequities resulting from an extreme physical hardship such as topography.

3.3 Premature Subdivision. Based on the standards outlined in Section 2 and the findings outlined in this Section 3, the Applicant has failed to meet its burden to show that the Subdivision is not premature, including failing to adequately

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address issues related to drainage/grading/runoff, roadways and Comprehensive Plan consistency.

Section 4. RECOMMENDATION

- 4.1 Planning Commission Recommendation. Based on the findings in section 3 of this Report, the Planning Commission recommends denial of the Proposed Subdivision, the Roadway Variances and the Lot Area Variance requested in the Application.

Adopted by the Wayzata Planning Commission this 15th day of June 2015.

Voting In Favor: Gnos, Gonzalez, Gruber, Iverson, Ramy, Vanderheyden

Voting Against: None

Abstaining: None

Chair, Planning Commission

DRAFT RESOLUTION NO. 27-2015**RESOLUTION DENYING APPLICATION FOR CONCURRENT PRELIMINARY AND
FINAL PLAT SUBDIVISION AND RELATED VARIANCES
AT 250 BUSHAWAY ROAD****BE IT RESOLVED** by the City Council of Wayzata, Minnesota as follows:**Section 1. BACKGROUND**

1.1. Project. Zev and Kristi Oman (the “Applicant”) have submitted a development application (the “Application”) requesting approval of a three (3) lot subdivision (the “Project”) and related variances at 250 Bushaway Road (the “Property”).

1.2. Application Requests. As part of the Application, the Applicant is requesting approval of the following items:

- A. Subdivision to create three (3) lots and related Concurrent Preliminary and Final Plat (Section 805) (collectively, the “Proposed Subdivision”)
- B. Variances from Subdivision Ordinance to allow use of existing private driveway to serve Lot 3 (collectively, the “Roadway Variances”):
 - 1. Use of Private Roadways (Section 805.27.K)
 - 2. Lot Frontage on a Public Street (Section 805.26.E)
 - 3. Street Width Less Than Twenty-Six (26) feet (Section 805.29.A)
 - 4. Construction of Roadways Without Curbs and Gutters (Section 805.29.L)
- C. Variance from Subdivision Ordinance to allow for two (2) lots that do not conform with Comprehensive Plan guidance of two (2) acre lot minimum in the Bushaway Conservation District (Section 805.14.E.1) (the “Lot Area Variance”)

1.3. Property. The street address, property identification number and owner of the Property are:

250 Bushaway Road	05-117-22-34-0018	Zev and Kristi Oman
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1.4. Land Use. Land uses along Bushaway Road are single family residential with larger residential estates flanking the east side, and R-2A residential on the west. The Property is zoned R-1, Low Density Single Family District (40,000 SF minimum lot sizes). The Property falls within the Comprehensive Plan’s Bushaway Conservation District, which proscribes a two acre lot minimum unless a variance is granted by the City Council.

1.5. Notice and Public Hearing. Notice of the public hearing on the Application was published in the *Lakeshore Weekly* on May 19, 2015. A copy of the notice was mailed to all property owners located with 350 feet of the Property on May 22,

2015. The public hearing was held at the June 1, 2015 Planning Commission meeting.

- 1.8 Planning Commission Meeting Summary. The Planning Commission reviewed the Application and held a Public Hearing on June 1, 2015. After conclusion of the Public Hearing, the Planning Commission voted six (6) in favor and zero (0) opposed to direct staff to prepare a draft *Planning Commission Report and Recommendation* for denial of the Application for review at the next meeting. On June 15, 2015, the Planning Commission reviewed the draft *Planning Commission Report and Recommendation* for denial of the Application, and voted six (6) in favor and zero (0) opposed to adopt the *Report*.

Section 2. STANDARDS

- 2.1 Subdivision and Plat Approval. Chapter 805 of the Wayzata City Code, (the "Subdivision Ordinance") sets forth the procedure and substantive review criteria for applications for a subdivision. Before any plat can be recorded or of any validity, it must be referred to the City Planning Commission and approved by the City Council as having fulfilled the requirements of the Subdivision Ordinance. Section 805.15 of the Wayzata Subdivision Ordinance allows the City to review a proposed preliminary and final plat simultaneously.

- A. Goals. Under Section 805.2.b of the Subdivision Ordinance, subdivisions approved under the Subdivision Ordinance must be guided by the following:

1. Preserve and enhance Wayzata's "small town" character (Comprehensive Plan).
2. Respect the existing scale, character and pattern of the City, recognizing existing neighborhoods and commercial areas (Wayzata Physical Plan).
3. Provide a balanced housing supply available for all people no matter their income, age, race or ethnicity (Comprehensive Plan).
4. Support a pedestrian environment at a human, not automotive scale (Wayzata Physical Plan).
5. Relate development/redevelopment to the natural characteristics of the land to enhance the development through the preservation of attractive natural amenities (i.e., lakes, wetlands, creeks, wooded areas, slopes, etc.) (Comprehensive Plan).

- B. Criteria for Approval. Under Section 805.14.e of the Subdivision Ordinance, the Planning Commission must consider the possible adverse

effects of a preliminary plat and report its findings and recommendation to City Council. Its judgment must be based upon, but not limited to, the following factors:

1. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.
2. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.
3. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filling or grading.
4. Existing stands of significant trees shall be retained where possible. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.
5. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.
6. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.
7. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding neighborhood or commercial area.
8. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.
9. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the Downtown Architectural District, Commercial and Institutional Architectural Districts, and Residential Architectural Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.

10. The proposed lot layout and building pads shall conform with all relevant performance standards.
11. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.
12. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

2.2 Roadway Standards. The Subdivision Ordinance contains the following standards with respect to roadways associated with a new subdivision:

- A. Private Streets. Private streets, except in the case of planned unit developments, are prohibited. (Section 805.27.k)
- B. Lot Frontage. Every lot must have the minimum frontage on a City approved Public Street. (Section 805.26.E)
- C. Widths. Minimum right-of-way widths and pavement widths (face to face of curb) for local and marginal access streets or roads are 50 feet and 26 feet respectively. (Section 805.29.A)
- D. Curb and Gutter. Concrete curb and gutter must be included as part of the required street surface improvement and shall be designed for installation along both sides of all roadways. (Section 805.29.L)

2.3 Lot Area Standard. Under the Wayzata Comprehensive Plan, lots within the Bushaway Conservation District are guided for a two acre minimum, unless a variance is granted by the City Council.

2.4 Variances from Subdivision Ordinance. Section 805.60 of the Subdivision Ordinance allows the City Council to approve variances from the minimum standards of the Subdivision Ordinance, when, in its opinion, undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable for the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity.

A variance shall only be approved when the City Council finds:

1. That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of the Subdivision Ordinance would deprive the applicant of the reasonable use of the applicant's land.

2. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.
3. That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
4. Hardship relating to economic difficulties shall not be considered for the purpose of granting a variance.
5. That the hardship is not a result of an action or actions by the owner, applicant, developer or any agent thereof.

2.5 Premature Subdivision. The Subdivision Ordinance requires the City Council to deny any preliminary plat of a proposed subdivision deemed premature for development. Section 805.16. The burden is on the applicant to show that the proposed subdivision is not premature. Section 805.18. Under Section 805.17 of the Subdivision Ordinance, a subdivision may be deemed premature should any of the following conditions exist:

- a. Lack of Adequate Drainage: A condition of inadequate drainage shall be deemed to exist if:
 1. Surface or subsurface water retention and runoff is such that it constitutes a danger to the structural security of the proposed structures.
 2. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
 3. The proposed site grading and development will cause harmful and irreparable damage from erosion and siltation on downstream land.

Factors to be considered in making these determinations may include: average rainfall for the area; the relation of the land to flood plains; the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.

- b. Lack of Adequate Water Supply: A proposed subdivision shall be deemed to lack an adequate water supply if the proposed subdivision does not have adequate sources of water to serve the proposed subdivision if developed to its maximum permissible density without causing an unreasonable depreciation of existing water supplies for surrounding areas.

- c. Lack of Adequate Roads or Highways to Serve the Subdivision: A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
 - 1. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or aggravate an already hazardous condition, and when, with due regard to the advice of Hennepin County and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use, or
 - 2. The traffic volume generated by the proposed subdivision would create unreasonable highway congestion or unsafe conditions on highways existing at the time of the application or proposed for completion within the next two (2) years.
- d. Lack of Adequate Waste Disposal Systems: A proposed subdivision shall be deemed to lack adequate waste disposal systems if in subdivisions for which sewer lines are proposed, there is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Wayzata Comprehensive Plan, as may be amended.
- e. Consistency with Comprehensive Plan: The proposed subdivision must be consistent with goals, standards and objectives of the City's Comprehensive Plan. Those include, but are not limited to, the limitation of development on slopes that are in excess of 12% to ensure that there is preservation of vegetation and other practices to assure soil stabilization and development that would enhance natural amenities.
- f. Providing Public Improvements: If public improvements, such as recreational facilities, streets and utilities, reasonably necessitated by the subdivision, which must be provided at public expense, cannot be provided for within the next two (2) fiscal years.
- g. MEQB Policies: The proposed subdivision is inconsistent with the policies the Minnesota Environmental Quality Board (MEQB), as may be amended, and could adversely impact critical environmental areas or potentially disrupt or destroy historic areas which are designated or officially recognized by the City Council in violation of Federal and State historical preservation laws.

Section 3. FINDINGS

The City Council of the City of Wayzata hereby confirms and memorializes that the Proposed Subdivision, Roadway Variances, and Lot Area Variance depicted in the Application do not meet the applicable requirements of Wayzata's Subdivision Ordinance, based upon the following findings of fact made on the record (as well as all Application materials, staff reports, public comment presented at the hearing, and the Recommendation of the Planning Commission):

3.1 Proposed Subdivision and Plats.

A. Goals. The Proposed Subdivision is not consistent with all of the goals of the Subdivision Ordinance.

1. The lots and building pads associated with the Proposed Subdivision would not respect the scale, character and pattern of the existing neighborhood. As noted in the Planning Commission Report, lots 2 and 3 of the Proposed Subdivision would not conform with the minimum lot size in the Comprehensive Plan's Bushaway Conservation District, and would not be reflective of the size and layout of adjacent properties and the surrounding neighborhood.
2. While the Applicant would be required to make a Parkland dedication pursuant to the Subdivision Ordinance, there would nonetheless be a significant loss of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.

B. Criteria for Approval.

1. Lots 2 and 3 of the Proposed Subdivision would not meet the two acre minimum for the Bushaway Conservation District, at 0.92 acres and 1.03 acres, respectively.
2. The building pads associated with the Project would negatively impact sensitive areas of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.
3. Existing stands of significant trees and natural vegetation would be lost. The Application materials show that approximately fifty five (55) trees would need to be removed as a result of the Project.

4. The Proposed Subdivision would adversely impact the scale, pattern or character of the surrounding neighborhood, as it would result in the loss of natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood. It would also not be consistent with the surrounding area in terms of creating 2 new smaller lots which do not fit the scale, pattern and character of the surrounding neighborhood.
5. The design of the lots, the proposed building pads, and the site layout of the Proposed Subdivision is not reflective of the surrounding lots and neighborhood character, as noted elsewhere in this Section.

3.2 Roadway Variances and Lot Area Variance.

- A. With respect to the Roadway Variances and Lot Area Variance requested in the Application:
 1. There are no special circumstances or highly unique conditions affecting the Property such that the strict application of the provisions of the Subdivision Ordinance would deprive the Applicant of the reasonable use of the Applicant's land.
 2. Granting of the Roadway Variances and Lot Area Variance would be detrimental to other property in the territory in which Property is situated, as noted elsewhere in this Resolution.
 3. The Roadway Variances and Lot Area Variance are not to correct inequities resulting from an extreme physical hardship such as topography.
 4. Economic considerations appear to be the basis for the Roadway Variances and Lot Area Variance needed to create the Proposed Subdivision of three lots.

3.3 Premature Subdivision. Based on the standards outlined in Section 2 and the findings outlined in this Section 3, the Applicant has failed to meet its burden to show that the Subdivision is not premature, including failing to adequately address issues related to drainage/grading/runoff, roadways and Comprehensive Plan consistency.

Section 4. CITY COUNCIL ACTION

- 4.1 Based on the Findings of this Resolution, the request for approval of the Proposed Subdivision, Roadway Variances, and Lot Area Variance as set forth in the Application (Attachment A), is hereby **DENIED**.

Adopted by the Wayzata City Council this ____ day of July, 2015.

Mayor Ken Willcox

ATTEST:

City Manager Heidi Nelson

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 Wayzata, Minnesota, at a duly authorized meeting held on _____, 2015.

Becky Malone, Deputy City Clerk
SEAL

Attachment A

Applicant Submittals

5/8/2015

To: Wayzata City Council

From: Zev and Kristi Oman
250 Bushaway Road
Wayzata, MN 55391

Re: Proposed Subdivision- VARIANCE REQUEST

We purchased our home at 250 Bushaway Road, Wayzata in April 2003. At that time the surrounding properties all contained large acreage and our property, which has 4.75 acres was one of the smaller parcels. Now, 12 years later all of our surrounding properties have been subdivided and we now feel like we live in a urban development. Our property used to have a private estate like feel to it, now it does not fit in with the neighboring homes.

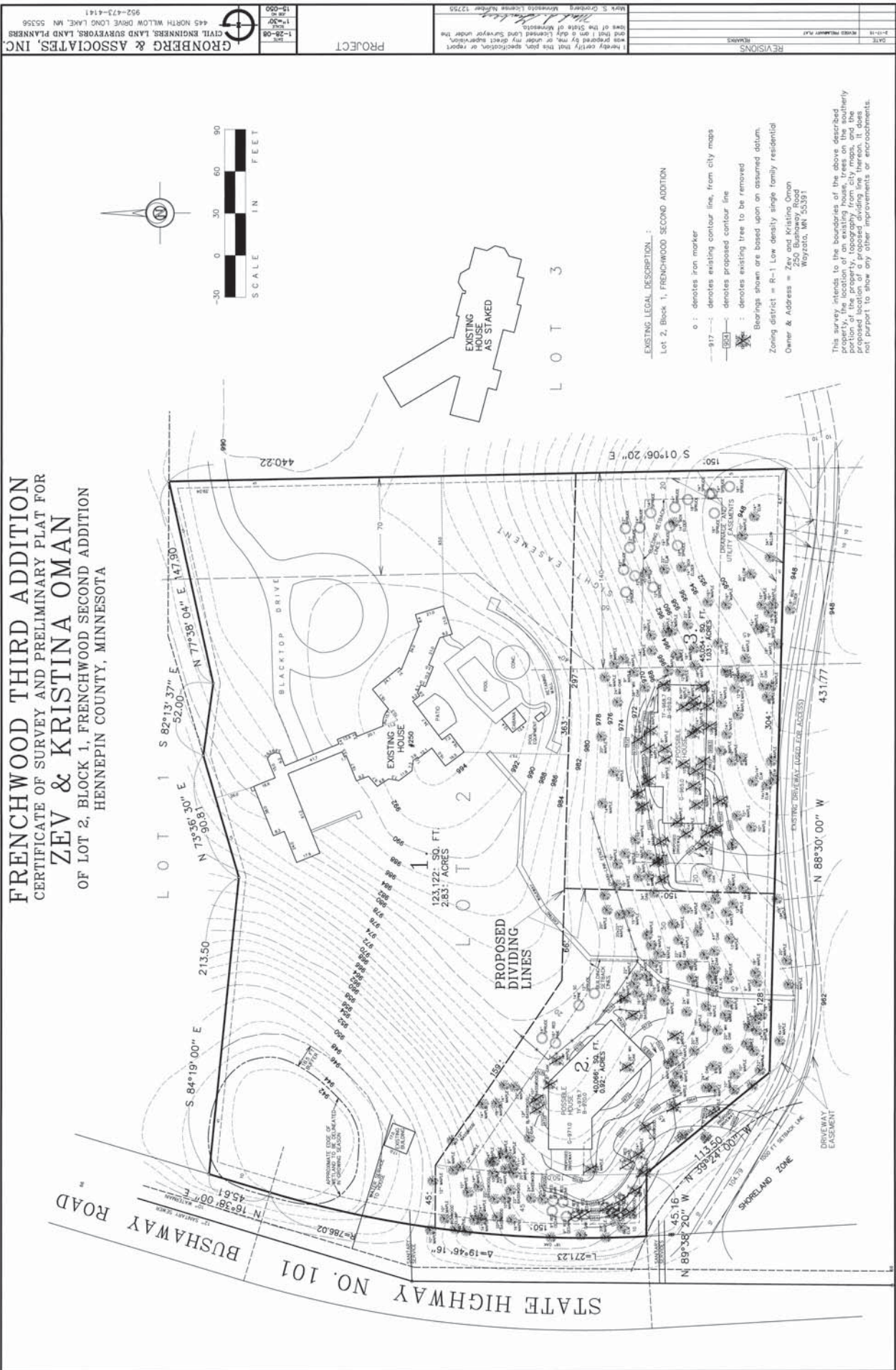
To be consistent with the neighboring properties we are looking to subdivide into 3 lots. Because of the topography and access, our home would remain as the largest parcel and the two other lots are just shy of the 80,000sf minimum. It doesn't make sense to do a single lot split because the new lot/house would look out of place standing alone, and would not esthetically conform with the surrounding homes.

