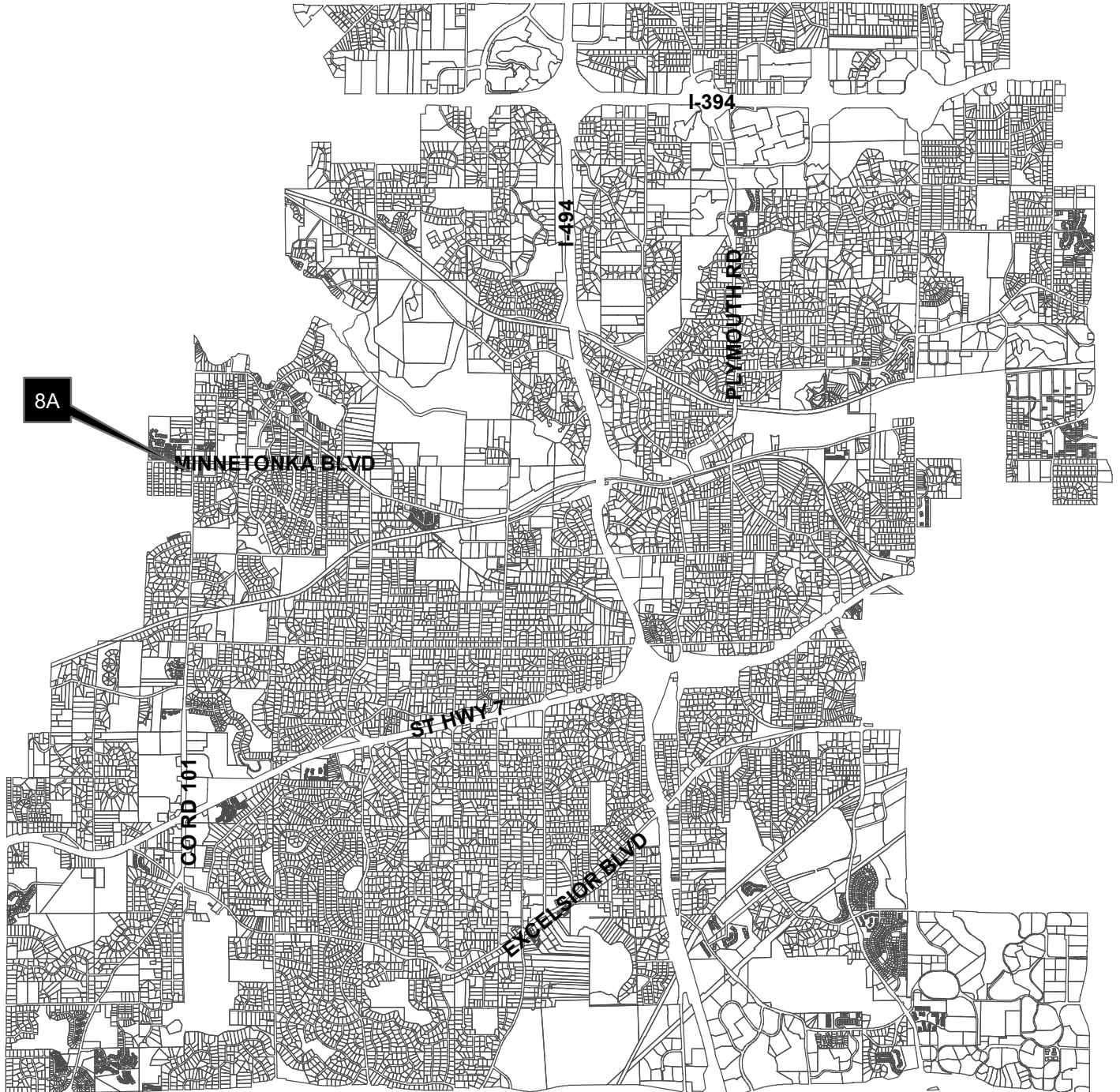




CITY OF  
**MINNETONKA**

**CITY OF MINNETONKA  
PLANNING COMMISSION  
DEC. 19, 2019**

14600 Minnetonka Blvd. • Minnetonka, MN 55345  
(952) 939-8200 • Fax (952) 939-8244  
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## Planning Commission Agenda

Dec. 19, 2019 – 6:30 p.m.

City Council Chambers – Minnetonka Community Center

1. **Call to Order**

2. **Roll Call**

3. **Approval of Agenda**

4. **Approval of Minutes:** Dec. 5, 2019

5. **Report from Staff**

6. **Report from Planning Commission Members**

7. **Public Hearings: Consent Agenda**

None

8. **Public Hearings: Non-Consent Agenda Items**

A. Conditional use permit, with parking variance, for a fast food restaurant at 3432 Co Rd 101.

Recommendation: Recommend the city council approve the request (5 votes)

1. Recommendation to City Council (Jan. 6, 2020)
2. Project Planner: Drew Ingvalson

9. **Other Business**

A. Presentation: Municipal Separate Storm Sewer System (MS4) Permit.

Staff Report: Leslie Yetka, Phil Olson, and Sarah Schweiger

B. Update: Tree Ordinance Review

Staff Report: Loren Gordon

## 10. Adjournment

### Notices

1. Please call the planning division at (952) 939-8290 to confirm meeting dates as they are tentative and subject to change.
2. There following applications are tentatively schedule for the Jan. 16, 2020 agenda.

<b>Project Description</b>	Moore Addition, 2-lot plat
<b>Project Address</b>	5024 Beacon Hill Road
<b>Assigned Staff</b>	Susan Thomas
<b>Ward Councilmember</b>	Kissy Coakley, Ward 4

<b>Project Description</b>	Medica Health, site plan
<b>Project Address</b>	401 Carlson Parkway
<b>Assigned Staff</b>	Ashley Cauley
<b>Ward Councilmember</b>	Brad Schaeppi, Ward 3

<b>Project Description</b>	Shady Oak Crossing, multiple items
<b>Project Address</b>	4312 Shady Oak Road
<b>Assigned Staff</b>	Loren Gordon
<b>Ward Councilmember</b>	Brian Kirk, Ward 1

**Minnetonka Planning Commission Meeting**  
Dec. 19, 2019

**Agenda Item 4**

Previous Meeting Minutes from Dec. 5, 2019



**Unapproved  
Minnetonka Planning Commission  
Minutes**

**Dec. 5, 2019**

**1. Call to Order**

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

**2. Roll Call**

Commissioners Powers, Sewall, Hanson, Henry, Knight, and Kirk were present. Luke was absent.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Assistant City Planner Susan Thomas, and Planner Drew Ingvalson.

**3. Approval of Agenda:** The agenda was approved as submitted.

**4. Approval of Minutes:** Nov. 14, 2019

***Henry moved, second by Knight, to approve the Nov. 14, 2019 meeting minutes as submitted.***

***Powers, Sewall, Hanson, Henry, Knight, and Kirk voted yes. Luke was absent. Motion carried.***

**5. Report from Staff**

Gordon briefed the commission on land use applications considered by the city council at its meetings of Nov. 18, 2019 and Dec. 2, 2019:

- Adopted a resolution approving the final plat for Inverness Wyola Addition on Inverness Road.
- Adopted a resolution approving the preliminary plat for Conifer Heights with some additions to include stormwater sewer improvements.
- Adopted a resolution approving the telecommunication tower at 3717 Co. Rd. 101.
- Adopted a resolution approving a conditional use permit and variance for Park Dental on Hwy. 7.
- Adopted a resolution approving a conditional use permit for Inspire Dance Studio on K-Tel Drive.
- Adopted a resolution approving a 12-month extension of final site and building plans for a two-phase parking ramp at 12501 Whitewater Drive.

Gordon announced that the next planning commission meeting is scheduled to be held Dec. 19, 2019. The planning commission meeting regularly scheduled for Jan. 2, 2020 has been cancelled.

6. **Report from Planning Commission Members:** None

7. **Public Hearings: Consent Agenda:** None

8. **Public Hearings**

**A. Expansion permit to replace the flat roof of an accessory structure with a pitched roof at 16816 Grays Bay Blvd.**

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

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

Knight asked if the proposal would create an issue with water traveling off the roof on the north side and into the lake. Thomas stated that a condition of approval would require additional vegetation to be planted on the north side.

Nate Jurmu of Frontier Custom Builders, representing the applicants, stated that the current roof is leaking. The stairs need to be replaced and the deck is not appealing. The new roof would be more appealing and provide room for storage.

The public hearing was opened. No testimony was submitted and the hearing was closed.

***Powers moved, second by Sewall, to adopt the resolution approving an expansion permit to replace the flat roof of an accessory structure with a pitched roof at 16816 Grays Bay Blvd.***

***Powers, Sewall, Hanson, Henry, Knight, and Kirk voted yes. Luke was absent. Motion carried.***

Chair Kirk stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

**B. Conditional use permit for an auto body repair and painting business at 13600 Co. Rd. 62.**

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

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

In response to Henry's question, Ingvalson explained that double stacking of parking stalls would not be allowed for vehicles driven by patrons that would be coming and going from a site; however, double-stacked parking areas are allowed when the drivers

moving vehicles are workers on the site. Gordon provided auto dealerships as an example of vehicles allowed to be parked double deep by dealership employees. An auto repair business would operate in a similar manner.

Henry asked how leaking oil and antifreeze would be handled to protect the wetlands. Ingvalson and Wischnack answered that would be regulated and enforced by the state building code and Minnesota Pollution Control Agency.

Sewall confirmed with Ingvalson that a condition of approval would require vehicles waiting to be repaired to be screened. Ingvalson explained that the screening must block the view of the vehicles year round. A seven-foot fence would be adequate.

Richard LaMettry, applicant, stated that he was available for questions.

Henry asked how paint spray would be captured. Mr. LaMettry stated that the business is a licensed, hazardous-waste generator. Everything must be removed by a licensed, hazardous-waste handler which is regulated and inspected by the state. The paint fumes would be filtered so they would not cause hazardous conditions, but may still carry a scent.

Powers confirmed with Mr. LaMettry that this would be his eleventh auto body repair shop. Mr. LaMettry added that there is a loading dock on the building that would not be utilized. It could be fenced and used as storage for vehicles. There is an abundance of office space in the building that could be leased. The warehouse rental would be used for storage.

In response to Henry's question, Mr. LaMettry stated that there would be no buried tanks. He has been in the business since he was 18 years of age and has never been cited for improper handling or disposal of waste.

The public hearing was opened. No testimony was submitted and the hearing was closed.