Also I would like point out some issues/mistakes made with neighboring properties which have negatively effected our property. In 1999 when 240 Bushaway Road was subdivided the city eliminated access to our lower level garages making it impossible to access them. Two years ago city allowed our neighbor at 270 Bushaway Road to install a pool at his property, even though the subdivision bilaws do not allow it, the pool was installed on the side of this home, not the back yard, so now every time I walk out my front door I see a swimming pool and the serene, quiet atmosphere is gone.

The Lecy Bros. development at 262 Bushaway Road contains two lots that do not conform with the 80,000sf lot minimum, our proposed two lots are similar in size with these lot sizes.

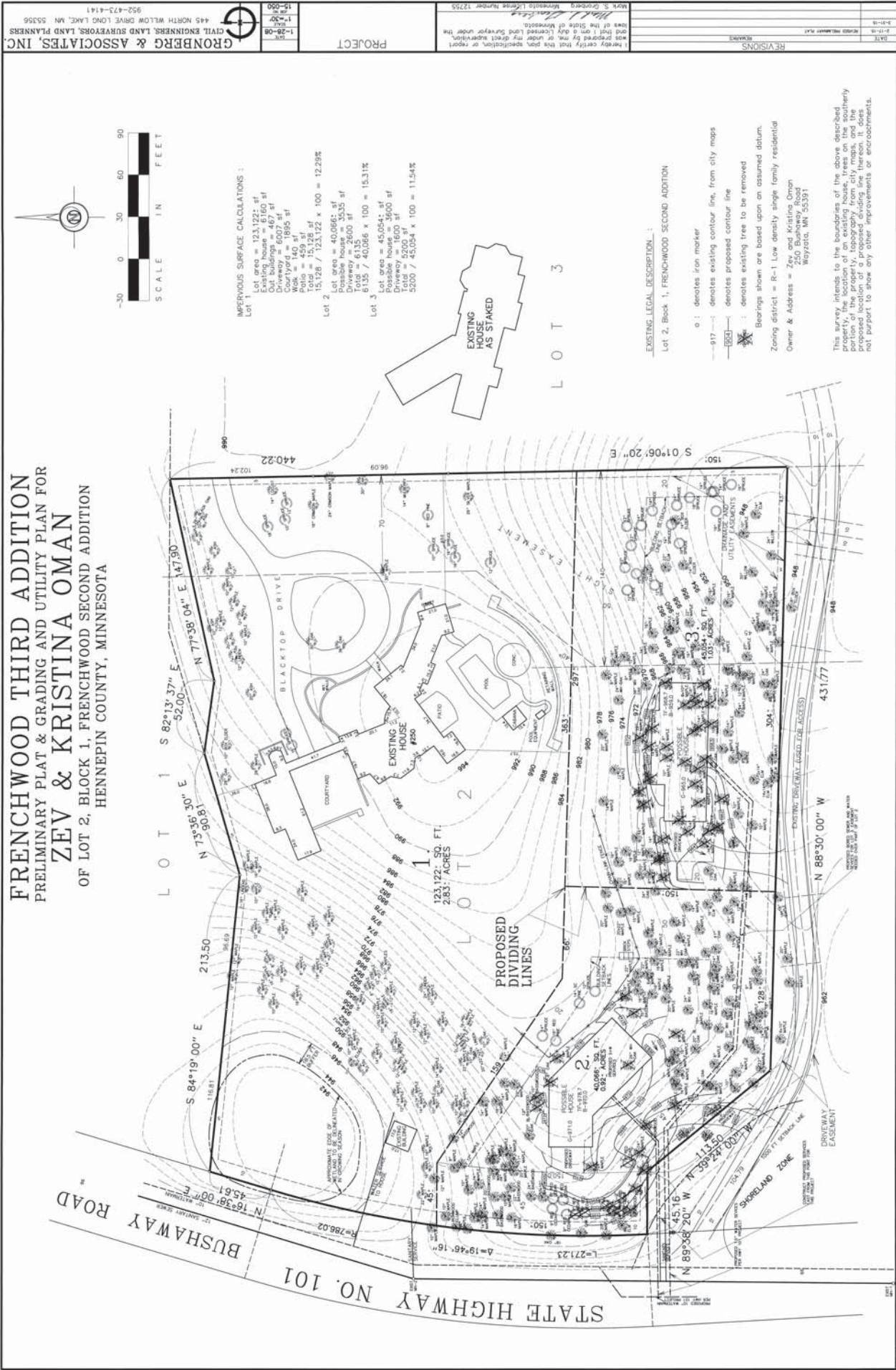
Lastly, I would like to point out that selling these proposed two additional lots would help me recoup some of the economic loss I have sustained; which was due to no fault of ours.

A handwritten signature in black ink, appearing to read 'K Oman', with a long horizontal flourish extending to the right.



Attachment A

FRENCHWOOD THIRD ADDITION PRELIMINARY PLAT & GRADING AND UTILITY PLAN FOR ZEV & KRISTINA OMAN OF LOT 2, BLOCK 1, FRENCHWOOD SECOND ADDITION HENNEPIN COUNTY, MINNESOTA



IMPERVIOUS SURFACE CALCULATIONS:

Lot 1
 Lot area = 123,122 sq. ft.
 Existing house = 6,160 sq. ft.
 Out buildings = 467 sq. ft.
 Driveway = 1,500 sq. ft.
 Court yard = 1,895 sq. ft.
 Walk = 140 sq. ft.
 Total = 15,128 sq. ft.
 15,128 / 123,122 x 100 = 12.29%

Lot 2
 Lot area = 40,066 sq. ft.
 Possible house = 3,535 sq. ft.
 Driveway = 1,500 sq. ft.
 Total = 5,035 sq. ft.
 5,035 / 40,066 x 100 = 12.57%

Lot 3
 Lot area = 45,004 sq. ft.
 Possible house = 3,600 sq. ft.
 Driveway = 1,600 sq. ft.
 Total = 5,200 sq. ft.
 5,200 / 45,004 x 100 = 11.54%

EXISTING LEGAL DESCRIPTION:

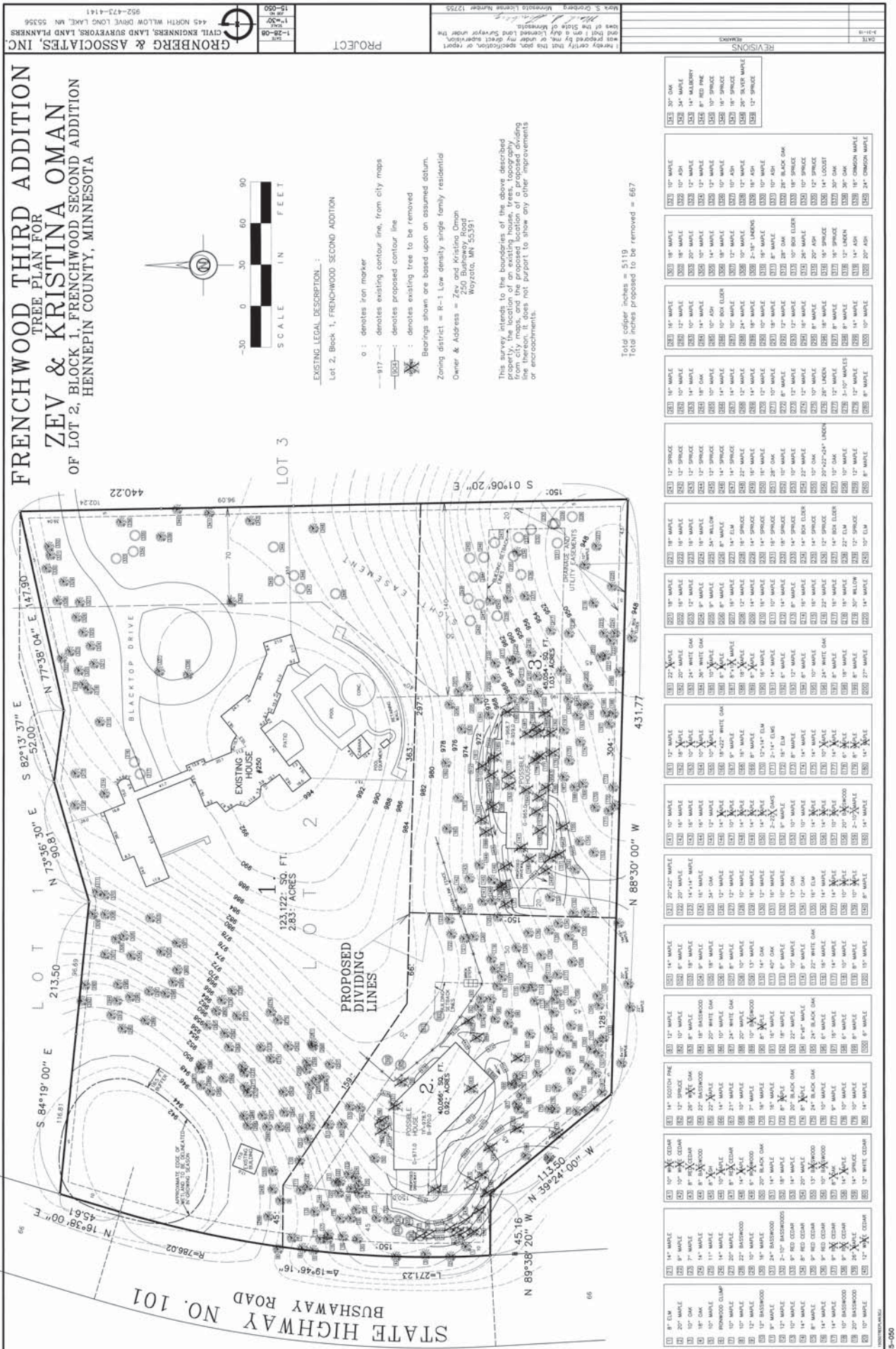
Lot 2, Block 1, FRENCHWOOD SECOND ADDITION

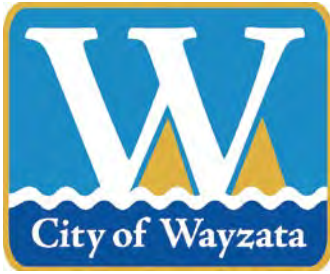
o : denotes iron marker
 -917- denotes existing contour line, from city maps
 -917- denotes proposed contour line
 X denotes existing tree to be removed
 Bearings shown are based upon an assumed datum.
 Zoning district = R-1 Low density single family residential
 Owner & Address = Zev and Kristina Oman
 250 Bushaway Road
 Wayzata, MN 55391

This survey intends to show the boundaries of the above described property, the location of an existing house, trees on the property, and the location of proposed dividing lines. It does not purport to show any other improvements or encroachments.

REVISIONS	DATE	BY	DESCRIPTION
1	1-28-08	15-050	15-050
2	1-28-08	15-050	15-050
3	1-28-08	15-050	15-050
4	1-28-08	15-050	15-050
5	1-28-08	15-050	15-050
6	1-28-08	15-050	15-050
7	1-28-08	15-050	15-050
8	1-28-08	15-050	15-050
9	1-28-08	15-050	15-050
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49	1-28-08	15-050	15-050
50	1-28-08	15-050	15-050
51	1-28-08	15-050	15-050
52	1-28-08	15-050	15-050
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98	1-28-08	15-050	15-050
99	1-28-08	15-050	15-050
100	1-28-08	15-050	15-050

Attachment A





City of Wayzata Public Works
299 Wayzata Blvd. W
Wayzata, MN 55391

Director Of Public Service
David Dudinsky

City Engineer/Assist. Public Works Director
Mike Kelly

Public Works Superintendent
Jim Eibensteiner

Public Works Secretary/Utility Billing Clerk
Rebecca Jones

Memorandum

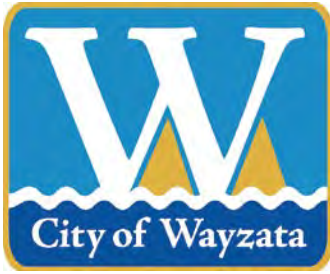
To: City Council and City Manager
From: Dave Dudinsky, Director of Public Service
Date: July 15, 2015
Re: Telecommunications Study Update

Following the February 17th, 2015 Telecommunications Study Update presentation, staff was directed to work on completing the following tasks:

1. Investigate the viability to relocate the current four telecommunication carriers at the existing water tower site to one or more of the alternative sites listed below:
 - o Public Works Facility (299 Wayzata Blvd W)
 - o Wayzata West Middle School (149 Barry Ave N)
 - o South Frontage Road (by Lift Station #21 east of Crosby Rd)
2. Perform an Aerial Fly-Over to obtain Video of the potential alternative sites listed above.
3. Investigate the possibility of constructing new telecom tower(s) as early as possible.
4. Draft letter to existing telecommunication carriers informing them that the existing water tower and ground site will no longer be available to them after their leases expire:
 - o AT&T lease expires: 04/01/2021
 - o Sprint lease expires: 01/01/2018
 - o T-Mobile lease expires: 01/01/2018
 - o Verizon Wireless lease expires: 01/01/2022
5. Have further discussions with Wayzata School District officials regarding the possible agreement on use of its property for telecommunications purposes including the construction of a telecommunications tower.
6. Draft a Telecommunications Policy
7. Finish drafting and adopting a Telecommunications Ordinance before telecommunications moratorium expires.

At the March 3rd, 2015 council meeting, the City Council adopted a six month moratorium on new wireless communications facilities and towers pending study and consideration of changes to the city's regulations and official controls.

SEH performed the Aerial Video Fly-Over on March 31st, 2015. Copies were made available to the telecommunication tenants.



City of Wayzata Public Works

299 Wayzata Blvd. W
Wayzata, MN 55391

Director Of Public Service

David Dudinsky

City Engineer/Assist. Public Works Director

Mike Kelly

Public Works Superintendent

Jim Eibensteiner

Public Works Secretary/Utility Billing Clerk

Rebecca Jones

The City gave notice by letter dated April 13, 2015 to all four current telecommunication carrier tenants at the water tower site that the City Council made the decision to move forward with the decommissioning of the Gardner Street water tower for use as a platform for telecommunications equipment, and relocating such equipment to an alternative site or sites

The City invited all four telecommunication carriers to a meeting on April 24th, 2015 to address questions and concerns regarding the April 13th decommission notice letter and six month moratorium passed by the City Council. Staff also requested at that meeting that the carrier's radio frequency engineers prioritize each of the potential relocation sites under consideration by the City

All of the telecommunication carriers did respond to the city's request to prioritize each of the potential relocation sites to the city's telecommunication consultants, SEH.

On June 2, 2015, staff met with Wayzata School District administrative representatives to present the results of the SEH draft report. The report concluded that all of the city's telecommunication carriers ranked the Wayzata West Middle School as the preferred relocation site. The district asked what the next step in the relocation process would be. We responded that if the City Council is interested in pursuing the school site to relocate the telecommunication carriers, staff will recommend a feasibility study be ordered. The district did not express any specific concerns with moving forward with a feasibility study of the school site. The meeting ended after a brief discussion regarding what yearly rent may be acceptable to both parties if the relocation to school site is ultimately approved by both parties.

SEH summarized the responses from the city's current four telecommunication carriers in a report dated July 9, 2015 which is attached.

The Planning Commission, City Staff, and the City Attorney are working a draft telecommunications ordinance that may be ready for a public hearing in mid-August of this year. After the Planning Commission adopts the telecommunication ordinance, it still takes two readings at the council level before the ordinance can be officially adopted.

SUMMARY AND RECOMMENDATIONS

Based on our review of the information provided inclusive of the City of Wayzata, the Tenant meeting and follow up response, and videos of all the sites under consideration, it is the opinion of SEH that the Middle School telecommunication site be considered as the primary location for a future Macro site. All present Tenants have identified this site as their first choice of all proposed locations due in large part to its ability to meet their necessary criteria for coverage, constructability and access.

If the City Council is interested in pursuing the Wayzata West Middle School Property to relocate the telecommunication carriers, staff recommends a feasibility study be ordered. Attached is a draft feasibility study list of tasks for consideration.

MEMORANDUM

TO: Dave Dudinsky
FROM: Dale Romsos
DATE: July 9, 2015
RE: Telecommunications Update Report Following Aerial Video Fly-Over

INTRODUCTION

This memorandum represents the findings of Short Elliott Hendrickson Inc. (SEH) following its aerial assessment of multiple sites for consideration of future telecommunication, as directed by the City of Wayzata.