***Knight moved, second by Hanson, to recommend that the city council adopt the resolution approving a conditional use permit for an auto body repair and painting business at 13600 Co. Rd. 62.***

***Powers, Sewall, Hanson, Henry, Knight, and Kirk voted yes. Luke was absent. Motion carried.***

**9. Other Business**

**A. Concept plan review for a senior rental building at 801 Carlson Parkway.**

Chair Kirk introduced the concept and called for the staff report.

Gordon reported. Staff recommends commissioners provide comments and feedback on the identified key issues and additional issues that commissioners deem appropriate.

Sewall asked if there is a need for hotels. Wischnack has heard of a need for hotels along the I-394 corridor and Ridgedale area. A report was provided on the number of needed commercial and industrial uses in the 2030 comprehensive guide plan.

Rick McKelvey of United Properties, applicant, stated that:

- The site is beautiful, but lacking activity. The 186 apartments geared toward residents 55 years of age and older, hotel, and restaurant would add to the energy of the location.
- Amenities would include an outdoor pickleball court, bocce ball, fire pit, and outdoor pool.
- He hoped that the restaurant would be supported by tenants of the Carlson Towers.
- The existing trails are fantastic.
- The proposal would create a new community.
- United Properties would become a long-term holder and resident of the property.
- He was proud of the design team. He looks forward to providing a fantastic project for the city.
- He was available for questions.

Lukas VanSistine of ESG Architects and Jesse Symynkywica of Damon Farber Landscape Architects introduced themselves. Mr. VanSistine stated that he also worked on the Island Apartments and Avidor Apartments in Minnetonka. Mr. VanSistine stated that:

- He was excited about what was happening on the campus already.
- The applicant has gone through a wide variety of site plan configurations.
- There is a strong east-west access to the site. It fizzles out into the lawn. The proposal would create a north-south access from Carlson Parkway and Lakeshore Parkway. He explained the traffic pattern. It would feel like a quiet street on the front.

Mr. Symynkywica stated that:

- The proposal would complete the site. There would be walking paths and a water feature in the middle. There would be festival areas to provide a movie night or other events to bring the community together. There would be arbors, grills, and outdoor dining areas adjacent to the green area.
- The area between the two buildings would be a green connection for cross pollination between the two projects.
- There would be open green walkways and places to sit and hang out.

- He pointed out the walkway connections and loop.
- The proposal would not impact too many trees. There are existing ash trees which would have to be dealt with, so it would be good to add different species of trees to the site.
- Pollinator gardens and natural plantings would be used to eliminate heavy maintenance. It is a better approach for the future.

Mr. VanSistine stated that:

- The apartment would provide resort-style living. A community would grow within it.
- High-quality materials would be used to complement the towers. Brick and metal panels would be used. Lanterns on the corners would tie in the campus. Bays would provide a home aesthetic rather than a large, blank wall.
- There would be a clear entrance. The entrance to the Carlson Towers would be prominent on the other end.
- Parking would be at grade due to its elevation. He pointed out a parking area that would be below grade.
- The apartments would have a business center, theater, fitness room, club room, great room with dining lounge, workshop, gaming area, and outdoor terrace and outdoor pool.
- There is a movement of people who want to sell their houses and move into a community like the proposed one with built-in activities.
- Much of the parking would be below grade with 1.34 stalls per unit.
- There would be a lounge on the top level to overlook the gardens and court.
- The hotel would use similar materials. This would be a good location due to its visibility from the interstates.

Hanson asked if senior housing is specifically addressed in the comprehensive guide plan. Gordon answered affirmatively. The aging population is large and growing larger. The need shows up in the comprehensive guide plan in the housing study. The proposal fits well with seniors wanting to move out of their single-family houses and stay in Minnetonka.

Wischnack read from the housing study included in the comprehensive guide plan that identifies the need for 170 independent, senior-housing units within one to three years and 320 additional units in five to 20 years and 192 assisted-living units within five years and an additional 199 units after five years. There is a pretty high demand in the independent senior market.

Chair Kirk noted that Applewood sold out as a cooperative. He questioned why the proposal would be for rental apartments and not an ownership cooperative.

Mr. McKelvey explained that United Properties conducted a rigorous market study which found the site attractive due to its access to I-394 and surrounding park land. The applicant was confident the building would be successful.

Powers agreed with the high demand. He thought the building could go higher and provide more units. The area already has mass and distance views. There would be no residences within 300 feet. Mr. McKelvey answered that the proposal would be the largest apartment building United Properties has developed to date.

Henry asked if affordable housing had been considered. Wischnack stated that staff has been discussing the possibility with the applicant. Discussions will continue.

Chair Kirk asked why the proposal would not be a cooperative. Mr. McKelvey described the financing structure. The proposed project would not be able to presell over 60 percent of the units to commence a project. The Applewoods have been very successful. Those are limited to 100 units to 110 units to create a smaller community. The proposed building would be larger, but the site would be able to accommodate the size.

Henry supports the building using less energy. He asked what would be done to minimize energy consumption. Mr. McKelvey stated that energy savings and conservation is a goal at United Properties. The project would go through an energy-design assist process to maximize energy efficiency.

In response to Henry's question, Mr. McKelvey provided that he is leading the construction of a building being built right now in Minneapolis on Hennepin Ave. and Washington that will be powered by steam and chilled water. That building would rely on a renewable source and provide a significant energy reduction. The proposed building would have energy-efficient windows. He was involved with developing the Ford building in Minneapolis which achieved LEED Certification.

Chair Kirk noted that the building codes have been updated to require more energy efficiency. He supports creating green roofs, water capture features and using pervious surfaces instead of impervious surfaces.

Knight asked why the building would not be made taller like student housing near the University of Minnesota. Mr. McKelvey explained how smaller unit sizes could help the student housing at UMN be financially feasible per square foot.

Mr. VanSistine appreciated the support for a tall building. He stated that there is a huge cost increase to construct a building with more than six stories which would make the rent too high. A building more than six stories would cross a threshold that would require the building to have to be 12 or 13 stories, be made of concrete, and have 300 units to be viable.

Sewall asked if the amenities would be shared between the hotel and the apartments. Mr. McKelvey answered in the negative. Apartment residents could purchase services

from hotel staff, but hotel guests would not use the apartment building's amenities. The pickle ball court would be fenced.

Sewall asked where he anticipated most of the traffic would come from at 5 p.m. Mr. McKelvey stated that the vehicles parking in the ramp would empty onto Deer Creek Parkway.

Henry asked if there would be one entrance to underground parking. Mr. VanSistine pointed out on the concept plan that there would be one entrance to the underground parking and a separate one to the at-grading parking area. Half of the 41 at-grade parking stalls would be designated as visitor parking. The parking ramps for the attached office buildings are full during the work week.

Powers asked if the apartments would have storage units. Mr. McKelvey explained that every apartment unit would have a dedicated storage room about 400 square feet in size.

Chair Kirk noted that no one from the public was present to comment.

Hanson appreciated the community the applicant would try to build. He likes the welcoming promenade and landscape architecture. He likes the aesthetics of the building. He was disappointed the building would not be taller than six stories, but understood the economics. He likes the amenities. The use makes sense for the site.

Powers agreed with Hanson. The presentation and property are very nice. The proposal would not add enough to the Carlson Towers area. The demand for this type of living is probably more than anticipated. The proposal looks and feels pretty. He likes the amenities package. The proposal is moving in the right direction.

Henry would like the outdoor spa to be open all year. He questioned if an indoor pool was considered. Mr. McKelvey stated that there would be an indoor pool in the hotel that the apartment residents could utilize for certain events and classes. It would be a large pool. The hotel would be convenient for business travelers and family members of the apartment residents.

In response to Henry's question, Mr. McKelvey pointed out the trails that would make the campus walkable. Chair Kirk was looking for a trail connection on the north. Henry liked the idea of a trail through the woods and appreciated that so many people involved in the project were present to receive feedback. Henry would like special features on the building, such as towers, to give it more pizzazz. He would like to see connections between the lawn area and the south lawn area between the hotel and apartments. He suggested a pass through or grand entrance into the living area that would allow visibility of the amenity area. Mr. VanSistine said that the proposed building would complement the towers, but not override them. Henry liked that philosophy. Mr. VanSistine stated that the brick would have a modern sheen and finish. The proposal strives to find a balance of traditional and modern.



The public spaces reminded Knight of the public spaces in Paris, Madrid, and Munich. He really likes the public spaces. This would be fantastic. He had no issues with the appearance of the buildings. He likes the proposal. It is a shame that the building could not be taller, but he understood the options. He likes the concept plan.

Sewall likes the openness and green space. Other applications for apartments attempted to shoe-horn a building onto a property. It would be a great place to live. The land use would be appropriate. The entrances would be back, farther off of Carlson Pkwy. That is smart from a traffic stand point. The building is fine. He understood the economics that would prevent going higher. He loves the landscaping and open spaces.

Chair Kirk thinks the proposed building would be exactly the right height. He saw the Carlson Towers as being very iconic. He would struggle with the appearance of a taller building competing with the towers. He would choose a six-story building over a 12-story building. He agreed that the openness would be great. He saw brick as timeless. Mixing other elements with the brick would provide more modern elements. He encouraged implementing affordable housing and utilizing sustainable practices in the proposal.

**10. Adjournment**

***Sewall moved, second by Hanson, to adjourn the meeting at 8:23 p.m. Motion carried unanimously.***

By: \_\_\_\_\_

Lois T. Mason  
Planning Secretary

**Minnetonka Planning Commission Meeting**  
Dec. 19, 2019

**Agenda Item 7**

Public Hearing: Consent Agenda

**NONE**

**Minnetonka Planning Commission Meeting**  
Dec. 19, 2019

**Agenda Item 8**

Public Hearing: Non-Consent Agenda

**MINNETONKA PLANNING COMMISSION**  
**Dec. 19, 2019**

<b>Brief Description</b>	Conditional use permit, with a parking variance, for a fast food restaurant at 3432 County Road 101
<b>Recommendation</b>	Recommend the city council adopt the resolution approving the request

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**Background**

In 2018, Nautical Bowls was granted a conditional use permit (fast food restaurant) and variances (parking and distance from residential properties) to operate their business out of the Minnehaven Square shopping center (17603 County Road 101).