Coverage in the downtown area of Wayzata by telecommunications carriers AT&T, Sprint, T-Mobile and Verizon Wireless has been from the City's single above ground water storage facility located off Gardner Street. In recent years this site has been at issue with residents concerned with its location in a general use park, continuous access by the carriers for equipment upgrades and aesthetics. These concerns have led to previous studies by SEH, centering on both equipment site upgrades and complete facility relocation. As a number of the current leases are reaching expiration, the City has elected to take a proactive approach regarding site relocation and carrier or Tenant input.

City investigation, along with input from SEH, identified three (3) locations for consideration as proposed sites. They included the following:

- i. **Public Works Facility (299 Wayzata Blvd West)**
- ii. **Wayzata Middle School (149 Barry Street)**
- iii. **South Frontage Road (Lift Station #21)**

SITE INVESTIGATION

On March 31 SEH performed video fly-overs, capturing information using current drone technology. Field operations were supervised by Richard Photographics and performed by Maverick Drone Systems of Savage, Minnesota, under the direction of SEH: Per the request of the City of Wayzata, SEH provided the services identified below.

1. Video of three (3) proposed tower locations in Wayzata (per City site selection) and video of the current site located at 408 Gardner Street East
2. Video was completed in a 360 arc starting at 0 degrees and at 10 ft. intervals from 150 ft. – 200 ft.
3. Verification was made of GPS coordinates, including heading and altitude at each interval by Richard Photographics.

The purpose of the fly over videos was to identify actual conditions at each site (real time) of vertical elevations at 10 ft. intervals to identify line-of-site issues for radio frequency (RF) propagation studies. The RF propagation studies are used by the wireless telecommunication tenants to determine cellular signal coverage strengths for site building and upgrades. Simulation was set beginning at an elevation of 150 ft. and proceeded to 200 ft. and included standard Tenant azimuth orientations. 10 ft. vertical elevation intervals were used, as that is representative of the standard separation for carriers to lease on cellular towers. (Reference video attached)

TENANT MEETING

Following review by the City of fly-over information, SEH assisted the City with scheduling and facilitation of a Tenant meeting. The purpose of the meeting (open forum) was to discuss the City's stance on Tenant re-location sites under consideration along with their feasibility and to seek Tenant information regarding alternative solutions for general City coverage -- the downtown area specifically. The meeting was held April 24, 2015, and attended by the City, SEH representatives, and representatives of the Tenants. (Reference attached meeting roster). Items discussed included:

- Introduction of the New Tower Concept, including Tenant phase in as current leases expire.
- Alternative Sites (as identified above), viability of the Wayzata Middle School (149 Barry Street), study pending.
- Emergency moratorium as the City considers ordinance development or amending (including ordinance process).
- Extension of co-locations at present sites other than the water tower.
- Alternative private sites within the City (City intent to retain current revenues).
- Creation/construction/acceptability of small or micro sites, use or incorporation of light structures.

The meeting concluded with a request by the City for feedback, which included the requirement to provide SEH with radio frequency information (RF) and individual Tenant RAD centers for each of the three (3) alternative sites under consideration. Additionally, the Tenants were asked to address the bullet points discussed at the meeting. Each was requested to provide a statement qualifier respective of its participation in working with the City on its overall initiative. Finally, Tenants were to prioritize each of the sites under consideration by the City. This information was to be received by (minimum) email within 30 days from the date of the meeting.

RESPONSES

The following represents the (direct) information gathered from the fly-over and tenant response as requested (excerpts from tenant responses):

i. Public Works Site

ATT-

The site is west of the City, and building this site will not help us cover the east of the City, which will introduce some coverage holes in the City. We will need both these sites with a very higher RAD 230 ft.; and I fear even with that, we will see some in-building coverage issues in the City

T-Mobile

This location is too far west of our target coverage area and 1.2 miles from our current location. Even with additional height, additional sites would be required. This location does not provide coverage to the primary residential and commercial areas in central and downtown Wayzata.

July 21th, 2015

AT&T Response



There are 3 crucial aspects in selecting the school area,

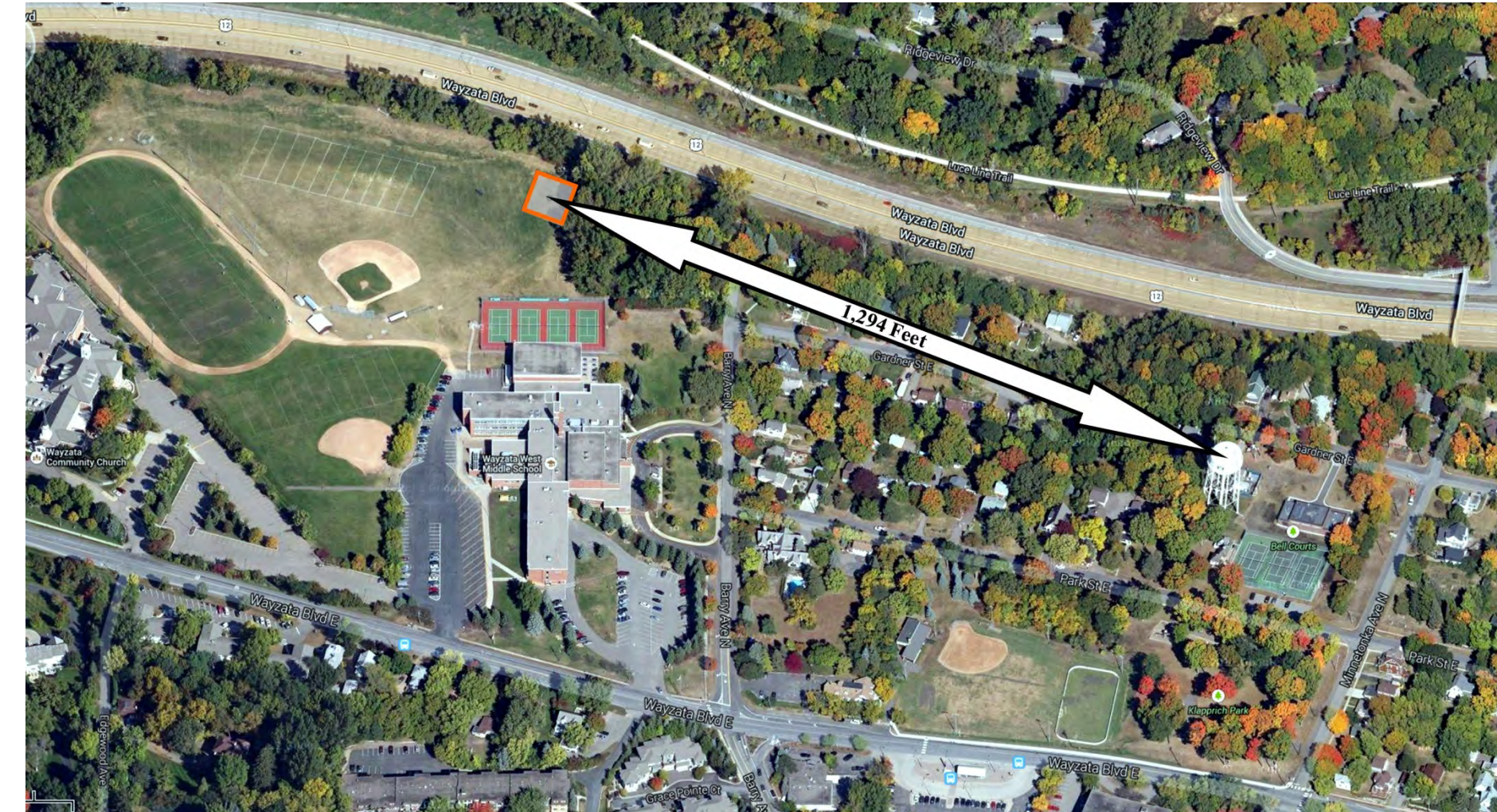
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TELECOMMUNICATIONS STUDY UPDATE

July 21th, 2015

Wayzata West Middle School Property (149 Barry Ave N)

T-Mobile Response



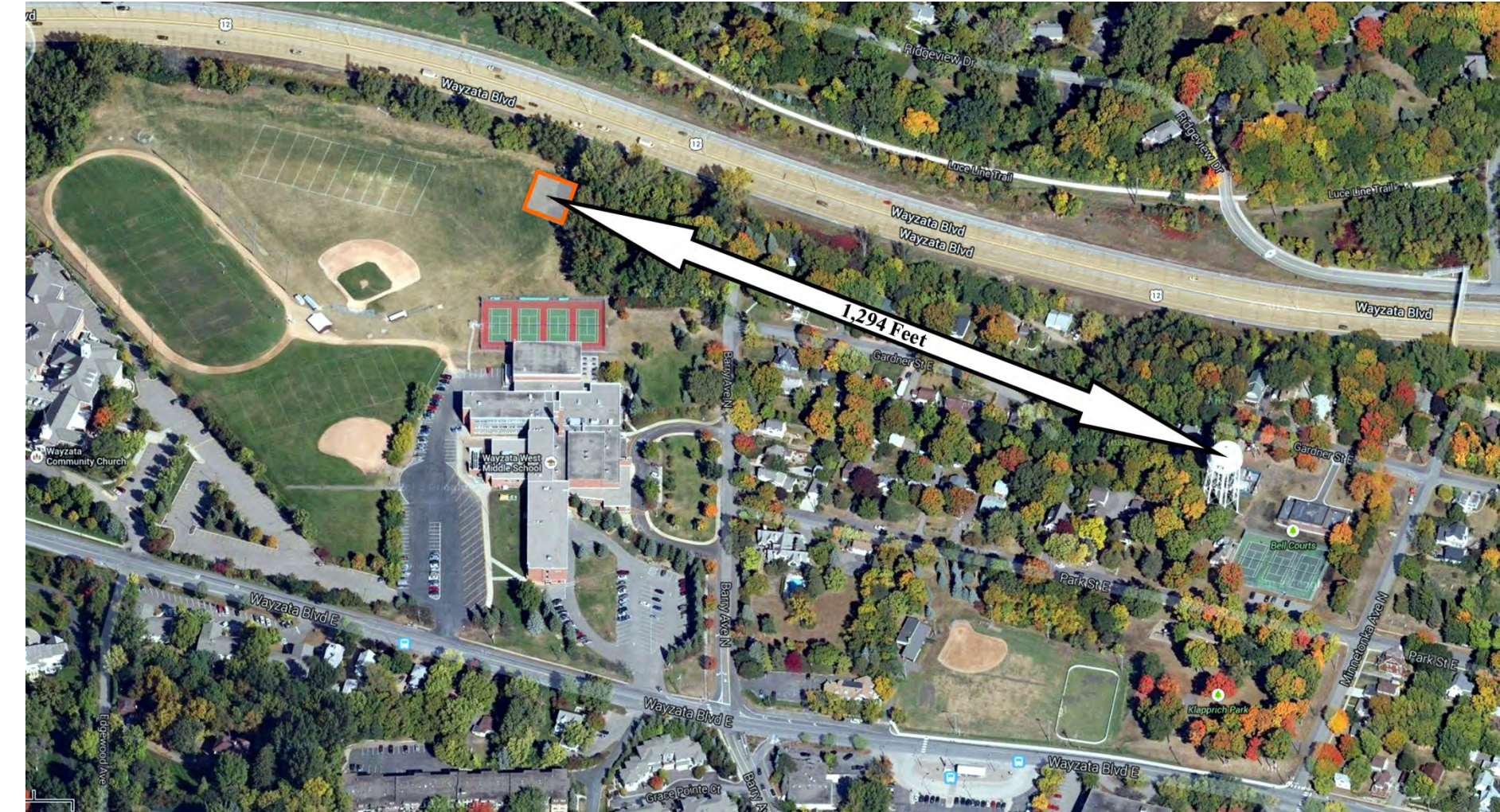
T-Mobile

This location is 0.24 miles west of the original location, and 28 ft. lower in elevation. Assuming we were to locate at approximately 160 ft., the coverage of the new site would be similar to the coverage of the existing site. This assumes a traditional antenna facility with tower-top radio design to maximize our coverage and capacity from this location. I have two concerns about using the Middle School as a relocation site. The first is the possibility of losing in-building coverage on the southeastern edge of downtown. I know there is new development in the area, and this new site may be shadowed by terrain and other buildings.

July 21th, 2015

Wayzata West Middle School Property (149 Barry Ave N)

Sprint Response



Sprint-

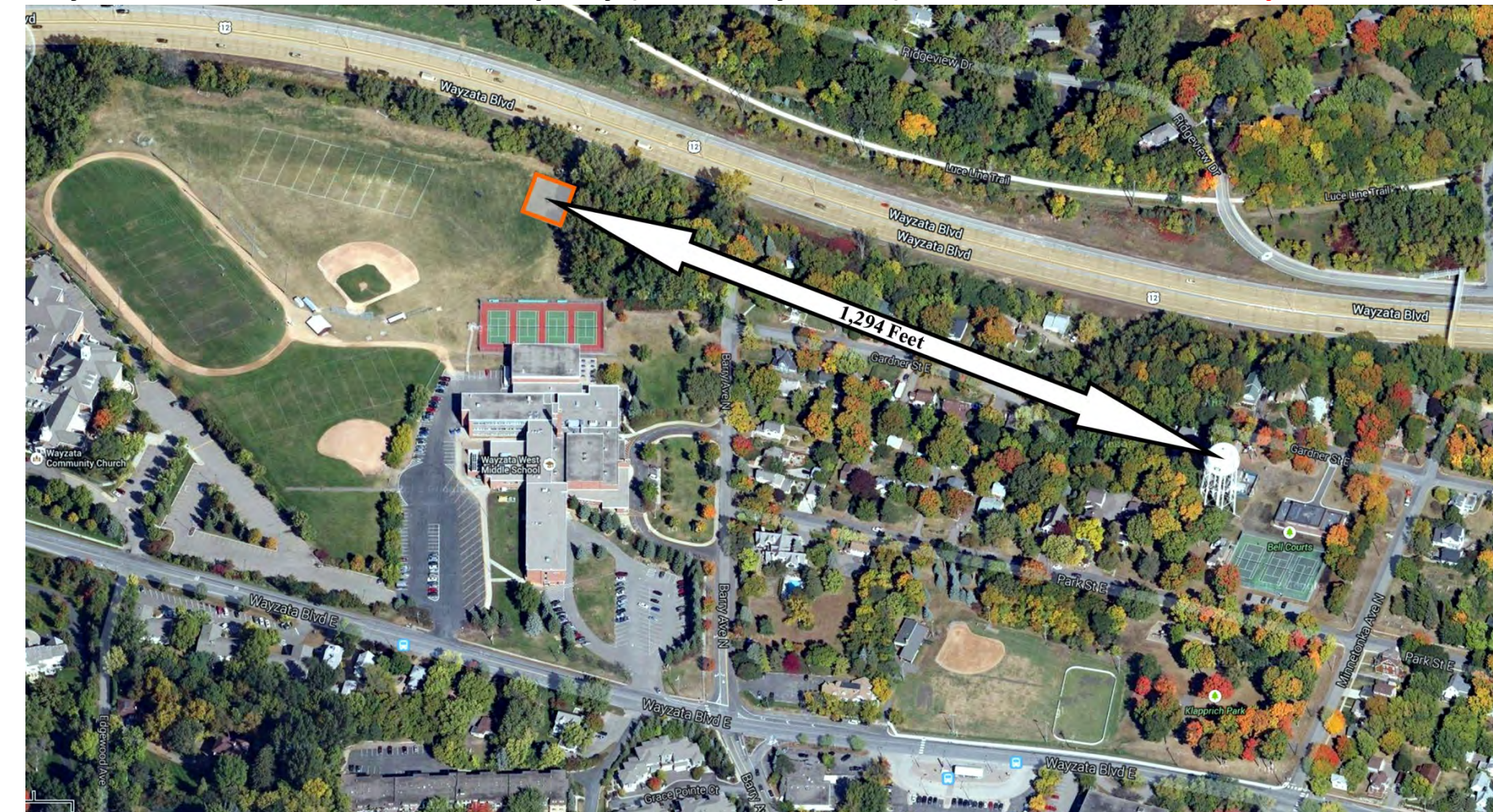
This replacement location would be our first choice, with a desired RAD center of 140 ft.-155 ft. Predictions show that we would be able to provide approximately the same level of service in downtown/lakefront Wayzata and surrounding residential areas, as well as improving service to the north of the site.

TELECOMMUNICATIONS STUDY UPDATE

July 21th, 2015

Wayzata West Middle School Property (149 Barry Ave N)

Verizon Response



Verizon-

Reluctantly Ranked #1 of the four choices, as it is the nearest location to the existing water tank and has the least negative impact on coverage. However, ground elevation is 30 ft. lower than the Gardner water tank location. There will be significant negative impacts upon 3G voice & 4G LTE services in the SE part of the City. VZW will need to have at the very least an Antenna Centerline height of 120 ft.

If this site is chosen, VZW will still require, as mentioned previously, a new site within the vicinity of the intersection of Superior Blvd & Wayzata Blvd, as well as small cells that provide capacity/coverage fixes to the Lake Street area of the City.

TELECOMMUNICATIONS STUDY UPDATE

July 21st, 2015

Wayzata Public Works Property (299 Wayzata Blvd W)

AT&T Response



ATT-

The site is west of the City and building this site will not help us cover the east of the City, which will introduce some coverage holes in the City. We will need both these sites with a very higher RAD 230 ft., and I fear even with that we will see some in-building coverage issues in the City

TELECOMMUNICATIONS STUDY UPDATE

July 21st, 2015

Wayzata Public Works Property (299 Wayzata Blvd W)

T-Mobile Response



T-Mobile

This location is too far west of our target coverage area and 1.2 miles from our current location. Even with additional height, additional sites would be required. This location does not provide coverage to the primary residential and commercial areas in central and downtown Wayzata.

July 21st, 2015

Wayzata Public Works Property (299 Wayzata Blvd W)

Sprint Response



Sprint-

This replacement location is not desirable. It would not allow us to meet our coverage objectives in the area, namely downtown/lakefront Wayzata and surrounding residential/commercial areas. This location is also approaching the coverage area of our adjacent site at 1345 West Wayzata Blvd, Long Lake and would cause considerable service degradation due to overlapping coverage

TELECOMMUNICATIONS STUDY UPDATE

July 21st, 2015

Wayzata Public Works Property (299 Wayzata Blvd W)

Verizon Response



Verizon-

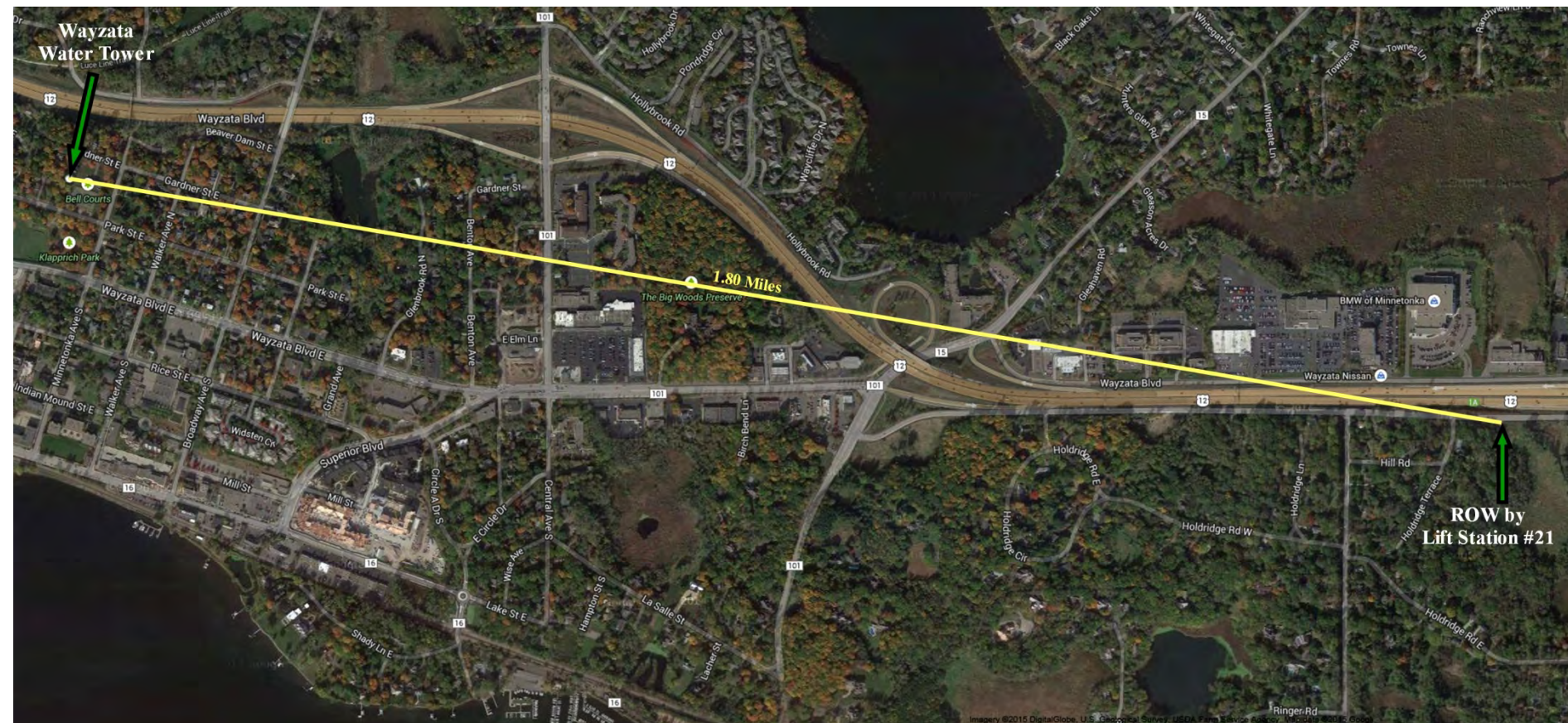
Location at the western edge of town does not serve the heart of Wayzata. If this site is used, a total of 3 macro sites will be required to replace the existing macro site (this site, plus a rooftop within the city and a monopole tower on the Wayzata West Middle School Property), as well as small cells along Lake Street. Without the 2 additional macro sites, moving to this location will completely remove in-building and in-car 3G voice service, make 3G voice signal unreliable and weaken the RF signal strength for our 4G LTE service to the southeast.

TELECOMMUNICATIONS STUDY UPDATE

July 21st, 2015

South Frontage Road Right-of-Way Property (by Lift Station #21)

AT&T Response



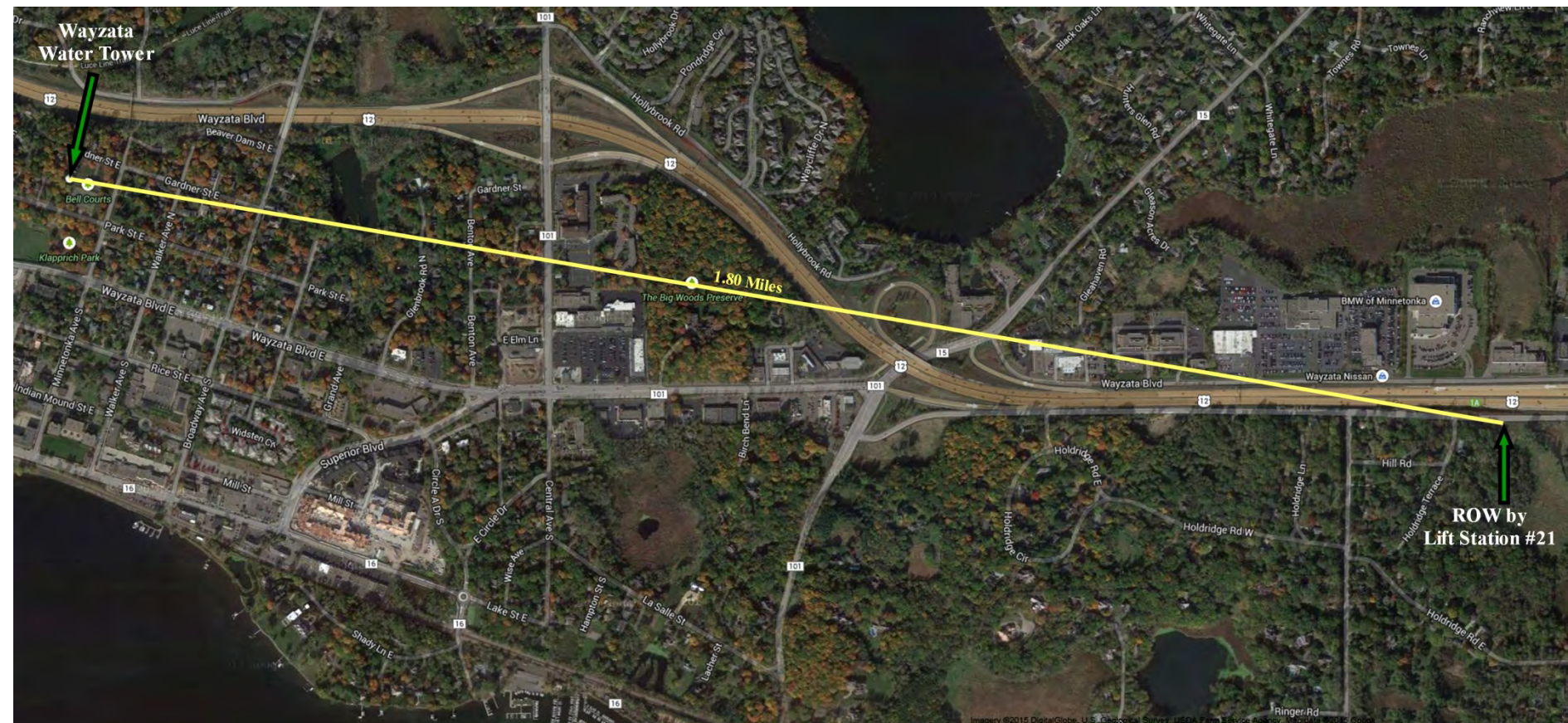
ATT-

The site will fall way east of the city, and we will see performance issues to the west and also in the City. We will need both these sites with a very higher RAD 230 ft.; and I fear even with that, we will see some in-building coverage issues in the City

July 21st, 2015

South Frontage Road Right-of-Way Property (by Lift Station #21)

T-Mobile Response



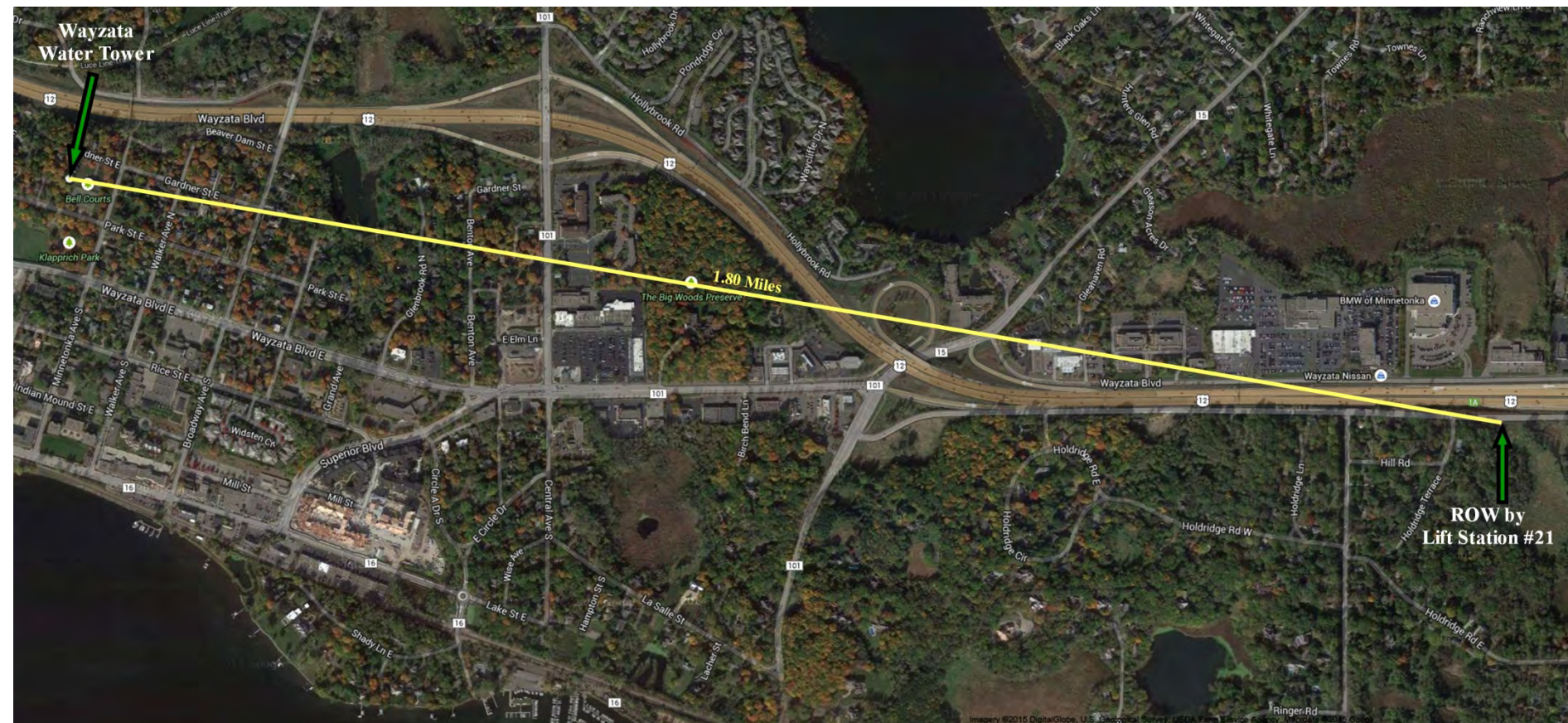
T-Mobile

This location is too far east of our target coverage area and 1.5 miles from our current location. Even with additional height, additional sites would be required. It is also too close to our existing site A100767A (0.6 miles). This location does not provide coverage to the primary residential and commercial areas in central and downtown Wayzata.

July 21st, 2015

South Frontage Road Right-of-Way Property (by Lift Station #21)

Sprint Response



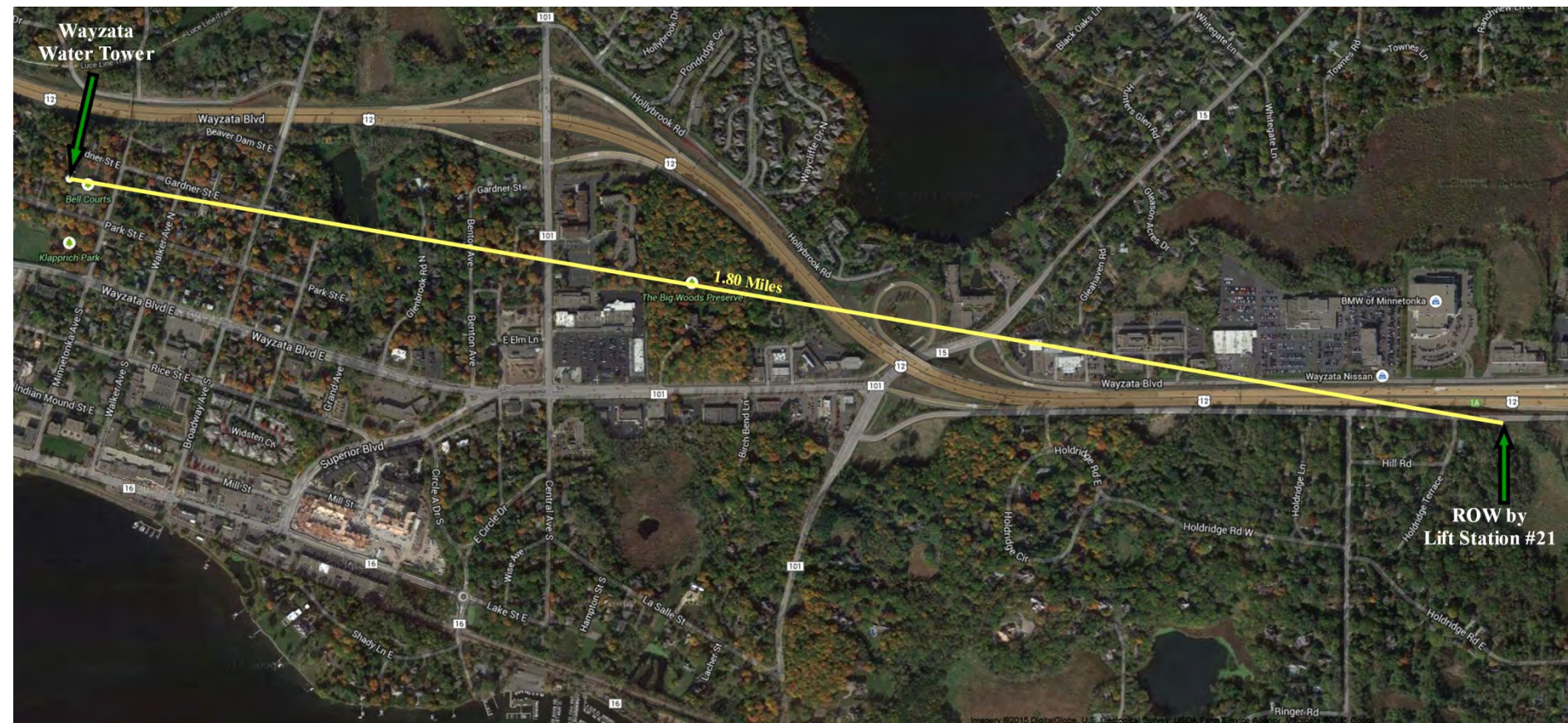
Sprint-

South frontage road (ROW by lift station #21) - this replacement location will not work for Sprint. It is too far removed from the downtown/lakefront area of Wayzata. We would not be able to provide quality service there or to a considerable area north of Highway 12.