**Existing Property Information**

- **Location:** Southwest of the Minnetonka Blvd./County Road 101 intersection
- **Zoning:** B-2, Limited Business District
- **Land Use:** Commercial
- **Existing Uses:** Office (Lindsay Group and Relief Plus Chiropractic) and Commercial (Caribou)
- **Access:** County Road 101
- **Lot Size:** 0.65 acres (28,600 sq. ft.)
- **Building:** The site is improved with an approximately 11,000 square-foot, two-story, office, and commercial building (built in 2006).
- **Parking:** 125 existing shared spaces with northern property (variance approved in 2018 from 186 spaces)



**Proposal**

The applicant, Bryant Amundson, is proposing to operate a fast-food restaurant within one of the first-floor tenant spaces at 3432 County Road 101. If approved, Nautical Bowls would move their operation out of the Minnehaven Square building to the subject building. The proposal

includes interior building changes, but no exterior building improvements (except a wall sign) are proposed at this time. This proposal requires:

- Conditional Use Permit for a Fast Food Restaurant: By city code, fast food restaurants are a conditionally permitted use within the B-2 zoning district. This proposal requires a conditional use permit (CUP).
- Parking Variance: By CUP standard, restaurants must provide parking in compliance with the requirements of the parking ordinance. The proposal requires a parking variance from 192 spaces to 125 spaces.

### **Proposed Space and Use**

As proposed, Nautical Bowls would move into a 1,600 square-foot space that was previously occupied by Verizon. The interior of the building would be remodeled to accommodate the proposed fast-food restaurant, but no exterior changes have been proposed. Per the plan, the remodeled space would accommodate seating for 32 people, a 14-person increase from their previous space. (See attached.)

Similar to the existing space, Nautical Bowls will primarily serve acai bowls. These are dishes whose main ingredient is pureed acai berries with other ingredients (granola, bananas, blueberries, strawberries, coconut, etc.). The applicant has noted that there would be a minimum of two employees on-site at all times. Additionally, the restaurant would generally be open:

- Summer Hours (April-Sept.): 8 a.m. – 8:30 p.m.
- Winter Hours (Oct.-March): 9 a.m. – 7 p.m.

The applicant has indicated that they do not intend to apply for a liquor license.

### **Primary Questions and Analysis**

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

- **Is the proposed restaurant use appropriate?**

Yes. The city conditionally permits fast food restaurants within the B-2 district. Furthermore, a fast food restaurant on the subject property would not be out of character for the development area. There are currently businesses with a "to-go option" just north of the property (Mandarin Yang's and Holiday State Store), and on the subject property (Caribou Coffee).

- **Does the proposal meet the general and specific conditional use permit standards?**

Yes. The proposal has been reviewed by the city's building, engineering, planning, natural resources, and fire staff and found that it would meet all of the general and specific conditional use permit standards, except for the parking requirements.

- **Can anticipated parking demands be accommodated?**

Yes. A parking study was completed in 2005 by WSB, and the Lindsay Group reevaluated parking in 2018. The studies looked at the two parcels owned by the Lindsay Group – 17603 Minnetonka Blvd. and 3432 County Road 101, as the parcels have a shared parking agreement. Both of these parking studies determined that the two properties are over parked.

The 2005 study determined that the two parcels only needed 106 total parking spaces between the two sites to meet the parking demand (125 spaces are currently available).

The 2018 parking review showed that typically, there is at least 50 percent of the parking spaces available, with the lowest parking availability for either site being 40 percent available during the reviewed times. (See Supporting Information and attached.)

Lastly, staff has not received any parking complaints about the site since Nautical Bowls opened in 2018. To verify, staff visited during four different times (morning, afternoon, evening) over two weeks in December, and the site consistently had at least 30% of the parking spaces available.

### **Staff Recommendation**

Recommend the city council adopt the resolution approving a conditional use permit, with a parking variance, for a fast-food restaurant at 3432 County Road 101.

Originator: Drew Ingvalson, Planner

Through: Loren Gordon, AICP, City Planner

### Supporting Information

<b>Project No.</b>	05063.19a
<b>Property</b>	3432 County Road 101
<b>Applicant</b>	Bryant Amundson, owner of Nautical Bowls
<b>Surrounding</b>	Northerly: Multi-tenant Building, zoned B-2, guided commercial Easterly: Spasso Restaurant (across County Road 101), zoned B-2, guided commercial. Southerly: Minnetonka Tennis Club, zoned B-1, guided service commercial. Westerly: Single-Family Homes, zoned R-1, guided low-density.
<b>Planning</b>	Guide Plan designation: Commercial Zoning: B-2, limited business district
<b>Background Information</b>	<p>The subject property contains an 11,000 square foot building. The building consists of both commercial tenants (1<sup>st</sup> floor, Caribou, and previously occupied by Verizon) and office tenants (Lindsay Group, Relief Plus Chiropractic). Nautical Bowls has proposed to fill the vacant space on the first floor (previously occupied by Verizon).</p> <p>The subject property has 44 parking spaces (1 proof of parking); however, the subject property has a shared parking agreement with the northern property (Minnehaven Square). Combined, there are 125 parking spaces.</p>
<b>History</b>	<p>In 2000, the property north of the subject property (owned by Holiday Gas Companies) received:</p> <ul style="list-style-type: none"><li>• A conditional use permit to redesign the existing gas service area; and</li><li>• Site and building plan review approval to replace a canopy, gas pumps, and remove an existing structure.</li></ul> <p>In 2005, the subject received:</p> <ul style="list-style-type: none"><li>• A conditional use permit for a two-story building with a fast food restaurant (Caribou Coffee);</li><li>• Site and building plan review approval;</li><li>• A setback variance from the right-of-way;</li><li>• A parking variance (with a shared property agreement with the subject property); and</li><li>• A drive aisle width variance.</li></ul> <p>In 2006, the subject property received a conditional use permit for an outdoor eating area for a coffee shop (Caribou Coffee).</p> <p>In 2018, Nautical Bowls was granted:</p>



- A conditional use permit (fast food restaurant) associated with a tenant space on the northerly property; and
- Variances (parking and distance from residential properties).

**2005 Parking Study**

A parking study was commissioned in 2005 for the subject property (3450 County Road 101), but also reviewed the northern property. The parking study was requested to answer the following questions:

1. Would the project meet the city code parking requirement by itself?
2. Would the project meet the code parking requirements if considered in combination with Minnehaven Square (the subject property)?
3. Would the number of parking spaces required by code be necessary to meet the parking demand for this development?

The full parking study prepared by WSB and Associates is attached. The following is intended to summarize the study:

- The proposal at 3450 County Road 101 would not meet city code required parking.
- If the project was considered in combination with the northern property (Minnehaven Square), the project would still not meet code parking requirements.
- Even though the subject properties did not meet city code parking requirements, the parking study determined that the parking lots on the two properties could accommodate the predicted parking demand. Specifically, the study indicated that 106 total parking spaces would be needed between the two sites. As proposed, the two properties would have 125 total parking spaces. The two lots were considered combined as there is a cross parking agreement between the two sites; however, individual parcel parking needs are described below.

Site	City Code Requirements	Parking Study Requirements	Approved Parking
17603 Mtka Blvd.	115	62	81
3432 Co. Rd. 101	54	44	38 (7 proof of parking)
<b>Combined</b>	<b>169</b>	<b>106</b>	<b>125</b>

(See attachments for complete parking study.)

**2018 Parking Study**

In Jan. 2018, the Lindsay Group conducted a parking review of 17603 Minnetonka Blvd. and 3432 County Road 101 to determine the number of parking spaces available during various times of the day from Friday, Jan. 26, 2018 to Wednesday, Jan. 31, 2018. The following is intended to summarize the review:

- The properties rarely have less than 50 percent of parking available.
- The lowest parking availability for the northern property was at 6 p.m. when 40 percent of parking was available.
- The lowest parking availability for the subject property was at 2 p.m. when 54 percent of the parking was available.

(See attachments for complete parking review table.)

**Parking Requirement Deficit**

Due to a shared parking agreement between the subject parcel and the northerly adjacent parcel, this review will be based on parking for the combined sites.

In 2018, the subject property was granted a variance to allow Nautical Bowls to increase the site's parking demand on the shared parking lot to 186 spaces when only 125 parking spaces existed.

With the subject proposal, Nautical Bowl would again be increasing the parking demand for the site. This increase is created as the proposed space is 500 square feet larger than the existing Nautical Bowls space, and the proposed use has a higher parking demand than the previous tenant (retailer, Verizon). Total site parking demand would increase by 6 parking spaces per city code or 192 in total for the site. This increase in parking demand requires a variance from the city's parking performance standards.

Site	City Code Requirements	Approved Parking
17603 Mtkka Blvd.	118	81
3432 Co. Rd. 101	74	44 (1 proof of parking)
<b>Combined</b>	<b>192</b>	<b>125</b>

**CUP Standards**

The proposal would meet all but one of the general CUP standards as outlined in City Code §300.21 Subd.2:

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

**Finding:** The proposed use is consistent with the ordinance. A fast-food restaurant is a conditionally-permitted use within the B-2 district.

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

**Finding:** The proposed use is consistent with the goals, policies, and objectives of the comprehensive guide plan.

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

**Finding:** The proposal has been reviewed by the city's building, engineering, planning, natural resource, and fire staff. Staff has determined that it would not have an undue adverse impact on governmental facilities, utilities, services, or existing or proposed improvements.

4. The use is consistent with the city's water resources management plan;

**Finding:** The proposal is consistent with the city's water resources management plan. No additional impervious surface is proposed to the property at this time.

5. The use is in compliance with the performance standards specified in section 300.28 of this ordinance; and

**Finding:** The majority of the performance standards outlined in the zoning ordinance are related to development and construction. The proposal is for the use of existing building space with no additions. Except for the parking variance to allow a reduction of required parking, the proposal would meet the standards outlined.

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

**Finding:** Staff does not believe that the proposal would have an undue adverse impact on the public's health, safety, or welfare.

The proposed restaurant would meet all of the specific conditional use permit standards for fast food restaurants as outlined in City Code §300.21 Subd.4(f):

1. Shall be located only on sites having direct access to minor arterial streets or service roads;

**Finding:** The subject property has access to County Road 101, an arterial road.

2. Public address systems shall not be audible from any residential parcel:

**Finding:** The applicant has not proposed any public address systems.

3. Stacking for a minimum of six cars per aisle shall be provided within applicable parking lot setbacks;

**Finding:** The applicant has not proposed a drive-up or any changes to the existing parking lot.

4. Shall not be permitted when traffic studies indicate significant impacts on the levels of service as defined by the institute of traffic engineers of adjacent streets and intersections; and

**Finding:** Staff has reviewed the proposal and does not believe that it would significantly impact the level of service of adjacent streets or intersections.

5. Buildings shall be setback at least 100 feet and screened from any adjacent property designated in the comprehensive plan for residential use.

**Finding:** The subject building is located over 100-feet from the nearest residentially guided property. In addition, the existing building is screened from adjacent properties by vegetation and a fence.

#### **Variance Standards**

The proposal for a parking variance would meet the variance standard outlined in City Code §300.07 Subd. 1(a).

1. The variance is in harmony with the general purposes and intent of this ordinance;

**Finding:** The intent of the ordinance, as it pertains to parking requirements, is to ensure adequate parking is provided to meet anticipated parking demand. A parking study was completed in 2005 by WSB and the Lindsay Group reevaluated the site's parking in 2018. Both of these parking studies determined that the subject parcel/adjacent parcel is over-parked and could accommodate the fast food restaurant at their relocation, thus meeting the intent of the ordinance.

2. The variance is consistent with the comprehensive plan;

**Finding:** The proposed use is consistent with the goals, policies, and objectives of the comprehensive guide plan.

3. There are practical difficulties in complying with the ordinance;

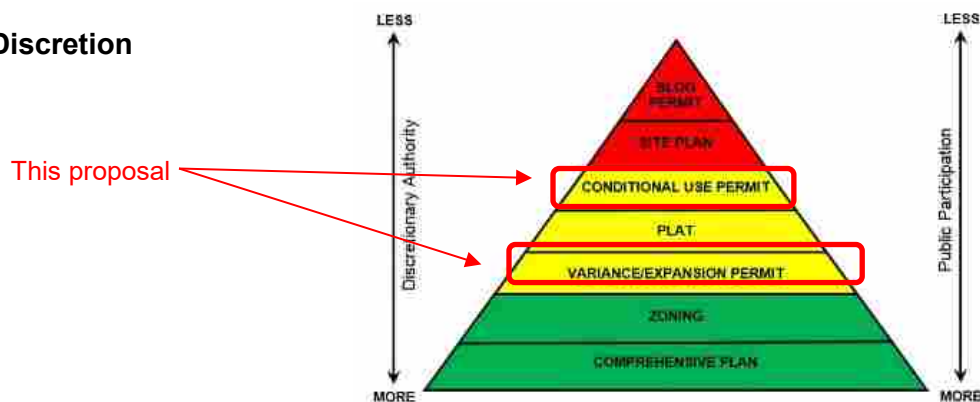
- a. The proposed use is reasonable, and the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations;

**Finding:** The subject lot and the northerly adjacent parcel have several different uses that complement each other because they have differing peak demand times. Due to these differing peak demands, the site has not experienced a parking deficit despite not meeting city code parking requirements. The 2005 parking study completed by WSB and the Lindsay Group reevaluation of the site's parking in 2018 both determined that the request for the parking variance is reasonable as it is expected that the parking demand for the site would be met.

- b. The proposed use would not alter the essential character of the surrounding area.

**Finding:** The two parking studies completed for the subject site and northerly adjacent property have determined that the existing site should be able to accommodate the additional parking demand of the fast food restaurant and its relocation. Due to this information, the parking variance is not expected to alter the essential character of the neighborhood.

### Pyramid of Discretion



### Motion Options

The planning commission has three options:

1. Concur with staff recommendation. In this case, a motion should be made recommending the city council adopt the resolution approving the proposal.
2. Disagree with staff's recommendation. In this case, a motion should be made recommending the city council deny the request. This motion should include reasons for the denial recommendation.

3. Table the requests. In this case, a motion should be made to table the item. The motion should include a statement for why the request is being tabled with direction to staff, the applicant, or both.

**Voting Requirement**

The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of a simple majority. The city council's approval requires an affirmative vote of five members.

**Neighborhood  
Comments**

The city sent notices to 70 area property owners and has received no comments to date.

**Deadline for  
Decision**

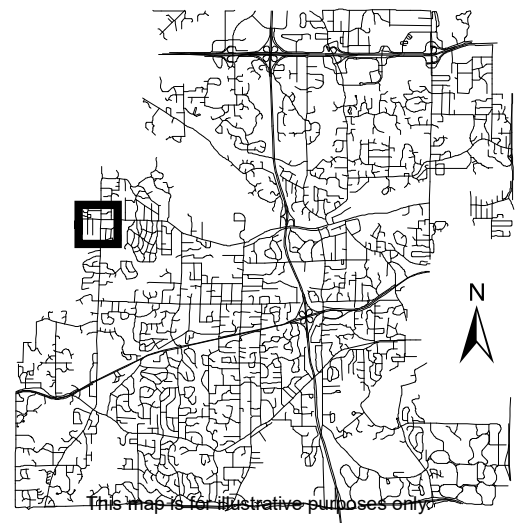
March 2, 2020





### Location Map

Project: Nautical Bowls  
Address: 3432 Co Rd 101



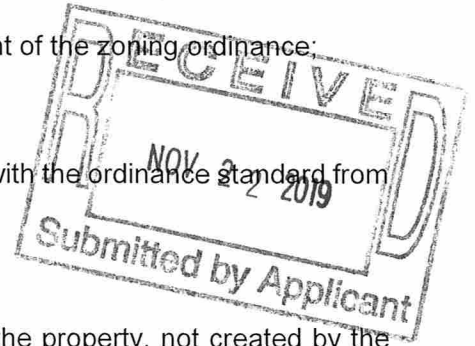
This map is for illustrative purposes only.



**PRACTICAL DIFFICULTIES WORKSHEET**

By state law, variances may be granted from the standards of the city's zoning ordinance only if:

- 1) The proposed variance is in harmony with the general purpose and intent of the zoning ordinance;
- 2) The proposed variance is consistent with the comprehensive plan; and
- 3) An applicant establishes that there are practical difficulties in complying with the ordinance standard from which they are requesting a variance. Practical difficulties means:
  - The proposed use is reasonable;
  - The need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and
  - The proposed use would not alter the essential character of the surrounding area.



<b>PRACTICAL DIFFICULTIES</b>	
<b>Describe why the proposed use is reasonable</b>	<p><i>Nautical Bowls is already an existing tenant in the same complex and has been previously approved by the city.</i></p> <p><i>The use of the space has not changed in one year of operation as a healthy fast-casual restaurant concept.</i></p> <p><i>Reasonable because we are not adding any use on top of what we already have since 2018.</i></p>
<b>Describe:</b> <ul style="list-style-type: none"> <li>• circumstances unique to the property;</li> <li>• why the need for variance was not caused by the property owner; and</li> <li>• and why the need is not solely based on economic considerations.</li> </ul>	<p><i>This variance was caused because Nautical Bowls is moving locations from one site on a lot to another.</i></p> <p><i>The new location being slightly bigger has triggered the variance. No part of the use of the space has altered.</i></p> <p><i>We believe our concept has brought some great and positive energy to the corner of Minnetonka blvd and County Rd 101 and we aim to continue that up and up well into the future.</i></p> <p><i>One think to note is this lot has two buildings on it that share the parking spaces as they all blend together to create a cohesive parking lot.</i></p>
<b>Describe why the variance would not alter the essential character of the neighborhood</b>	<p><i>Nautical Bowls would not alter the character of the neighborhood in any fashion besides that of a positive one.</i></p> <p><i>We have been incredibly well received in the Minnetonka community, finally serving a quick and healthy meal to locals and those from surrounding neighborhoods and cities.</i></p>

**VARIANCE APPLICATIONS WILL NOT BE ACCEPTED IF THIS WORKSHEET IS NOT COMPLETE**

**PROCESS**

Existing Space



Proposed Space







Proposed Space

For Lease  
952 897 7720  
www.colliers.com/msp  
Zac Hoang Lauren Kessler  
Colliers International