July 21st, 2015

South Frontage Road Right-of-Way Property (by Lift Station #21)

Verizon Response



Verizon-

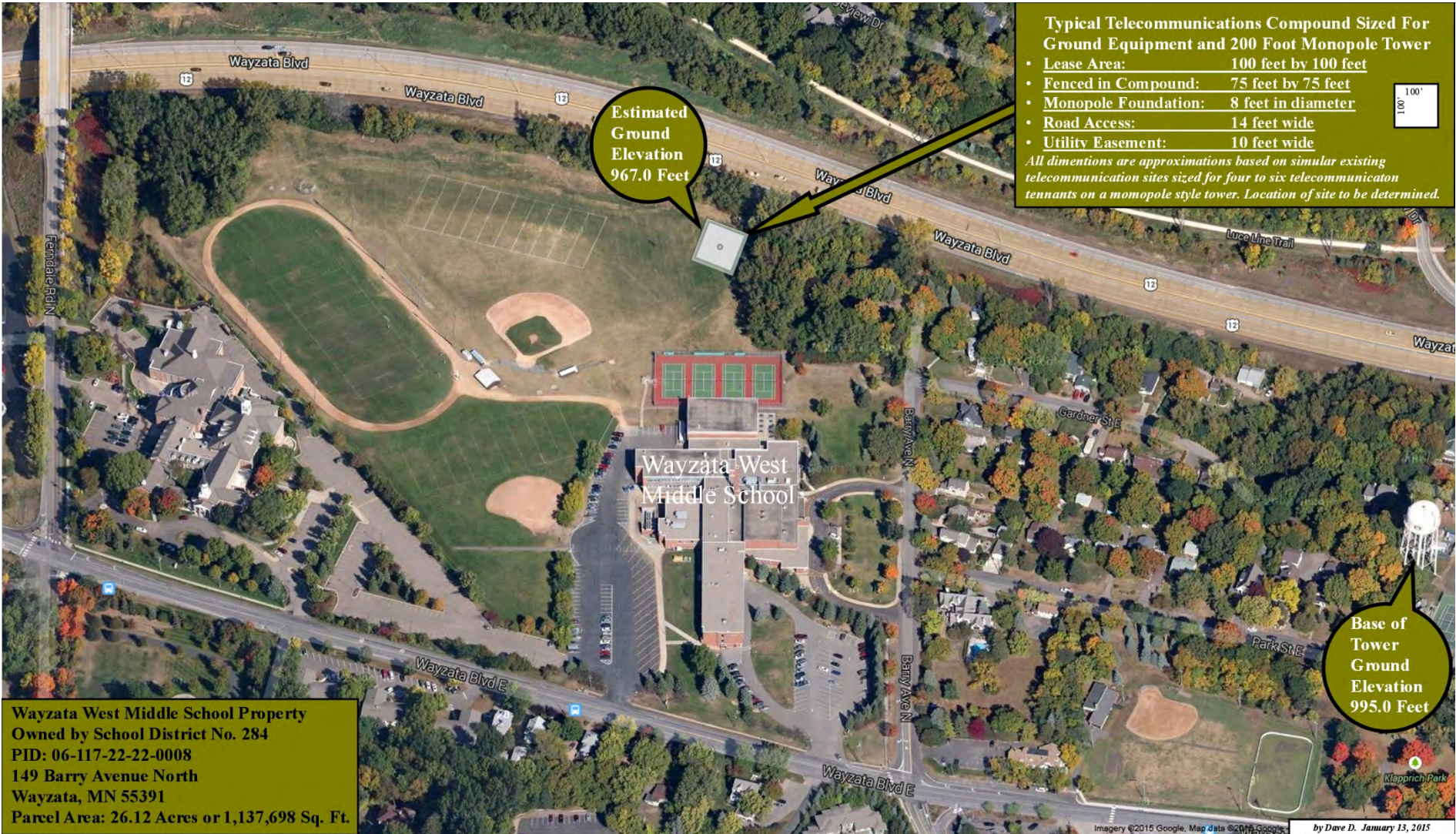
Coverage result is same as Mn/DOT ROW property, above. Creates need for 3 additional macro cell site location (same as above). If this site is used, a total of 4 macro sites will be required to replace the existing macro site.

TELECOMMUNICATIONS STUDY UPDATE

July 21st, 2015

Wayzata West Middle School Property

SUMMARY



SUMMARY

Based on our (SEH) review of the information provided inclusive of the City of Wayzata, the Tenant meeting and follow up response, and videos of all the sites under consideration, it is the opinion of SEH that the Middle School telecommunication site be considered as the primary location for a future Macro site. All present Tenants have identified this site as their first choice of all proposed locations due in large part to its ability to meet their necessary criteria for coverage, constructability and access.

Sprint-

This replacement location is not desirable. It would not allow us to meet our coverage objectives in the area, namely downtown/lakefront Wayzata and surrounding residential/commercial areas. This location is also approaching the coverage area of our adjacent site at 1345 West Wayzata Blvd, Long Lake, and would cause considerable service degradation due to overlapping coverage

Verizon-

Location at the western edge of town does not serve the heart of Wayzata. If this site is used, a total of 3 macro sites will be required to replace the existing macro site (this site, plus a rooftop within the city and a monopole tower on the Wayzata West Middle School Property), as well as small cells along Lake Street. Without the 2 additional macro sites, moving to this location will completely remove in-building and in-car 3G voice service, make 3G voice signal unreliable and weaken the RF signal strength for our 4G LTE service to the southeast.

ii. Wayzata Middle School Site (149 Barry Street)

ATT-

We need the site location to be near the City, and this is the only candidate we have near the City now with the 30ft-40ft drop in the ground elevation. We would like to make it up by having an increased RAD of 190ft at the school property.

There are 3 crucial aspects in selecting the school area,

1. Proximity to the City since most of the activities and customers are in the City, we would like to have a site that is close to the City, as this takes care of the coverage and capacity issues.
2. Ground Elevation, although we lose 30ft to 40ft we are hoping to get a higher RAD that will help us achieve the coverage objective
3. RAD center available. We are currently at 145ft, with the site moving to the school, we would like to make it up with increase in the RAD. It's easy to apply down-tilts and limit the coverage if needed; but if we fall short on the RAD, we really don't have a lot of freedom to optimize.

T-Mobile

This location is 0.24 miles west of the original location, and 28 ft. lower in elevation. Assuming we were to locate at approximately 160 ft., the coverage of the new site would be similar to the coverage of the existing site. This assumes a traditional antenna facility with tower-top radio design to maximize our coverage and capacity from this location. I have two concerns about using the Middle School as a relocation site. The first is the possibility of losing in-building coverage on the southeastern edge of downtown. I know there is new development in the area, and this new site may be shadowed by terrain and other buildings.

Sprint-

This replacement location would be our first choice, with a desired RAD center of 140 ft.-155 ft. Predictions show that we would be able to provide approximately the same level of service in downtown/lakefront Wayzata and surrounding residential areas, as well as improving service to the north of the site.

Verizon-

Reluctantly Ranked #1 of the four choices, as it is the nearest location to the existing water tank and has the least negative impact on coverage. However, ground elevation is 30 ft. lower than the Gardner water tank location. There will be significant negative impacts upon 3G voice & 4G LTE services in the SE part of the City. VZW will need to have at the very least an Antenna Centerline height of 120 ft.

If this site is chosen, VZW will still require, as mentioned previously, a new site within the vicinity of the intersection of Superior Blvd & Wayzata Blvd, as well as small cells that provide capacity/coverage fixes to the Lake Street area of the City.

iii. South Frontage Rd Site (Lift Station #21)

ATT-

The site will fall way east of the City, and we will see performance issues to the west and also in the City. We will need both these sites with a very higher RAD 230 ft.; and I fear even with that, we will see some in-building coverage issues in the City

T-Mobile

This location is too far east of our target coverage area and 1.5 miles from our current location. Even with additional height, additional sites would be required. It is also too close to our existing site A1O0767A (0.6 miles). This location does not provide coverage to the primary residential and commercial areas in central and downtown Wayzata.

Sprint-

South frontage road (ROW by lift station #21) - this replacement location will not work for Sprint. It is too far removed from the downtown/lakefront area of Wayzata. We would not be able to provide quality service there or to a considerable area north of Highway 12.

Verizon-

Coverage result is same as Mn/DOT ROW property, above. Creates need for 3 additional macro cell site locations (same as above). If this site is used, a total of 4 macro sites will be required to replace the existing macro site.

TENANT INFORMATION FINDINGS

Upon reviewing Tenant responses, it was determined that the proposed Wayzata Middle School site represents the best site for consideration of the three sites identified. Based on the comments provided above, each of the Tenants has identified that this location best serves as a replacement Macro site for covering Wayzata's downtown area. It should be noted that the Tenants have indicated desired elevations needed for site service that do not conflict with each other and keep the tower under 199 ft. It was concluded that the other proposed sites could not serve the needs of the existing Macro site but may be viable sites for future capacity needs. Below represents the RAD requirements of the current Tenants at the proposed location:

RAD center request:	120ft.	Verizon
	140 to 155ft.	Sprint
	160ft.	TMO
	190ft.	ATT

SUMMARY

Based on our review of the information provided inclusive of the City of Wayzata, the Tenant meeting and follow up response, and videos of all the sites under consideration, it is the opinion of SEH that the Middle School telecommunication site be considered as the primary location for a future Macro site. All present Tenants have identified this site as their first choice of all proposed locations due in large part to its ability to meet their necessary criteria for coverage, constructability and access.

dmk

Attachments

c: Miles Jensen, PE – SEH Saint Paul

Daniel J. Zienty – SEH Saint Paul

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APRIL 24, 2015
TELECOMMUNICATIONS

	Name	Representing	Phone #	E-mail
1.	Dale Romo	SEH		
2.	KSHITIJ (KT)	AT&T	952-656-9289	Ks9580@att.com
3.	Cynthia Shuck	VZ	507514 0416	
4.	PATRICK CASEY	VZ	6127201042	
5.	Mick McManis	TMO	612-812-1518	
6.	Josh Mathias	T-Mobile	612-701-0834	
7.	Valeu Bruggem	AT&T	630-209-4142	
8.	JASON HAN	AT&T	612-670-0101	
9.	Michelle Duvand	AT&T	952656 9191	
10.	Ad Onk	Jacobs	952831.1043	x3104
11.	Steve Carlson	T-Mobile	952-833-4057	
12.	MIKE BULTSMA	VINCO/SPRINT	612-803-7522	m.bultsma@vinco-inc.com
13.	DAN ZENNY	SEH INC.	651 490 2160	
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From: [SURYAWANSHI, KSHITIJ](#)
To: [Dale Romsos](#)
Cc: [ROBERTS, ALAN S](#); [Jason Hall](#); [DURAND, MICHELLE](#); [BRUGGEMAN, VALERIE A](#)
Subject: RE: City of Wayzata telecom meeting agenda
Date: 04/30/2015 04:17 PM

Hi Dale,

We need the site location to be near the city and this is the only candidate we have near the city now with the 30ft-40ft drop in the ground elevation we would like to make it up by having an increased RAD of 190ft at the school property.

There are 3 crucial aspects in selecting the school area,

1. Proximity to the city since most of the activities and customers are in the city we would like to have a site which is close to the city as this takes care of the coverage and capacity issues.
2. Ground Elevation, although we lose 30ft to 40ft we are hoping to get a higher RAD that will help us achieve the coverage objective
3. RAD center available. We are currently at 145ft, with the site moving to the school we would like to make it up with increase in the RAD. Its easy to apply downtilts and limit the coverage if needed but if we fall short on the RAD we really don't have a lot of freedom to optimize.

Public works site:

The site is west of the city and building this site will not help us cover the east of the city which will introduce some coverage holes in the city.

Frontage Road site

The site will fall way east of the city, and we will see performance issues to the west and also in the city.

We will need both these sites with a very higher RAD 230ft and I fear even with that we will see some inbuilding coverage issues in the city

Let me know if this works.

Thanks
KJ

From: Dale Romsos [mailto:dromsos@sehinc.com]
Sent: Thursday, April 30, 2015 6:48 AM
To: SURYAWANSHI, KSHITIJ
Cc: ROBERTS, ALAN S; Jason Hall; DURAND, MICHELLE; BRUGGEMAN, VALERIE A
Subject: RE: City of Wayzata telecom meeting agenda

KJ,

I appreciate your quick response but I need a little more from you rather than one pick. I would like to see your options of locations and elevation, along with a justification/reasoning of your response. If you just give me one pick (location and elevation) it does not give me other options for you. If a

site has specific problems for ATT please tell me why.

Thank you,

Dale Romsos | Project Manager

SEH | 3535 Vadnais Center Drive | St. Paul, MN 55110-5196

651.414.5186 direct | 612.325.9995 cell | 888.908.8166 fax

www.sehinc.com

SEH--Building a Better World for All of Us

From: "SURYAWANSHI, KSHITIJ" <ks958u@att.com>
To: "dromsos@sehinc.com" <dromsos@sehinc.com>,
Cc: "ROBERTS, ALAN S" <AR191N@att.com>, "DURAND, MICHELLE" <md7679@att.com>, Jason Hall
<jhall@hallinstitute.com>, "BRUGGEMAN, VALERIE A" <vb2793@att.com>
Date: 04/29/2015 01:23 PM
Subject: RE: City of Wayzata telecom meeting agenda

Hi Dale,

On reviewing the candidates we got from the city we would like to pursue with the school as our primary candidate, A RAD of 190ft would be acceptable.

Let me know if you have any questions.

Thanks

KJ

From: dromsos@sehinc.com [<mailto:dromsos@sehinc.com>]
Sent: Tuesday, April 21, 2015 8:22 AM
To: Amy.Dresch@jacobs.com; ROBERTS, ALAN S; Bryan.Krause@VerizonWireless.com; dzienty@sehinc.com; daved@wayzata.org; jhall@hallinstitute.com; SURYAWANSHI, KSHITIJ; DURAND, MICHELLE; SADOFF, MITCHELL; Pat.Conlin@jacobs.com; BRUGGEMAN, VALERIE A
Cc: Mike Bultsma; McManman, Mick
Subject: City of Wayzata telecom meeting agenda

Dale Romsos | Project Manager

SEH | 3535 Vadnais Center Drive | St. Paul, MN 55110-5196

651.414.5186 direct | 612.325.9995 cell | 888.908.8166 fax

www.sehinc.com

SEH--Building a Better World for All of Us



To: Dave Dudinsky
CC: Lori LeBlanc, Steve Carlson, Mick McManman, Dale Romsos – S.E.H.
From: Joshua Mathews, Senior RF Engineer, T-Mobile USA
Date: 5/08/2015
Re: **Wayzata Water Tower, Wayzata MN (A1O0033A)**

I have been asked to review the options presented to us for the relocation of our site currently located on the Wayzata Water tower (A1O0033A).

Our site currently provides coverage to the City of Wayzata, Highway 12, and the immediate surrounding area. It is the only T-Mobile antenna facility in Wayzata. For comparison purposes, it has an ACL of 116 feet, and is 995 feet above mean sea level.

Candidate: Wayzata Public Works (299 Wayzata Blvd W)

This location is too far west of our target coverage area, and 1.2 miles from our current location. Even with additional height, additional sites would be required. This location does not provide coverage to the primary residential and commercial areas in central and downtown Wayzata.

Candidate: MN DOT Right of Way (Near Holdridge Lane)

This location is too far east of our target coverage area, and 1.5 miles from our current location. Even with additional height, additional sites would be required. It is also too close to our existing site A1O0767A (0.6 miles). This location does not provide coverage to the primary residential and commercial areas in central and downtown Wayzata.

Candidate: Wayzata West Middle School (149 Barry Ave North)

This location is 0.24 miles west of the original location, and 28' lower in elevation. Assuming we were to locate at approximately 160', the coverage of the new site would be similar to the coverage of the existing site. This assumes a traditional antenna facility with tower-top radio design to maximize our coverage and capacity from this location.

I have two concerns about using the Middle School as a relocation site. The first is the possibility of losing in-building coverage on the southeastern edge of downtown. I know there is new development in the area, and this new site may be shadowed by terrain and other buildings.

The other concern is capacity. Data usage and growth is ever increasing and demanding on the network. We project the need to add at least one more macro antenna facility at some location in or near downtown Wayzata to provide relief in the not-distant future. Our hope is any antenna ordinance changes considered by the City would include provisions to allow rooftop or other reasonable public or private property types for such future needs

We also would like to provide input and guidance regarding any possible ordinance changes for wireless siting in Wayzata.

Dave Dudinsky

From: Bachman, Michael [CNO] [Michael.A.Bachman@sprint.com]
Sent: Friday, May 08, 2015 3:26 PM
To: Dave Dudinsky; dromsos@sehinc.com
Cc: MinneapolisRF; Shaikh, Bilal B [Nexius Contractor for Sprint]; Mike Bultsma
Subject: FW: MS03XC199 Wayzata WT - Replacement Site(s)

Gentlemen,

Thank you for taking these inputs. If you have need for further clarification, please let me know.

- 149 Barry Ave North (Wayzata Middle School) – this replacement location would be our first choice, with a desired RAD center of 140'-155'. Predictions show that we would be able to provide approximately the same level of service in downtown/lakefront Wayzata and surrounding residential areas as well as improving service to the north of the site.
- 402 Gardner Street (adjacent to existing site) – this replacement location would be our second choice, with the following desired RAD centers: sector 1 – 140', sector 2 – 180', sector 3 – 140'. Due to the fact that the water tank would be in line of sight between the new location and downtown/waterfront Wayzata, it would be required to have a higher antenna placement to "clear" the obstruction. Under those circumstances, we would then be able to not only replicate our current coverage, but actually improve it, especially to the north of the site.
- 299 Wayzata Blvd West (Wayzata Public Works) – this replacement location is not desirable. It would not allow us to meet our coverage objectives in the area, namely downtown/lakefront Wayzata and surrounding residential/commercial areas. This location is also approaching the coverage area of our adjacent site at 1345 West Wayzata Blvd, Long Lake and would cause considerable service degradation due to overlapping coverage
- Just north of Holdridge Lane (MNDOT ROW) – this replacement location will not work for Sprint. It is too far removed from the downtown/lakefront area of Wayzata. We would not be able to provide quality service there or to a considerable area north of Highway 12
- South frontage road (ROW by lift station #21) - this replacement location will not work for Sprint. It is too far removed from the downtown/lakefront area of Wayzata. We would not be able to provide quality service there or to a considerable area north of Highway 12
- Regarding the Private Telecom Site at 1411 Wayzata Blvd, Sprint currently has operational facilities at that location. Due to cell site capacity limitations, even if that tower were to be replaced with a 190'+ tower, we would still require a second cell site location to adequately meet the needs of Sprint customers in the Wayzata area

Thank you,

Mike Bachman

Minneapolis RF Engineering
M: 612-386-9741
michael.a.bachman@sprint.com



From: Mike Bultsma [<mailto:m.bultsma@vinco-inc.com>]
Sent: Tuesday, May 05, 2015 1:11 PM
To: Patterson, Lee T [CNO]
Cc: Spacone, Dean [CNO]
Subject: MS03XC199 Wayzata WT - Replacement Site(s)

Lee,

As you are aware, the City of Wayzata has notified all of the carriers that they will not be renewing their leases once they expire for the sites located on the city's water tank at 403 Gardner Street East. The city is proposing to build a new site (or sites) consisting of a 190-ft monopole to facilitate obtaining the same coverages that the carriers currently have. The (5) sites currently proposed are listed below.

- 402 Gardner Street (adjacent to existing site) → not likely to get approved by city council
- 149 Barry Ave North (Wayzata Middle School)
- 299 Wayzata Blvd West (Wayzata Public Works)
- Just north of Holdridge Lane (MNDOT ROW)
- South frontage road (ROW by lift station #21)

The city has asked that the RF group from each of the carriers review the proposed locations and make a determination if coverage levels can be accomplished by locating at one or more of the sites above. Ideally they would like a narrative from each carrier prioritizing the sites above and also indicating which sites, if any, are undesirable and why. Desired RAD-center information should also be included.

The attachment has additional information and photos of each of the above sites. The city also have video taken from a drone at each location for various heights ranging from 150' to 200'. I will have the DVD of the video at our office tomorrow and can get it to you if it's something that will assist you with your review.

If at all possible, city would like carrier comments no later than Friday (5/8/15). Send comments to the following:

Dave Dudinsky (City of Wayzata) daved@wayzata.org
Dale Romsos (SEH) dromsos@sehinc.com

If you have any questions or need additional information, please call me at 612-803-7572.

Thanks.

Mike Bultsma, PE

m.bultsma@vinco-inc.com
612-803-7572 (mobile)
651-379-0720 (office - direct)
651-982-4642 (office - main)
651-982-4621 (fax)

Vinco, Inc.
P.O. Box 907
Forest Lake, MN 55025

May 21, 2015

SENT VIA E-MAIL AND US MAIL

Attn: David Dudinsky, Dir. of Public Service
City of Wayzata
299 Wayzata Blvd. W.
Wayzata, MN 55391

Re: Verizon Wireless Installation on City of Wayzata Water Tower
Located at 403 Gardner Street
Verizon Wireless Site Name: MIN Ferndale

Mr. Dudinsky:

Our law firm has been retained by Verizon Wireless to provide this response to the City's request that our clients facility be relocated off of the Gardner Street Water Tower, as well as working toward the City's development of a new wireless ordinance and lifting its current moratorium. As a reminder, we worked directly with you and the City Attorney almost 15 years ago to reach an agreement for our client to lease space on the water tower. We now understand that the City prefers to have all of the installations removed from this property, and our client has asked us to work with the City to provide the information requested.

Wireless communications are not a luxury anymore. Staying connected wirelessly has become part of the fabric of our lives. In fact, numerous people are dropping their landlines altogether in favor of their cell phones. U.S. government statistics (assembled in conjunction with the State Health Access Data Assistance Center at the University of Minnesota, among others) most recently show that 36.7% of all people in Minnesota living in the Twin Cities rely on their cell phone as their only phone. (See U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2012 (December 18, 2013), p.6 at Table 1 (<http://www.cdc.gov/nchs/data/nhsr/nhsr070.pdf>)).

More than 1 out of every 3 Minnesotans lives in a household that uses a cellphone exclusively – with no wireline phone at all. This underscores the importance of reliable coverage. For many of us, these networks are the only connection to emergency services. Furthermore, the Wireless Communications and Public Safety Act of 1999 acknowledges and promotes the construction and operation of seamless, ubiquitous and reliable wireless networks. As Wayzata moves forward with its new ordinance, we must never forget that these cell sites are a critical component of end to end communications infrastructure that connects the public with fire, police and medical emergency service, to reduce response times.

Verizon Wireless Coverage in Wayzata. For nearly 20 years, our clients have provided coverage to the city of Wayzata. The first site was a Rooftop collocation located at 1055 East Wayzata Blvd owned by First National Bank of Wayzata, and for nearly 15 years our clients have utilized the City's water tower at Gardner Street. Verizon Wireless is deeply concerned about the City's decision to ultimately relocate the site away from the water tower and city center,



Verizon Wireless Installation on City of Wayzata Water Tower

May 21, 2015

Page 2 of 4

since the alternate siting options presented April 24th, 2015 are farther away from the city center and located on the outskirts of the city. Every option will result in worse coverage.

For your information, just last year our client had to relocate from the rooftop site at 1055 East Wayzata Blvd. because the building was to be demolished for redevelopment. As a result, Verizon Wireless moved its facility .4 miles east to collocate on an existing tower. That seemingly small move created major changes in customer experience and degraded coverage to our customers at the Presbyterian Homes Complex and elsewhere within the City.

It is my understanding that you are acutely aware of this, since you asked Verizon Wireless to build another site near the old location, with the suggestion that Verizon Wireless could possibly utilize the Wells Fargo Building to improve the lost coverage by that move. Please know that, regardless of what happens with the new ordinance or the Ferndale Water Tank Relocation, our client will continue actively pursuing a new rooftop location within the vicinity of the Wells Fargo Building, in order to repair the coverage issues created by the forced move associated with the bank building redevelopment. The City's proposed move from the Ferndale Water Tower is expected to have similar ramifications to the citizens of Wayzata.

Verizon Wireless has ranked the alternative sites. Since the City has sent a clear signal that it does not intend to renew that water tower lease our client has evaluated those locations presented at the April 24th, 2015 meeting. It should be noted that this is an RF engineering evaluation only. In particular, we have not had sufficient time to conduct any other due diligence to evaluate these sites, or the viability of the locations. It is entirely possible that one or more of the owners are unwilling or unable to enter into a lease for a site that would work for our client. Moreover, the contents of title reports, FAA determinations, environmental screening reports, NEPA screenings including SHPO approvals, and proposed lease terms may well make one or more of these locations unavailable.

Much depends on the City's new amendments to its zoning ordinance, and whether that ordinance is flexible enough to allow installations with a minimum amount of zoning process time in locations where the City Staff prefers the sites to be located, but still allowing the wireless companies an opportunity to install their sites in other locations, as long as those sites are well designed, so that they are compatible with other structures in the area. We fully expect that the City understands that the need for wireless service is difficult to predict. In fact, Verizon Wireless itself can only forecast the network needs of its customers for the next 2 years. As you consider how best to draft the zoning amendments, we ask that you take into account the demand for wireless services in Wayzata, and the fact that these services are only possible if antennas can be installed where they need to be.

As you can see, from the enclosed Propagation Study, moving the site to any of the locations will result in the need to build multiple, additional installations to fill in the resulting coverage gaps, in addition to meeting the ever increasing need for wireless capacity and data speeds that are increasingly important to the residents and businesses in Wayzata. This being the case, the following is a ranking and summary of the alternative locations proposed by Staff, which were



ranked by Verizon Wireless's RF Engineering Team based upon each site's comparative usefulness as a replacement to the existing water tower site:

1. Wayzata West Middle School Property (149 Barry St)

- Reluctantly Ranked #1 of the four choices as it is the nearest location to the existing water tank and has the least negative impact on coverage. However, Ground Elevation is 30' lower than the Gardner water tank location.
- There will be significant negative impacts upon 3G voice & 4G LTE services in the SE part of the city.
- VZW will need to have at the very least an Antenna Centerline height of 120 feet.
- If this site is chosen VZW will still require, as mentioned previously, a new site within the vicinity of the intersection of Superior Blvd & Wayzata Blvd as well as small cells that provides capacity/coverage fixes to the Lake Street area of the city.

2. Wayzata Public Works Property – (299 Wayzata Blvd W)

- Location at the western edge of town does not serve the heart of Wayzata
- If this site is used, a total of 3 macro sites will be required to replace the existing macro site (this site, plus a rooftop within the city and a monopole tower on the Wayzata West Middle School Property), as well as small cells along Lake Street
- Without the 2 additional macro sites, moving to this location will completely remove in-building and in-car 3G voice service, make 3G voice signal unreliable and weaken the RF signal strength for our 4G LTE service to the southeast

3. Mn/DOT ROW property (just north of Holdridge Lane)

- Location at eastern edge of town does not serve Heart of Wayzata or Hwy. 12 going west
- If this site is used, a total of 4 macro sites will be required to replace the existing macro site (this site, plus a rooftop within the city, a monopole tower on the Wayzata West Middle School Property, and a monopole tower on the Wayzata Public Works Property), as well as small cells along Lake Street
- Without the 3 additional macro sites, moving to this location will completely remove 4G LTE service and 3G voice service in the heart of Wayzata, and degrade 3G voice service along Hwy 12 going west

4. South Frontage Road ROW (by Lift Station #21)

- Coverage result is same as Mn/DOT ROW property, above
- Creates need for 3 additional macro cell site location (same as above)
- If this site is used, a total of 4 macro sites will be required to replace the existing macro site

5. Private Property existing Telcom Site (1411 Wayzata Blvd E)

- Site is currently in use by Verizon Wireless for 4G LTE service
- Adding 3G service to this location will not provide 3G voice coverage along Hwy 12 going west or in the western part of Wayzata



Verizon Wireless Installation on City of Wayzata Water Tower

May 21, 2015

Page 4 of 4

Conclusion. Verizon Wireless understands the City's concerns about the use of the park for wireless installations, but it appears that the water tower itself is not being removed from the park. Since Verizon Wireless has been on that water tower since long before any residents of Wayzata have expressed concerns about using the park, it seems that these concerns have little to do with the Verizon Wireless installation itself.

Rather than having to construct 2, 3 or 4 additional cell sites to provide the wireless services that are in great demand in Wayzata, we respectfully request that the City allow the Verizon Wireless installation to remain at the water tower, at least until our client's lease expires. This way, the number of additional, new installations can be kept to a minimum. To be clear, Verizon Wireless intends to continue its work with the City of Wayzata to improve wireless service in the City. After all, cell sites are only built in locations where wireless services are in demand – this includes locations throughout the City of Wayzata. Therefore, as the City continues its work to revise its zoning ordinance, we hope that the City will plan for that future growth, even while it considers how best to use its water tower, public parks and other public property.

We plan to attend all meetings related to this issue and as well as all meetings related to the zoning amendments that the City requires. If any reader of this letter has questions in the meantime, please do not hesitate to contact us. (Our telephone numbers and e-mail addresses are below.) We also ask that the City Staff provide copies of all staff reports, documents and other information related to these two issues.

In the meantime, we look forward to working with the City to maintain – and improve – Verizon Wireless service.

Sincerely,

Jaymes D. Littlejohn

Attorney at Law

P: (612) 877-5274 F: (612) 877-5047

Jay.Littlejohn@lawmoss.com

Anthony A. Dorland

Attorney at Law

P: (612) 877-5258 F: (612) 877-5025

Anthony.Dorland@lawmoss.com

JDL/dmr
Enclosure

cc: Cynthia Shuck, Verizon Wireless (via e-mail)
Scott Chamberlain (via e-mail)

Radio Frequency Propagation Study (5/20/2015)

Ranking of Alternatives to Existing Site Located On Gardner Street Water Tower, 403 Gardner Street in Wayzata, MN (Project Name: MIN Ferndale)

Nithyakalyani S. Jaipuriyar – RF Engineer, Verizon Wireless

E-mail: Nithyakalyani.Jaipuriyar@VerizonWireless.com

Introduction. The Verizon Wireless Radio Frequency Engineering department has evaluated the alternative locations proposed by the City of Excelsior as potential locations to replace the existing installation on the City's Water Tower at 403 Gardner Street. The current location of the Verizon Wireless facility and each of the alternative locations are shown in Figure A below.

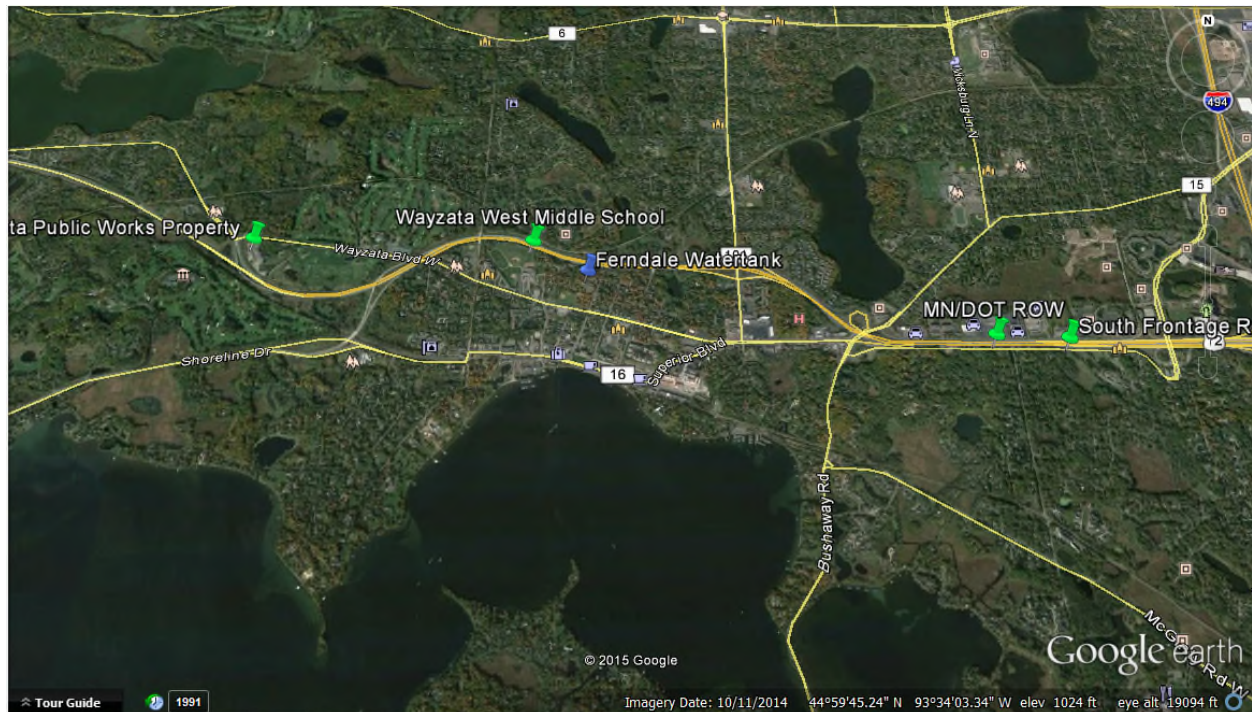


Figure A: Location of current installation and alternatives proposed by City of Wayzata.