Caribou COFFEE  
DRIVE THRU

3434

3432

Caribou COFFEE  
DRIVE THRU

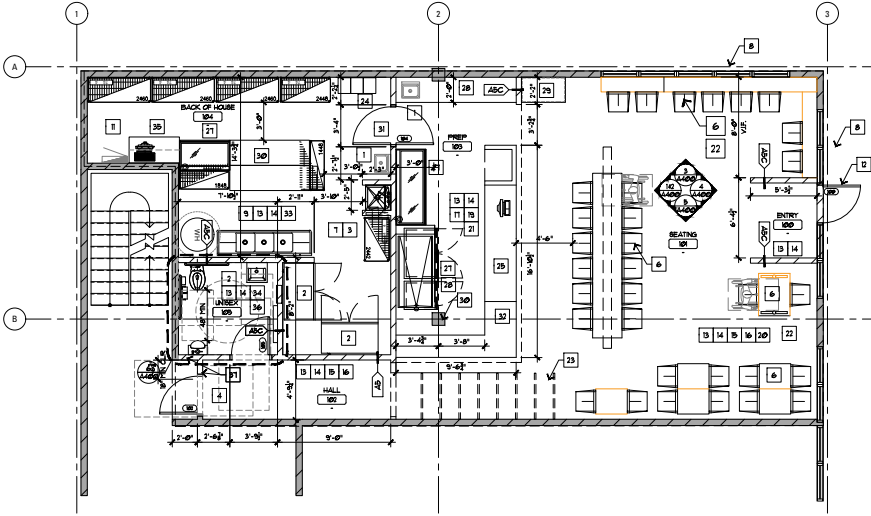




Proposed Space

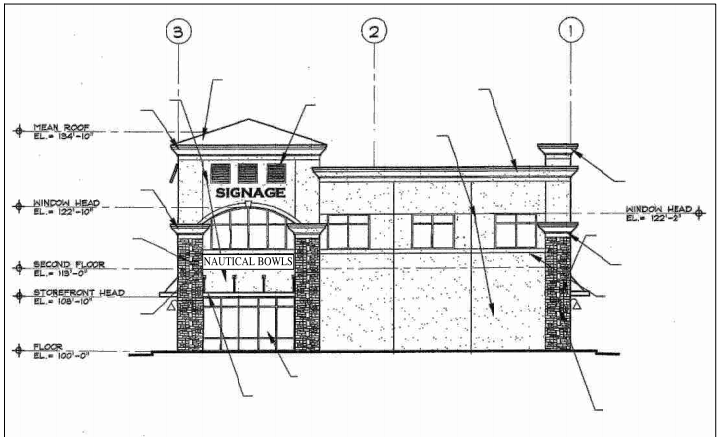




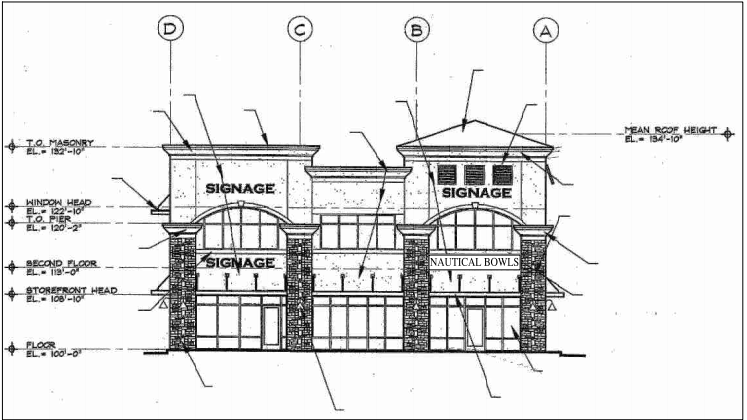


1 FLOOR PLAN  
1/4"=1'-0"





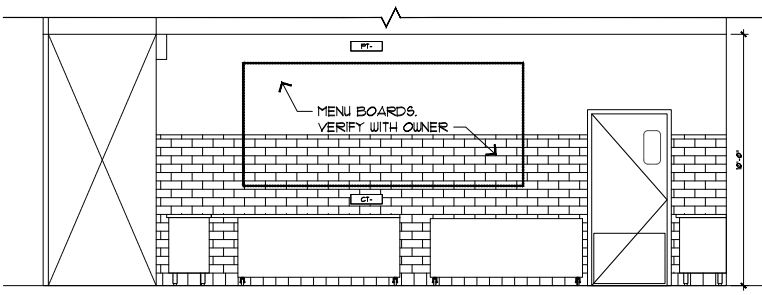
1 EXISTING EXTERIOR ELEVATION - SOUTH  
18'-1'-0"



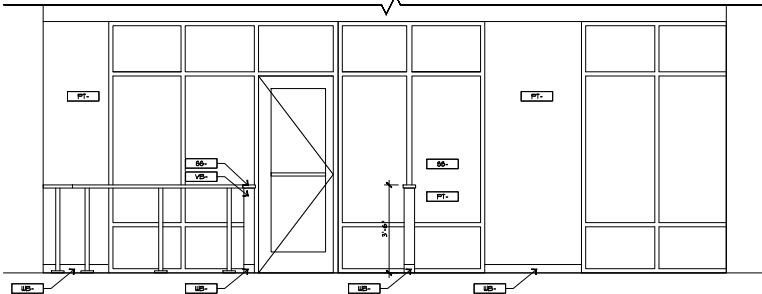
2 EXISTING EXTERIOR ELEVATION - NORTH  
18'-1'-0"

Revisions

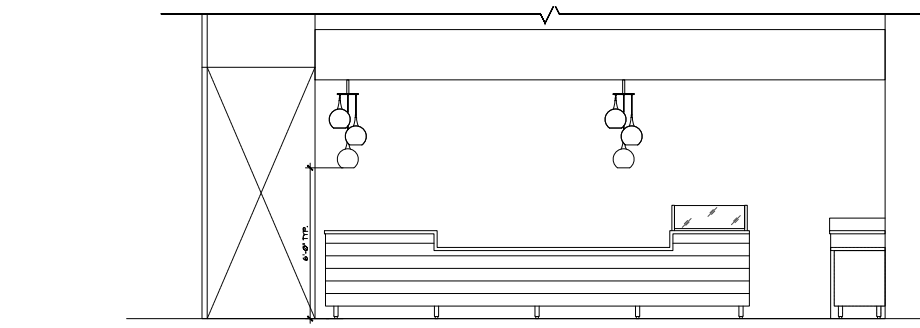
No.	Date	Description



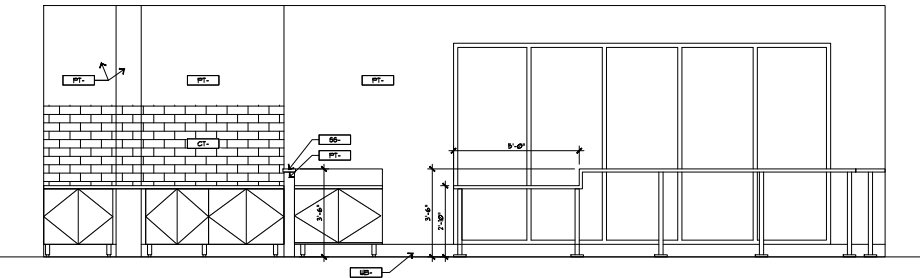
2 INTERIOR ELEVATION - WEST • BEHIND P.O.S.  
 12'-11-0"



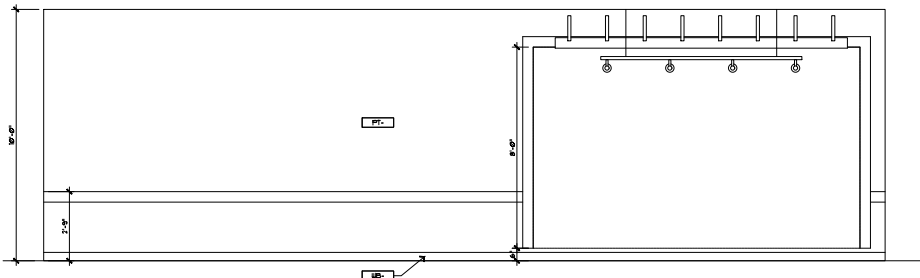
4 INTERIOR ELEVATION - EAST • ENTRY  
 12'-11-0"



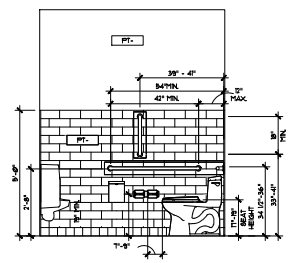
1 INTERIOR ELEVATION - WEST • P.O.S.  
 12'-11-0"



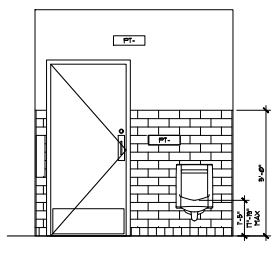
3 INTERIOR ELEVATION - NORTH • SEATING  
 12'-11-0"



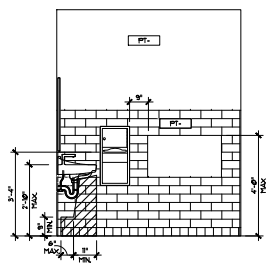
5 INTERIOR ELEVATION - SOUTH • SEATING / MURAL  
 12'-11-0"



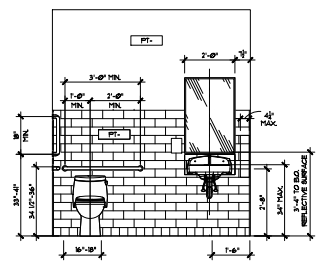
10 WEST RESTROOM ELEVATION  
 12'-11-0"



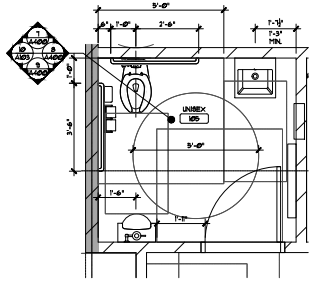
9 SOUTH RESTROOM ELEVATION  
 12'-11-0"



8 EAST RESTROOM ELEVATION  
 12'-11-0"

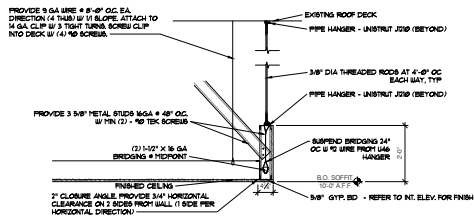


7 NORTH RESTROOM ELEVATION  
 12'-11-0"

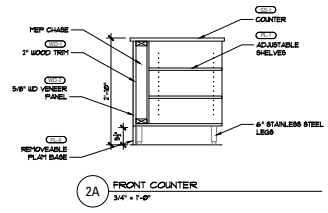
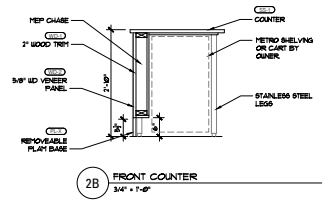


6 ENLARGED RESTROOM PLAN  
 12'-11-0"





1 SOFFIT CONNECTION DETAIL  
3/4" x 1'-0"



No.	Date	Description
01	09/27/19	REVISION SUBMITTAL

<b>Minnehaven Square</b>			
	Sq Ft	Spaces Needed per City Code	
Minnehaven Barbers	510	5.0	minimum
Anna Nails	600	5.0	minimum
GQ Tailors	600	5.0	minimum
Anytime Fitness	4,671	20.8	
Mandarin Yang	3,000	50.0	
Holiday	4,360	17.4	
Beauphoria	1,218	4.9	
Cigar Jones	1,374	5.5	
New Retail Tenant	1,100	4.4	
<b>Required</b>		<b>118</b>	
<b>Available</b>		<b>81</b>	
<b>3450 County Road 101</b>			
Caribou	1,840	30.7	
Lindsay Group	1,863	7.5	
Chiropractor	1,291	5.2	
Proposed Nautical Bowls	1,600	26.7	
Storage	3,760	3.8	
<b>Required</b>		<b>73.9</b>	
<b>Available</b>		<b>44</b>	
<b>Total Needed</b>		<b>192</b>	
<b>Total Available</b>		<b>125</b>	

**MINNEHAVEN WEEKDAY VEHICLE COUNT- 81 Spaces Available**

Time Date	7:30 AM	8:15 AM	9:15 AM	9:45 AM	10:00 AM	11:15 AM	12:00 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	4:00 PM	4:30 PM	5:00 PM	6:00 PM	Average per Time Frame
F 1/26/18									41			51	49				47
M 1/29/18						38	42	47		46		35	37	34	40	49	40.9
T 1/30/18	14	34			37	34	35	36		39	38	44	48		56	49	38.7
W 1/31/18	24	33	34	35	35	35	41	40		29						49	34
<b>Average</b>	<b>19</b>	<b>33.5</b>	<b>34</b>	<b>35</b>	<b>36</b>	<b>36</b>	<b>39.3</b>	<b>41</b>	<b>41</b>	<b>38</b>	<b>38</b>	<b>43.3</b>	<b>44.7</b>	<b>34</b>	<b>48</b>	<b>49</b>	<b>38</b>
<b>Total Available</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>	<b>81</b>
<b>Percentage Left Available</b>	76.5%	58.6%	58.0%	56.8%	55.6%	56.0%	51.4%	49.4%	49.4%	53.1%	53.1%	46.5%	44.9%	58.0%	40.7%	39.5%	53.0%