The ranking below is based upon careful study of both existing and future network coverage and capacity in the area of the City of Wayzata. Included in this ranking are maps which show the resulting RF signal propagation, assuming the existing site is removed and replaced with each of the alternative locations, as well as an explanation of our rationale and the need for additional installations that would be required if the existing site is, in fact, to be removed in spite of the negative impact on wireless service that will result.

Current Coverage. Figures B and C below show the coverage that is provided by the existing site.

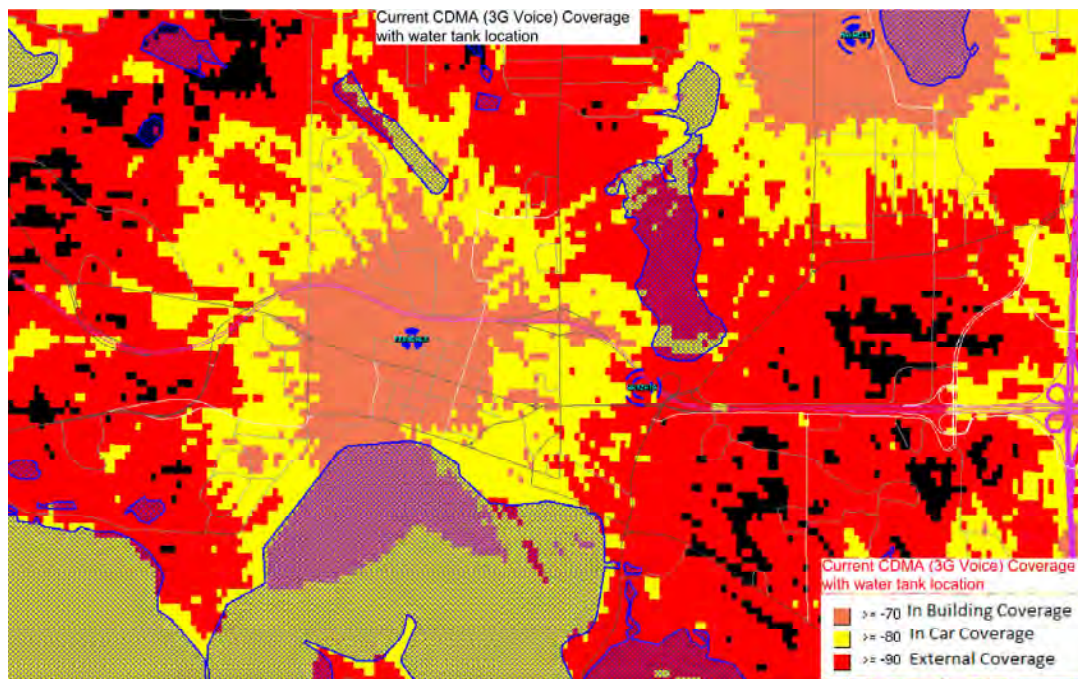


Figure B: Current CDMA Coverage.

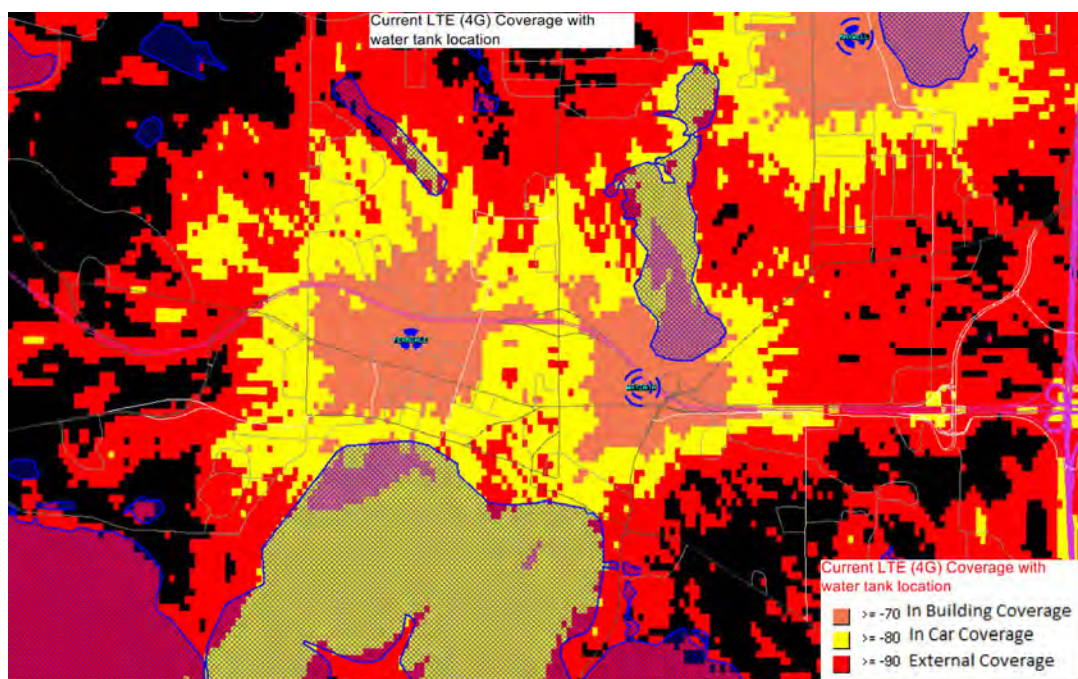


Figure C: Current LTE (4G) Coverage.

As shown above, the current installation provides a reliable signal inside of buildings in the immediate vicinity of the site and a relatively acceptable signal throughout the City of Wayzata. The remainder of this study includes the ranking of the proposed alternatives.

Ranking of Proposed Alternatives.

1. Wayzata West Middle School Property (149 Barry St) (Figures D and E)

- Reluctantly Ranked #1 of the four choices as it is the nearest location to the existing water tank and has the least negative impact on coverage. However, Ground Elevation is 30' lower than the Gardner water tank location.
- There will be significant negative impacts upon 3G voice & 4G LTE services in the SE part of the city.
- VZW will need to have at the very least an Antenna Centerline height of 120 feet.
- If this site is chosen VZW will still require, as mentioned previously, a new site within the vicinity of the intersection of Superior Blvd & Wayzata Blvd as well as a site that provides capacity/coverage fixes to the Lake Street area of the city.

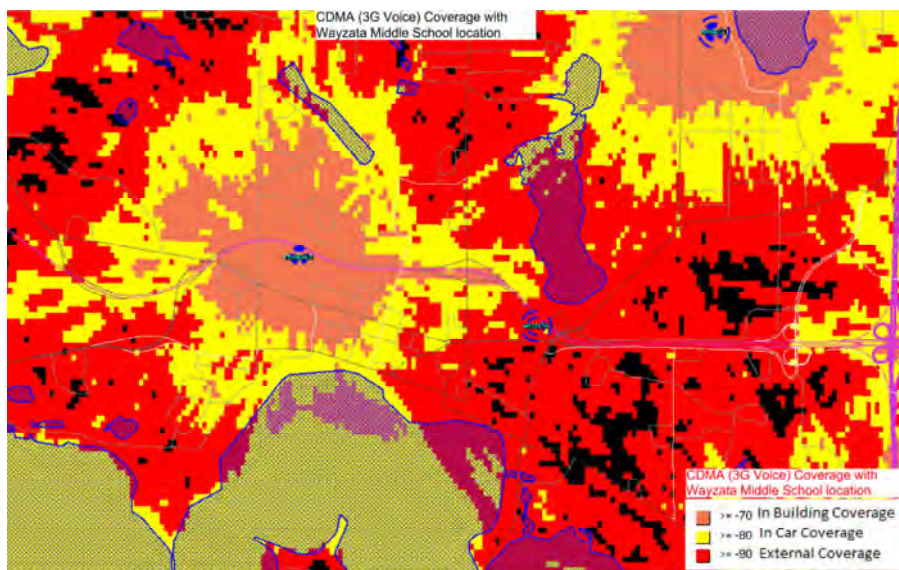


Figure D

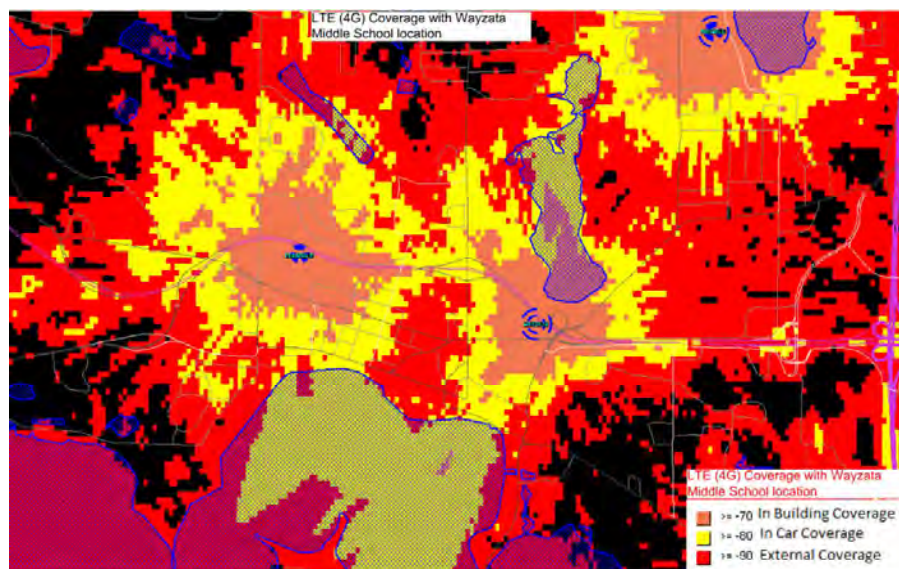


Figure E

2. Wayzata Public Works Property – (299 Wayzata Blvd W) (Figures F and G)

- Location at the western edge of town does not serve the heart of Wayzata
- If this site is used, a total of 3 macro sites will be required to replace the existing macro site (this site, plus a rooftop within the city and a monopole tower on the Wayzata West Middle School Property), as well as small cells along Lake Street
- Without the 2 additional macro sites, moving to this location will completely remove in-building and in-car 3G voice service, make 3G voice signal unreliable and weaken the RF signal strength for our 4G LTE service to the southeast

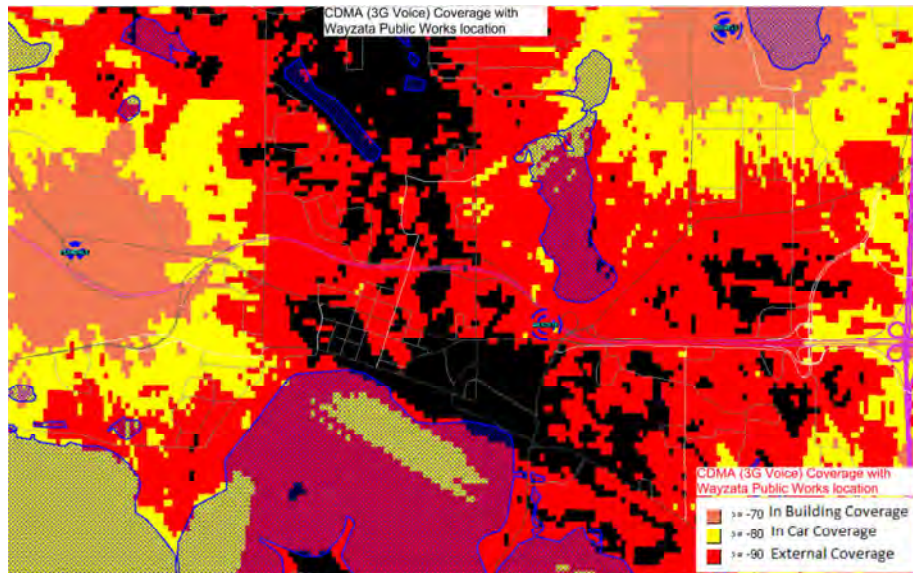


Figure F

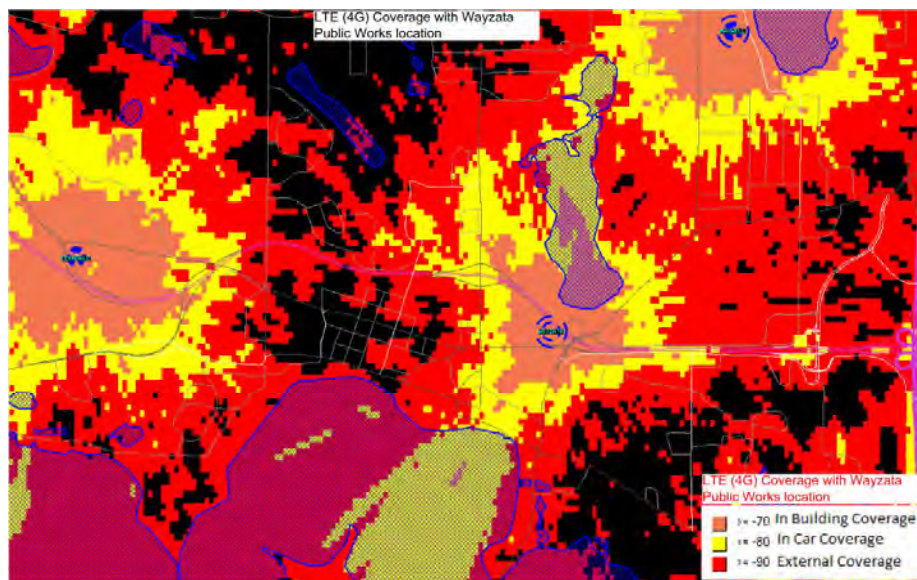


Figure G

3. Mn/DOT ROW property (just north of Holdridge Lane) (Figures H and I)

- Location at eastern edge of town does not serve Heart of Wayzata or Hwy. 12 going west
- If this site is used, a total of 4 macro sites will be required to replace the existing macro site (this site, plus a rooftop within the city, a monopole tower on the Wayzata West Middle School Property, and a monopole tower on the Wayzata Public Works Property), as well as small cells along Lake Street
- Without the 3 additional macro sites, moving to this location will completely remove 4G LTE service and 3G voice service in the heart of Wayzata, and degrade 3G voice service along Hwy 12 going west

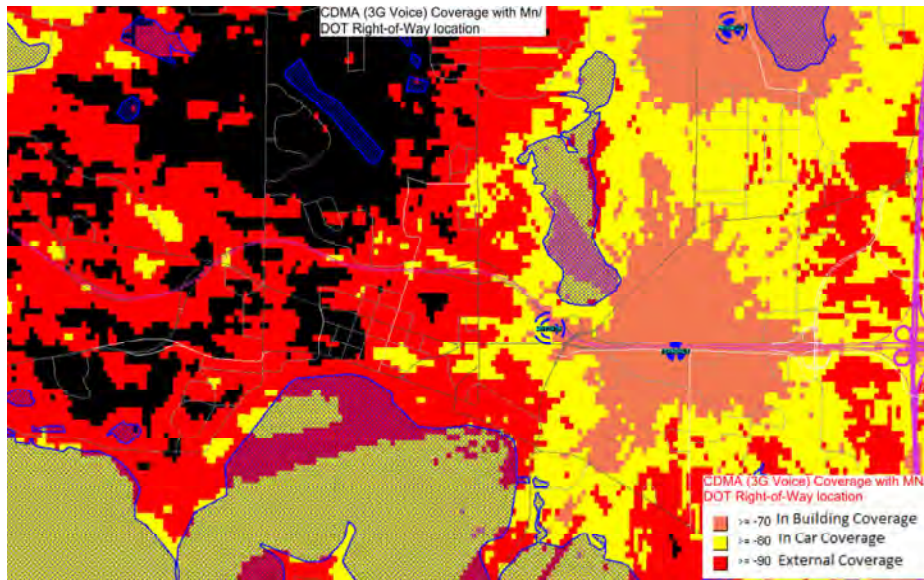


Figure H

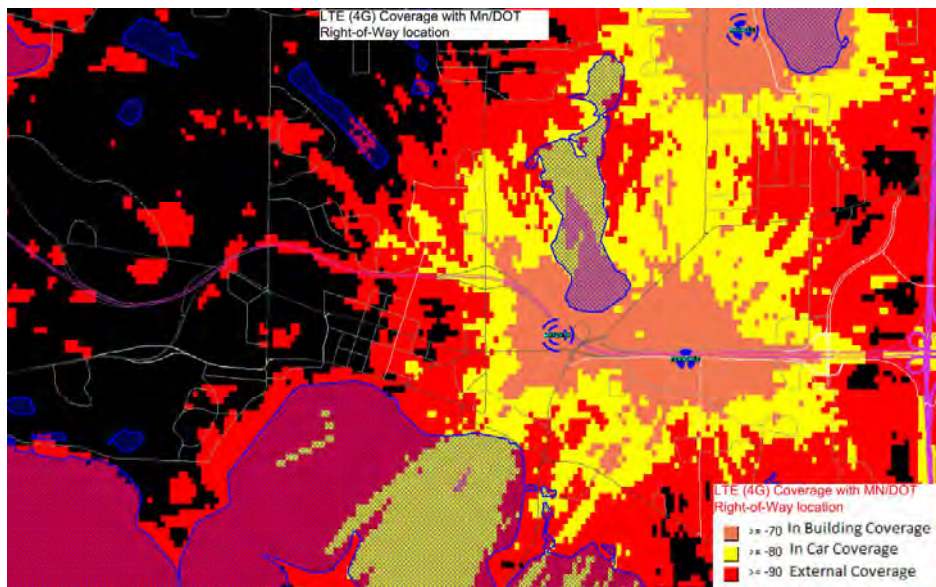


Figure I

4. South Frontage Road ROW (by Lift Station #21) (Figures J and K)

- Coverage result is same as Mn/DOT ROW property, above
- Creates need for 3 additional macro cell site location (same as above)
- If this site is used, a total of 4 macro sites will be required to replace the existing macro site
- Site is currently in use by Verizon Wireless for 4G LTE service
- Adding 3G service to this location will not provide 3G voice coverage along Hwy 12 going west or in the western part of Wayzata