**3450 COUNTY ROAD 101 / CARIBOU WEEKDAY VEHICLE COUNT- 48 Spaces Available**

Date																	Average per Time Frame
F 1/26/18									18			19	15				15.3
M 1/29/18						23	14	9		13		17	20	18	14	10	19.7
T 1/30/18	3	13			22	23	19	21		32	21	25	20		19	18	15.6
W 1/31/18	8	13	16	14	15	19	16	18		21						14	16.8
<b>Average</b>	<b>5.5</b>	<b>13</b>	<b>16</b>	<b>14</b>	<b>18.5</b>	<b>21.7</b>	<b>16.3</b>	<b>16</b>	<b>18</b>	<b>22</b>	<b>21</b>	<b>20.3</b>	<b>18.3</b>	<b>18</b>	<b>16.5</b>	<b>14</b>	<b>16.8</b>
<b>Total Available</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>	<b>48</b>
<b>Percentage Left Available</b>	88.5%	72.9%	66.7%	70.8%	61.5%	54.9%	66.0%	66.7%	62.5%	54.2%	56.3%	57.6%	61.8%	62.5%	65.6%	70.8%	65.0%

**MINNEHAVEN WEEKEND VEHICLE COUNT**

Time Date	11:00 AM	3:00 PM
S 1/27/18	49	36
<b>Average</b>	<b>42.5</b>	
<b>Total Available</b>	<b>81</b>	
<b>Percentage Left Available</b>	47.5%	

**3450 COUNTY ROAD 101 / CARIBOU WEEKEND VEHICLE COUNT**

Date		
S 1/27/18	17	12
<b>Average</b>	<b>14.5</b>	
<b>Total Available</b>	<b>48</b>	
<b>Percentage Left Available</b>	69.8%	



WSB & Associates, Inc.  
701 Xenia Avenue South, Suite 300  
Minneapolis, MN 55416  
(763) 541-4800 (tele)  
(763) 541-1700 (fax)

## Memorandum

Date: August 2, 2005

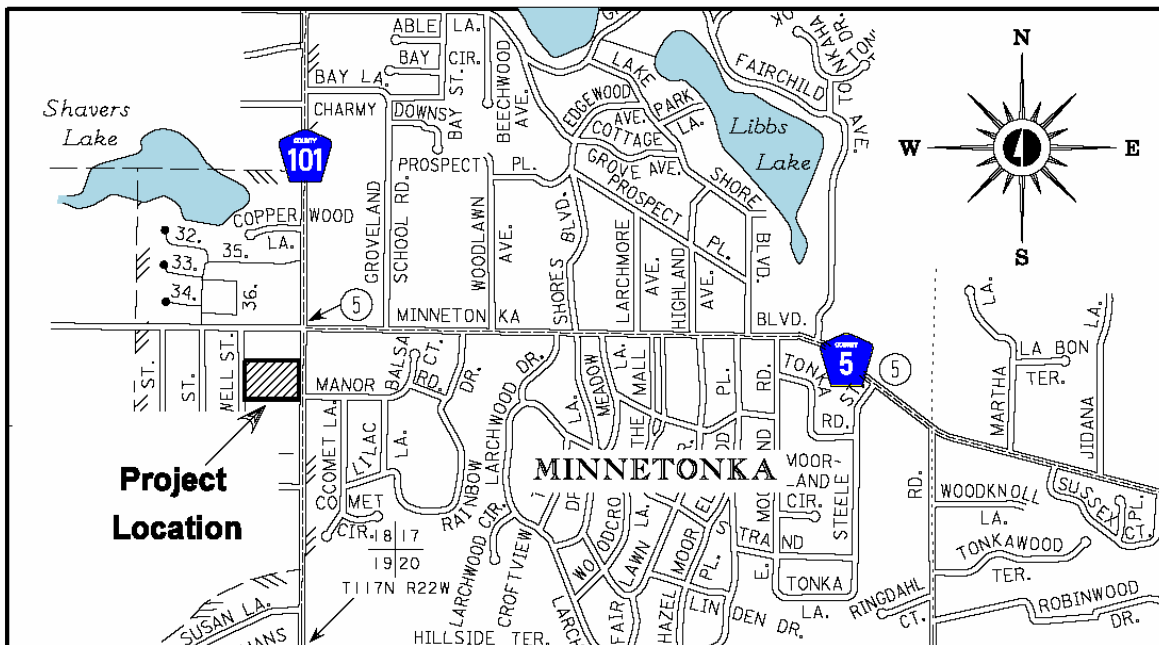
To: Mr. Geoff Olson, Planning Director

From: Tony Heppelmann

Re: Lindsay Group Development Parking Study (Minnetonka Blvd and CR 101)

The purpose of this study is to evaluate the number of parking spaces required for a proposed development by the Lindsay Group located south of Minnetonka Boulevard on the west side of CR 101. The proposed development is adjacent to the existing Minnehaven Square. The proposed development and Minnehaven Square will have a common circulation isle on the property line and will be able to share parking between the two developments. See **Figure 1** for the project location. This parking study addresses three questions regarding this development.

1. Will the project meet the code parking requirements by itself?
2. Will the project meet the code parking requirements if considered in combination with the Minnehaven Square?
3. Is the number of parking spaces required by code necessary to meet the parking demand for this proposed development?



**Figure 1. Project Location**

## 1. Proposed Development

The proposed development will consist of a two-story building with a basement. The top level of the building will have 3,760 SF of office space. The ground floor will have 2,220 SF of retail space and 1,540 SF containing a restaurant/coffee shop. The basement will be 3,760 SF used for storage.

## 2. Relationship to Existing Development

The proposed development is located directly south of Minnehaven Square. Both developments are under the same ownership. The parking lot on the east side of the proposed development will have a common circulation isle with the south side of the parking lot for Minnehaven Square. Customers from Minnehaven Square and the proposed development can, and will, park in both lots. It is most likely that the west (back) lot behind the proposed development will be used by the office employees and the employees in both Minnehaven Square and the proposed development. This will allow for customers of the retail and restaurant development to park in the east lot (in front of the building) as well as in the existing parking lot at Minnehaven Square

## 3. Proposed Parking Supply

The proposed development will add 41 new parking spaces. Twenty-four (24) parking spaces are on the west side of the site behind the proposed building and 13 parking spaces are located on the east side of the proposed building near the access to CR 101. Also, four (4) new parking spaces will be created on the south side of the existing Minnehaven Square parking lot when the existing curb and circulation isle are removed and a new circulation isle created on the proposed development site. Land for an additional seven (7) parking spaces has been reserved on the far west side of the site for Proof of Parking. This brings the total potential new parking spaces to 48. See **Figure 2** for the site plan.

## 4. City Ordinance Parking Requirements

The City of Minnetonka “Code of Ordinances” provides parking requirements for various land use types. The proposed development could be classified as either a mixed use building or a neighborhood shopping center in the city code. Because office space is located on the second floor of the building it was determined that the mixed use building classification is the most appropriate for calculating the parking requirements for this project. **Table 1** summarizes the applicable parking requirements from the “Code of Ordinances” and applies the requirements to the proposed land uses and floor areas. Based on the “Code of Ordinances” and assuming there is no shared parking, fifty-four (54) parking spaces are required. The proposed parking spaces will not meet the city parking code requirements if the building is considered by itself.

Because of the relationship of the proposed development to the existing Minnehaven Square the proposed development was considered with the Minnehaven Square to determine whether the combined site would meet the code requirements for parking. The existing Minnehaven Square is considered to be a Neighborhood Shopping Center. **Table 2** summarizes the applicable parking requirements as applied to the existing neighborhood shopping center. The table shows that the existing Minnehaven Square requires 115 spaces based on the parking

code. There are currently 72 spaces provided on the site. **Table 2** also shows the number of spaces that would be required if it Minnehaven Square were classified as a mixed use building. The number of parking spaces required if treated as a mixed use building is less. This is because the parking required for shopping center is 4.5 spaces per 1,000 square feet while the parking requirement for a single retail use is 4.0 spaces per 1,000 square feet. The code is somewhat contradictory to actual experience in that typically the parking demand for a stand alone retail use is higher than for a mixed use where parking for different uses will peak at different times. **Table 2** shows that, in either case, combining the proposed development and the existing Minnehaven Square will not achieve the code required parking, since neither by themselves meet the code requirements for parking.

## 5. Shared Parking Demand

The last question this study addresses is whether the number of parking spaces required by the code is necessary and whether the proposed parking is adequate to meet demand. The application of the City “Code of Ordinances” parking space rates for single-use developments may over estimate the number of parking spaces needed in a mixed-use development. Because the maximum parking demand occurs at different times for different land uses, the total peak demand for a mixed-use development is often less than the sum of the maximum parking demands for each of the individual uses. For example, a church and an office building may have a combined peak demand that is much less than the sum of the peak demand for each use, since they generate that demand at completely different times. Similarly, the parking demand for office, retail, and restaurant uses also peak at different times creating an opportunity to share some of the parking spaces.

The Urban Land Institute (ULI) has surveyed the hourly parking demand for a number of different land uses for weekdays and Saturdays, and based on the surveys, has determined the percentage of peak demand that occurs during each hour. The results of these surveys are summarized in a report titled “Shared Parking Demand”. **Table 3** and **Table 4** summarize the results for the land uses proposed in this development. These percentages were applied to the parking rates in the City Code for each land use in the proposed development and a combined peak demand was estimated for the proposed development by adding up the parking demand for each hour; see **Table 5** and **Table 6** respectively. The hour from 12:00 p.m. – 1:00 p.m. on a weekday was determined to be the peak for the proposed development with a demand of 44 parking spaces. The Saturday peak was in the hour from 5:00 p.m. to 6:00 p.m. with a demand of 30 parking spaces. Based on the estimated shared parking demand, the proposed development would have adequate parking with the proof of parking spaces.



The actual parking demand for the Minnehaven Square was surveyed to determine whether parking may be available for use by the proposed development. Minnehaven Square has 72 total parking spaces. Counts of vehicle occupied parking spaces were taken at different times of the day over a period of approximately one week. The results are shown in **Table 7**. The maximum number of vehicles parked in the Minnehaven Square lot during the times surveyed was 50 vehicles on Friday, July 8 at 4:45 p.m. The next highest demand was 44 vehicles on July 5 at 1:00 p.m. This time period correlates to the peak demand for shared parking for the proposed development. Based on the ULI surveys of seasonal variations in parking demand for different land uses, the maximum parking demand in July for retail use is 75% of the peak parking demand during the year. The restaurants and office space are at 100% of the peak demand during July. Therefore, the peak parking demand for the existing development obtained by factoring up the peak parking count is 62 parking spaces.

An estimate was made of the maximum shared parking demand for Minnehaven Square using the same methodology used for the proposed development. The hourly percentages from the ULI "Shared Parking" were applied to the City Code parking rates for each land use in the existing development, to find the combined peak-hour parking demand for the existing development. The analysis indicates the joint peak parking demand occurs from 12:00 p.m. to 1:00 p.m. on a weekday and is 87 parking spaces. These calculations are shown in **Table 8**. Given that the actual parking counts are much less than the calculated parking demand, the shared parking methodology seems to be a very conservative estimate of parking needs. Therefore, it is our conclusion that the code required parking spaces are not need for this development and that the number of parking spaces that are proposed should be sufficient for the development.

## **6. Conclusions**

The proposed development will provide 41 new parking spaces for its tenants and customers, and seven (7) proof of parking spaces could be added on the west side of the site for a total of 48 new parking spaces. This is less than the 54 parking spaces required by City Code. However, a shared parking analysis for this site indicates that not all the parking spaces required by City Code are needed for this project. A shared parking demand analysis for the proposed development indicates that a maximum of 44 parking spaces would be needed for the proposed development, which is more than the 41 proposed but less than the 48 which could be provided with the proof of parking spaces. The existing development to the north which is under the same ownership has 72 total parking spaces available and an estimated maximum parking demand of 62 spaces based on actual parking counts of the site. This leaves ten (10) spaces available for use by either site. Based on the shared parking analysis and the existing parking counts for Minnehaven Square, it is our conclusion that the proposed 41 new parking spaces plus the seven (7) proof of parking spaces is adequate to meet the parking needs of the proposed development.



**Table 1. Proposed Development Parking Requirements by  
 City of Minnetonka “Code of Ordinances”**

	<b>Development Floor Area</b>	<b>“Code of Ordinances” Parking Spaces per 1000 S.F. Mixed Use Development</b>	<b>Required Parking Spaces</b>
<b>Land Use</b>	<b>1000 S.F.</b>		
<b>Office</b>	3.76	4	15
<b>Retail</b>	2.22	4	9
<b>Restaurant</b>	1.54	16.7	26
<b>Storage</b>	3.76	1	4
<b>Total</b>	11.19		<b>54</b>

**Table 2. Minnehaven Square Parking Requirements by  
 City of Minnetonka “Code of Ordinances”**

	<b>Development Floor Area</b>	<b>Shopping Center “Code of Ordinances” Parking Spaces per 1000 S.F.</b>	<b>Required Parking Spaces</b>
<b>Land Use</b>	<b>1000 S.F.</b>		
<b>Shopping Center</b>	14.5	4.5	65
<b>Restaurant</b>	3.0	16.7	50
<b>Total</b>	17.5		<b>115</b>

**Table 3. Weekday Hourly Parking Demand Ratios <sup>1</sup>**  
**(Percentage of Peak Demand Occurring Each Hour)**

	<i>Time of Day</i>											
	<i>7:00 AM</i>	<i>8:00 AM</i>	<i>9:00 AM</i>	<i>10:00 AM</i>	<i>11:00 AM</i>	<i>12:00 AM</i>	<i>1:00 PM</i>	<i>2:00 PM</i>	<i>3:00 PM</i>	<i>4:00 PM</i>	<i>5:00 PM</i>	<i>6:00 PM</i>
<b>Land Use</b>												
Office	20%	63%	93%	100%	100%	90%	90%	97%	93%	77%	47%	23%
Retail	8%	18%	40%	65%	83%	93%	95%	93%	90%	83%	75%	78%
Restaurant	3%	5%	10%	20%	30%	50%	70%	60%	60%	50%	70%	90%

<sup>1</sup> Hourly Demand Parking Ratios from the Urban Land Institute (ULI) study of "Shared Parking"

**Table 4. Saturday Hourly Parking Demand Ratios <sup>1</sup>**  
**(Percentage of Peak Demand Occurring Each Hour)**

	<i>Time of Day</i>											
	<i>7:00 AM</i>	<i>8:00 AM</i>	<i>9:00 AM</i>	<i>10:00 AM</i>	<i>11:00 AM</i>	<i>12:00 AM</i>	<i>1:00 PM</i>	<i>2:00 PM</i>	<i>3:00 PM</i>	<i>4:00 PM</i>	<i>5:00 PM</i>	<i>6:00 PM</i>
<b>Land Use</b>												
Office	3%	10%	13%	13%	17%	17%	13%	10%	7%	7%	3%	3%
Retail	3%	10%	35%	30%	45%	73%	85%	95%	100%	100%	90%	75%
Restaurant	3%	3%	5%	8%	10%	30%	45%	45%	45%	45%	60%	90%

<sup>1</sup> Hourly Demand Parking Ratios from the Urban Land Institute (ULI) study of "Shared Parking"

**Table 5. Weekday Hourly Parking Demand - Proposed Development**

		<i>Time of Day</i>											
		<i>7:00 AM</i>	<i>8:00 AM</i>	<i>9:00 AM</i>	<i>10:00 AM</i>	<i>11:00 AM</i>	<i>12:00 PM</i>	<i>1:00 PM</i>	<i>2:00 PM</i>	<i>3:00 PM</i>	<i>4:00 PM</i>	<i>5:00 PM</i>	<i>6:00 PM</i>
<b>Land Use</b>	<b>Size (KSF)</b>												
<b>Office</b>	3.76	3.0	9.5	14.0	15.0	15.0	13.5	13.5	14.5	14.0	11.5	7.0	3.5
Restaurant	1.54	0.6	1.3	2.6	5.1	7.7	12.9	18.0	15.4	15.4	12.9	18.0	23.1
<b>Retail</b>	2.22	0.7	1.6	3.6	5.8	7.3	8.2	8.4	8.2	8.0	7.3	6.7	6.9
<b>Storage</b>	3.67	0.3	0.7	1.6	2.6	3.3	3.7	3.8	3.7	3.6	3.3	3.0	3.1
<b>Total</b>		<b>5</b>	<b>13</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>38</b>	<b>44</b>	<b>42</b>	<b>41</b>	<b>35</b>	<b>35</b>	<b>37</b>

**Table 6. Saturday Hourly Parking Demand - Proposed Development**

		<i>Time of Day</i>											
		<i>7:00 AM</i>	<i>8:00 AM</i>	<i>9:00 AM</i>	<i>10:00 AM</i>	<i>11:00 AM</i>	<i>12:00 AM</i>	<i>1:00 PM</i>	<i>2:00 PM</i>	<i>3:00 PM</i>	<i>4:00 PM</i>	<i>5:00 PM</i>	<i>6:00 PM</i>
<b>Land Use</b>	<b>KSF</b>												
<b>Office</b>	3.76	0.5	1.5	2.0	2.0	2.5	2.5	2.0	1.5	1.0	1.0	0.5	0.5
Restaurant	1.54	0.6	0.6	1.3	1.9	2.6	7.7	11.6	11.6	11.6	11.6	15.4	23.1
<b>Retail</b>	2.22	0.2	0.9	3.1	2.7	4.0	6.4	7.5	8.4	8.9	8.9	8.0	6.7
<b>Storage</b>	3.67	0.3	0.7	1.6	2.6	3.3	3.7	3.8	3.7	3.6	3.3	3.0	3.1
<b>Total</b>		<b>1</b>	<b>3</b>	<b>6</b>	<b>7</b>	<b>9</b>	<b>17</b>	<b>21</b>	<b>22</b>	<b>21</b>	<b>21</b>	<b>24</b>	<b>30</b>

**Table 7. Minnehaven Square Parking Lot Counts**

<b>Date</b>	<b>Time</b>	<b>Vehicles Using Parking Lot</b>
<b>Weekday</b>		
7/8/2005	7:30 AM	13
7/8/2005	8:15 AM	22
7/11/2005	8:15 AM	21
7/7/2005	11:00 AM	36
7/5/2005	12:00 PM	43
7/5/2005	1:00 PM	44
7/11/2005	2:30 PM	37
7/8/2005	4:45 PM	50
7/7/2005	6:00 PM	28
<b>Saturday</b>		
7/9/2005	11:20 AM	39
7/9/2005	3:00 PM	27

**Table 8. Estimated Weekday Hourly Parking Demand - Existing Development<sup>3</sup>**

Minnehaven Square		Time of Day											
		7:00 AM	8:00 AM	9:00 AM	10:00 AM	11:00 AM	12:00 PM	1:00 PM	2:00 PM	3:00 PM	4:00 PM	5:00 PM	6:00 PM
<b>KSF</b>													
Office	1.00	0.3	0.7	1.6	2.6	3.3	3.7	3.8	3.7	3.6	3.3	3.0	3.1
Retail	13.50	4.1	9.5	21.6	35.1	44.6	50.0	51.3	50.0	48.6	44.6	40.5	41.9
Restaurant	3.00	1.1	2.3	4.5	9.0	13.5	22.5	31.6	27.1	27.1	22.5	31.6	40.6
<b>Total</b>		<b>5</b>	<b>12</b>	<b>28</b>	<b>47</b>	<b>61</b>	<b>76</b>	<b>87</b>	<b>81</b>	<b>79</b>	<b>70</b>	<b>75</b>	<b>86</b>

<sup>3</sup> Adjusted for seasonal variations in accordance with ULI Monthly Variations in Peak Parking Demand Ratios.

**Table 9. Estimated Saturday Hourly Parking Demand - Existing Development<sup>3</sup>**

Minnehaven Square		Time of Day											
		7:00 AM	8:00 AM	9:00 AM	10:00 AM	11:00 AM	12:00 PM	1:00 PM	2:00 PM	3:00 PM	4:00 PM	5:00 PM	6:00 PM
<b>KSF</b>													
Office	1.00	0.1	0.4	1.4	1.2	1.8	2.9	3.4	3.8	4.0	4.0	3.6	3.0
Retail	13.50	1.4	5.4	18.9	16.2	24.3	39.2	45.9	51.3	54.0	54.0	48.6	40.5
Restaurant	3.00	1.1	1.1	2.3	3.4	4.5	13.5	20.3	20.3	20.3	20.3	27.1	40.6
<b>Total</b>		<b>3</b>	<b>7</b>	<b>23</b>	<b>21</b>	<b>31</b>	<b>56</b>	<b>70</b>	<b>75</b>	<b>78</b>	<b>78</b>	<b>79</b>	<b>84</b>

<sup>3</sup> Adjusted for seasonal variations in accordance with ULI Monthly Variations in Peak Parking Demand Ratios.