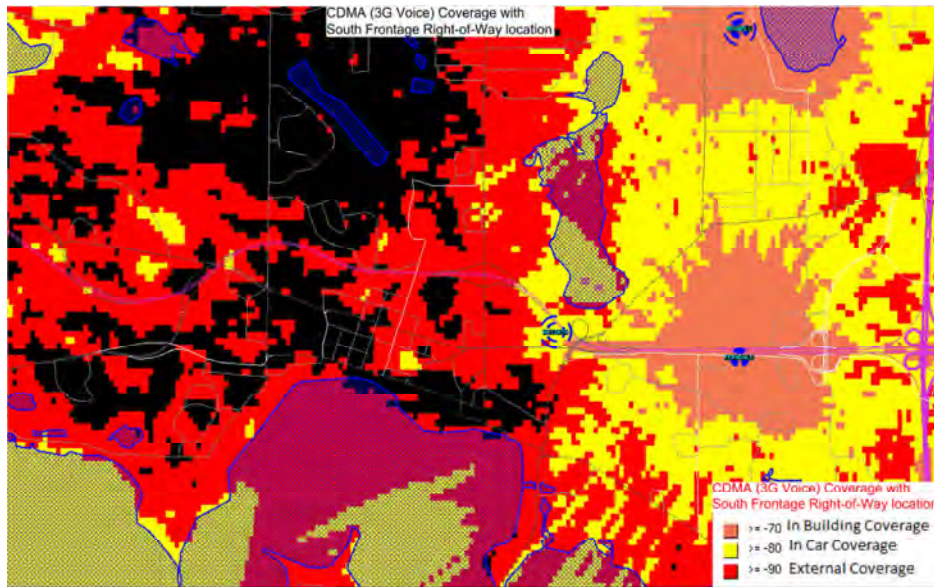


Figure J

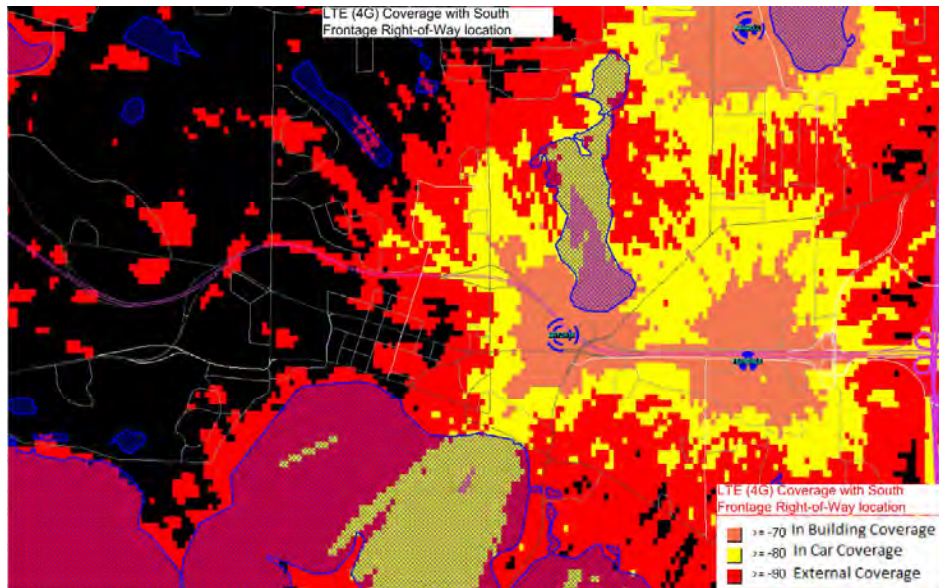
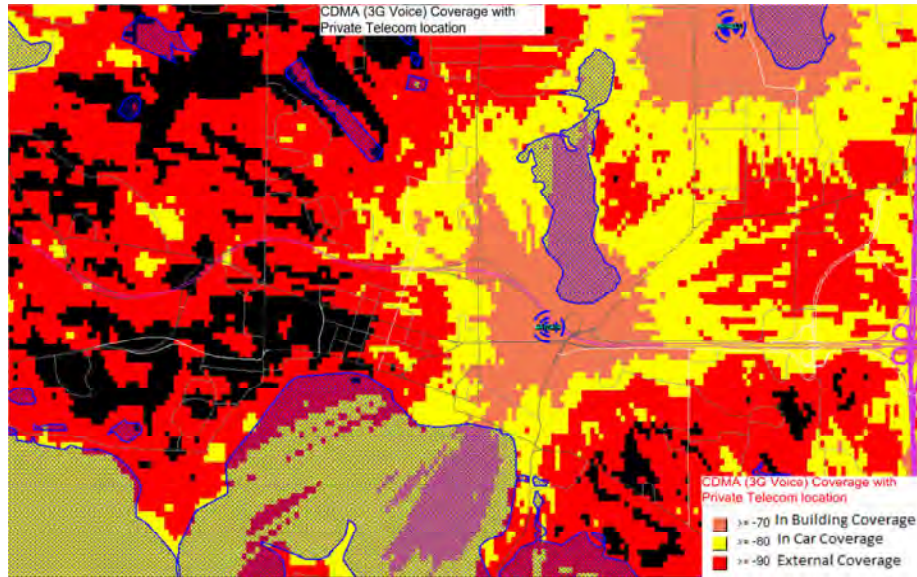


Figure K

5. Private Property existing Telecom site (1411 Wayzata Blvd E) (Figures L)

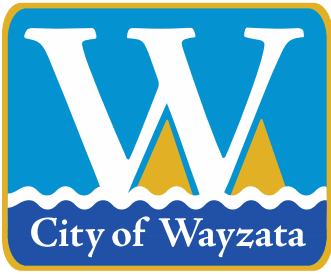
- Site is currently in use by Verizon Wireless for 4G LTE service
- Adding 3G service to this location will not provide 3G voice coverage along Hwy 12 going west or in the western part of Wayzata



Conclusion. As you can see, relocating the existing site to any of the alternative locations will result in the need to build multiple, additional installations to fill in the resulting coverage gaps, in addition to meeting the ever increasing need for wireless capacity and data speeds required by residents and businesses in Wayzata.

Telecommunication Tower Feasibility Study @ Wayzata West Middle School Site (List of Tasks for Consideration)

1. Wayzata West Middle School (149 Barry Ave N) Feasibility Study (proposed tower location north of Tennis Courts)
 - a. Identify colocation capacity (Tenant capacity) of proposed monopole
 - b. Identify ground space requirements
 - c. Site Survey
 - d. Soils Assessment
 - i. Provide geotechnical services of tower site and proposed access road(s)
 - ii. Prepare report/recommendations
 - e. Identify existing utilities and make recommendations referencing Tenant requirements (location of additional utilities that would serve telecom tower),
 - f. Provide recommendation(s) for access to Tower Site by Tenants
2. Address Campus (Student) Safety Concerns
 - a. Radio frequency (RF) signals from antennas
 - b. Access to site during and post school hours-safety of students
 - c. Present findings to Wayzata School District Representatives for Review and Comment.
3. FAA Safety Analysis/Aeronautical Study
 - a. Application preparation
4. Regulatory Due Diligence
 - a. NEPA (National Environmental Policy Act)
 - i. Letters- CLG (Certified Local Government), US Fish and Wildlife, Public Notice- 30 days from submittal excluding complication
 - ii. Architectural & Archeological- surveys and reporting plus SHPO (State Historic Preservation Office)
 - iii. TCNS (Tower Construction Notification System)
5. Financial: Relocation Cost Assessment
 - a. Preparation of New Site
 - b. Relocation of Tenants
 - c. Decommission and Cleanup of Gardner Telecom Site
 - d. City Attorney and Staff update the Council on negotiations with telecom tenants on new lease arrangement discussions (that the City Attorney advises can be shared publicly).
6. Overall Project Schedule
 - a. Goal is to move tenants to Wayzata West Middle School by end of fall of 2019.
 - i. Identify anticipated project milestones inclusive of both engineering (Plans/Specifications) and Construction



City of Wayzata

600 Rice Street

Wayzata, MN 55391-1734

Mayor:

Ken Willcox

City Council:

Bridget Anderson

Johanna McCarthy

Andrew Mullin

Steven Tyacke

City Manager:

Heidi Nelson

Date: July 10, 2015

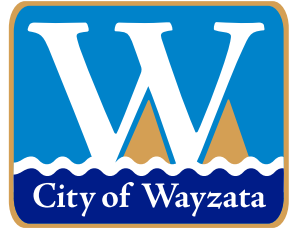
To: Mayor Willcox and Councilmembers

From: Heidi Nelson, City Manager

Subject: Consider Approval of Updated Strategic Plan

Attached to this memo please find an updated draft of the updated Strategic Plan. This update is based upon the discussion at the July 7th regular meeting. The updated document was based upon Strategic Planning Session Report that was reviewed by the Council on June 2nd following the April 30/May 1 Strategic Planning Session. Staff is seeking feedback regarding the updates made to the plan following July 7th and approval of the updated Strategic Plan.

Staff intends to provide quarterly updates on the progress on Strategic Plan items as part of the regular Council agenda going forward.



A BLUEPRINT FOR THE FUTURE

Five Year Vision for the Community: Wayzata in 2017

Wayzata
is a well
maintained
and safe
community.

Wayzata is
an active
community
with a
“Home
Town” feel.

Wayzata
provides
a world-
class guest
experience.

Wayzata
celebrates its
proud history
on the lake.

Wayzata
offers an
exceptional
lakefront
destination.

Wayzata has
a strong,
stable
financial
foundation.

STRATEGIC DIRECTION:

Ensuring Financial Stability

Strategic Priority	Key Outcome	Measure	Target	Strategic Initiatives
Financial Strength FINANCE	Capital maintenance demand	Long-term costs	Incorporate in 2016/2017 budget	1) 10-year maintenance plan 2) Capital maintenance funding strategy 3) Plan for funding/ongoing maintenance of Bushaway Corridor landscape
	Fiscal strength	Bond rating	AAA	1) Monitor bond rating criteria against policy/performance
	Telecom Site	Relocation of Telecomm site(s)	Complete relocation by 2019	1) Complete amendments to Telecom Ordinance with in 6 month moratorium period (Sept. 2015) 2) Coordinate lease expiration /water tower painting for relocation of tower 3) Ensure city remains driver of site selection process for what is best community outcome
	Muni	Improved financial performance, customer service, food quality and consistency	Increase profitability by 5% by December 2016	1) Update Muni business plan by Sept. 30, 2015 2) Ensure appropriate mgmt/staffing per business plan 3) Within new business plan address restaurant competition/ liquor competition/parking challenges and customer feedback/demands 4) Focus on customer service, training, food quality and consistency
Proactive Development & Redevelopment GROWTH	Promenade of Wayzata	Retail leases	75% leased by June 2016	1) Presbyterian Homes sales/marketing strategy
	Downtown Parking	Parking Spaces	20% increase by Dec. 2017	1) Implement Parking Pilot Programs for Summer 2015 2) Measure Parking Pilot Programs and plan for long term implementation of parking management tools 3) Define Parking District cost/benefits by Aug. 2015 4) Complete pre-design/programming for Mill St. Ramp Sept. 2015 5) Define plan of finance for ramp construction by Sept. 2015 6) Draft Parking Ordinance amendments by Sept. 2015 7) Draft Parking/Mobility District Ordinance by Sept. 2015 8) Begin site plan submittal/rezone/plat process Oct. 2015 9) Continue collaboration with Carish's re public use of parking ramp 10) Determine procurement process for ramp construction by Dec. 2015 11) Site plan process/entitlement complete by Dec. 2015 12) Ramp construction start Oct. 2016
	Targeted multi-family complexes	Reinvestment	2 complexes improved by Dec. 2016	1) Marketing campaign - multi-family investment program 2) Improve rental inspection coordination with reinvestment 3) Increase and implement rental housing inspection standards 4) Promote development of diversity of housing stock.
	Signage	Increased wayfinding into and within city	Roll out 2nd phase wayfinding & new directional signage by June 2016	1) Improve directional signage on freeway to Lake Minnetonka & commercial districts 2) Monument signage of Muni
	Marketing	Marketing plan in place	Establish marketing/branding campaign by June 2016	1) Develop marketing/branding campaign for city 2) Determine funding for marketing/branding campaign
	Traffic/Circulation	Update Traffic Study	Complete by Sept. 2016	1) Assess Superior Blvd./Wayzata Blvd. intersection design 2) Service levels at key intersections 3) Assess additional redevelopment /parking expansion on traffic/ circulation 4) Consider additional access points to HWY 12 corridor

STRATEGIC DIRECTION: Sustaining Our Community

Strategic Priority	Key Outcome	Measure	Target	Strategic Initiatives
Organizational Sustainability	Institutional Knowledge	Documentation/ SOPs	All depts. by July 2016	1) Documentation project - all depts. 2) Succession plan - all depts.
WORKFORCE	Shared services	Executed agreement	Long Lake PW by June 2016	1) Develop options for shared service 2) Implement Long Lake opportunity
Focused Community Engagement	Citizens' Academy	Participation	20 participants by June 2016	1) Create a Citizens' Academy
CUSTOMER	Website	Visits	Implemented by June 2016	1) Incorporate paperless technology into website

STRATEGIC DIRECTION: Enhancing City Assets

Strategic Priority	Key Outcome	Measure	Target	Strategic Initiatives
Operational Effectiveness	Business and permits	Online forms availability	80% by June 2016	1) Program funding and implementation for a line permits/business apps
OPERATIONS	Staff time	Utility bill processing	20% reduction June 2016	1) Document current staffing metrics 2) Establish improvement program
	Ordinance/policy priorities	Ordinances revised/ established	All complete by moratorium end date or June 2016	1) Telecomm Ordinance 2) Parking Ordinance 3) Neighborhood Zoning Standards Ordinance 4a) Tree Preservation Ordinance 4b) Signage Ordinance 5a) Medical Marijuana Ordinance 5b) Alternative Energies Ordinance 6) Meeting Minute-taking policy
Maintain and Enhance Community Amenities	Lake Effect Projects	Shovel ready signature project	Phase One of signature project start construction by June 2016	1) Complete RFP process for design of signature central lakefront project 2) Cultivate project partners with Council leadership 3) Complete design of signature central lakefront project in alignment with broader scope of parking/does/ connections/corridors 4) Transition completion of design into phased project implementation 5) Increase community engagement throughout process - communicate progress, highlight current projects, funder cultivation, celebrate milestones 6) Ensure Lake Effect value statements are reflected in the process and design
MAINTENANCE				

Strategic Planning Overview

The Strategic Planning Session took place in Wayzata on April 30 & May 1, 2015. Participants included: Mayor Ken Willcox, Council Members Bridget Anderson, Johanna McCarthy, Andrew Mullin and Steven Tyacke with City Manager Heidi Nelson. Staff included Bryan Gadow, Director of Planning and Building; Dave Dudinsky, Public Services Director; Mike Risvold, Police Chief; Kevin Klapprich, Fire Chief; Don Uram, Administrative Services Director; and Kristin Classey, Communications Specialist.

During the session, council relations and the strategic initiatives outlined on the previous pages were discussed.