## **Resolution No. 2020-**

### **Resolution approving a conditional use permit, with a parking variance, for a fast food restaurant at 3432 County Road 101**

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

#### Section 1. Background.

- 1.01 The applicant, Bryant Amundson, is proposing to operate a fast-food restaurant within one of the first-floor tenant spaces at 3432 County Road 101. The proposal includes interior building changes, but no exterior building improvements at this time.
- 1.02 The request requires a conditional use permit for a fast food restaurant with the following variance:
1. Parking variance from 192 spaces to 125 spaces.
- 1.03 The property is located at 3432 County Road 101. It is legally described in Exhibit A.
- 1.04 City Code §300.18 Subd. 4(f) allows fast-food restaurants as conditional uses within the B-2 zoning district.
- 1.05 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the city council to grant variances.
- 1.06 On Dec. 19, 2019, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the conditional use permit, with a parking variance.

#### Section 2. Standards

- 2.01 City Code §300.18 Subd.2 lists the general conditional use permit standards. These standards are incorporated by this reference.
- 2.02 City Code §330.18 Subd.4(f) lists the specific conditional use permit standards

for a fast-food restaurant. These standards are incorporated by this reference.

- 2.03 By City Code §300.07 Subd. 1(a), a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties means: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

### Section 3. Findings

- 3.01 The proposal would meet all but one of the general CUP standards as outlined in City Code §300.21 Subd.2:

1. The proposed use is consistent with the ordinance. A fast-food restaurant is a conditionally-permitted use within the B-2 district.
2. The proposed use is consistent with the goals, policies, and objectives of the comprehensive guide plan.
3. The proposal has been reviewed by the city's building, engineering, planning, natural resources, and fire staff. The use is not anticipated to have an undue adverse impact on governmental facilities, utilities, services, or existing or proposed improvements.
4. The proposal is consistent with the city's water resources management plan. No additions are proposed to the property at this time.
5. The majority of the performance standards outlined in the zoning ordinance are related to development and construction. The proposal is for the use of an existing building with no additions. Except for the parking variance to allow a reduction of required parking, the proposal would meet the standards outlined.
6. The proposal is not anticipated to have an undue adverse impact on the public's health, safety, or welfare.

- 3.02 The proposed restaurant would meet all but one of the specific conditional use permit standards for fast food restaurants as outlined in City Code §300.21 Subd.4(f):

1. The subject property has access to County Road 101, an arterial road.
2. No public address systems are proposed.
3. No drive-up or any changes to the existing parking lot are proposed.

4. The proposal is not anticipated to significantly impact the level of service of adjacent streets or intersections.
5. The subject building would be located over 100-feet from the nearest residentially guided property. In addition, the existing building is screened from adjacent properties by vegetation and a fence.

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

1. Intent of the Ordinance: The intent of the ordinance, as it pertains to parking requirements, is to ensure adequate parking is provided to meet anticipated parking demand. A parking study was completed in 2005 by WSB and the Lindsay Group reevaluated the site's parking in 2018. Both of these parking studies determined that the subject parcel/adjacent parcel is over-parked and could accommodate the fast food restaurant, thus meeting the intent of the ordinance.
2. The proposed use is consistent with the goals, policies, and objectives of the comprehensive guide plan.
3. Practical Difficulties:
  - a) Reasonableness and Unique Circumstance. The subject lot and the northerly adjacent parcel have several different uses that complement each other because they have differing peak demand times. Due to these differing peak demands, the site has not experienced a parking deficit despite not meeting city code parking requirements. The 2005 parking study completed by WSB and the Lindsay Group reevaluation of the site's parking in 2018 both determined that the request for the parking variance is reasonable as it is expected that the parking demand for the site would be met.
  - b) Character of the Neighborhood. The two parking studies completed for the subject site and northerly adjacent property have determined that the existing site should be able to accommodate the additional parking demand of the fast food restaurant and its relocation. Due to this information, the parking variance is not expected to alter the essential character of the neighborhood.

Section 4. City Council Action

4.01 The above-described conditional use permit, with a parking variance, is approved based on the findings outlined in Section 3 of this resolution. Approval is subject to the following conditions:

1. Subject to staff approval, the property must be developed and maintained



in substantial conformance with the plans included in the staff report associated with the conditional use permit request including:

- Building Elevations date stamped Nov. 18, 2019
  - Floor plan date stamped Nov. 18, 2019
2. Prior to the issuance of a building permit for tenant finish, this resolution must be recorded with Hennepin County. The building permit for the proposal outlined in this resolution must be applied for by Jan. 6, 2021.
  3. The restaurant must obtain all applicable food licenses from the city.
  4. All signage must comply with city code requirements.
  5. The city council may reasonably add or revise conditions to address any future unforeseen problems.
  6. Any change to the approved use that results in a significant increase in traffic, parking, or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Jan. 6, 2020.

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Brad Wiersum, Mayor

Attest:

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Becky Koosman, City Clerk

**Action on this resolution:**

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on Jan. 6, 2020.

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Becky Koosman, City Clerk

Exhibit A

The South 55 feet of the North 383 feet of the East Quarter of the Northeast Quarter of the Southeast Quarter of Section 18, Township 117 North, Range 22, West of the 5th Principal Meridian.

ALSO, the South 45 feet of the North 328 feet of the East Half of the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of Section 18, Township 117, Range 22.

Hennepin County, Minnesota  
Abstract Property

**Minnetonka Planning Commission Meeting**  
Dec. 19, 2019

**Agenda Item 9**

Other Business



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | [eminnetonka.com](http://eminnetonka.com)

**TO:** Planning Commission

**FROM:** Leslie Yetka, Natural Resources Manager  
Sarah Schweiger, Water Resources Engineer

**DATE:** Dec. 11, 2019

**SUBJECT:** Presentation on water resource protection and the Municipal Stormwater Permit (MS4 Permit)

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### **Background**

The City of Minnetonka has a long history of valuing and protecting water resources, including lakes, creeks, wetlands, and groundwater. The city's Water Resources Management Plan (WRMP), first adopted in 1959 and updated approximately every 10 years, includes specific goals for protecting and enhancing water resources while balancing the infrastructure and development needs of the city. There are also a number of regulatory controls to address various water protection standards as required by state and federal law. In addition, the city's capital improvement plans include projects to address water protection.

One particular regulatory control of interest is the municipal stormwater permit (MS4 Permit). This state-mandated permit originates from the federal Clean Water Act and is enacted through the Minnesota Pollution Control Agency, and requires entities (including cities) that operate a public drainage system (e.g., catch basins, pipes, ditches, storm ponds) to develop and implement specific strategies for managing surface runoff to improve and protect downstream waterbodies. Even with regulatory controls and capital projects, the city recognizes that ongoing education of residents and officials will continue to be an important component of a holistic water resources protection effort.

### **Presentation on Water Resource Protection**

City staff will review how land development alters the movement of water on the land and resulting impacts on the city's water resources. Staff will also discuss strategies used in water resource protection, including planning, policies, practices, and partnerships, along with regulatory requirements of the state-mandated municipal stormwater permit (MS4 Permit).

### **Action**

Hear the presentation and discuss. No action on this item is needed.

**MINNETONKA PLANNING COMMISSION**  
**Dec. 19, 2019**

**Brief Description**            Review information related to the Tree Protection Ordinance

**Recommendation**        Hear the report and discuss

**Background**

City staff has started a review of the Tree Protection Ordinance in response to general concerns about tree loss in the community. The ordinance has been in place since 2008, adding additional protections to existing environmental ordinances.

The city council discussed tree protection at the Oct. 21, 2019 study session meeting. Packet materials from that meeting are attached. Staff will provide an overview of the current ordinance and general tree information presented at that study session.

During 2020, staff will continue to review the ordinance and determine if there are potential revisions that could be considered.

**Staff Recommendation**

Hear the report and discuss. No action on this item is needed.

Originator: Loren Gordon, AICP, City Planner

**City Council Study Session Item #\_\_**  
**Meeting of Oct. 21, 2019**

**Brief Description:** Information related to the Tree Protection Ordinance

**Background**

Minnetonka values its natural resources, as evidenced by:

- The actions of policymakers who adopt and promote natural resources protection ordinances and conscientiously make decisions related to budget, programs, and development that may impact resources.
- The actions of city staff who lead resource restoration efforts on public property, field verify all wetland delineations and tree inventories submitted with development proposals and monitor and prepare for disease and invasive pests.
- The actions of private property owners who purchase trees through the city's tree sale, plant native vegetation on their properties, and attend city-led seminars on pollinators, buckthorn removal, and many other important topics.

In many ways, the historical and on-going actions of policymakers, city staff, and private property owners have created the "look and feel" of Minnetonka.

Over the last year, the planning commission and city council have reviewed several subdivision proposals that met the standards of the existing tree protection ordinance. During these reviews, members of both bodies expressed concern about tree loss and suggested that the tree ordinance be reviewed.

**Minnetonka Ordinance**

**Ordinance History.** In March 2004, the city council held a study session on Minnetonka's "development policies." One component of that discussion was tree protection. At that time, city ordinances included specific development standards intended to protect water resources – wetlands, floodplain, and shoreland areas. No similar protections were in place to protect tree resources. Instead, the city had a "tree removal" ordinance that focused on mitigation for (i.e., replacement of) trees removed rather than on the preservation of existing trees. At the meeting, the council generally directed staff to begin looking at tree preservation standards. Over the next four years:

- A one-year development moratorium was enacted.
- Two open houses were conducted; one was specific to proposed ordinance revisions, and one was part of the annual City-Wide Open House.
- Five newspaper articles were published related to proposed ordinance revisions: two in the *Minnetonka Memo*, one in the *Lakeshore Weekly News*, and two in the *Star Tribune*.
- Questions about proposed ordinance revisions were included in the annual community survey.

- Over 2,400 postcards were sent to owners of wooded lots.
- The planning commission and council discussed tree preservation policies and standards at 15 meetings.
- Staff provided six draft ordinances to respond to the questions and concerns raised during the commission and council meetings.
- The draft ordinances were posted on [eminnetonka.com](http://eminnetonka.com), with an invitation to comment on the survey drafts via an online survey.

The existing ordinance is the culmination of that four-year process, during which there was clear consensus on two points: (1) tree preservation was important; and (2) the rights of owners to use their private property was equally important. For more information about the meetings and draft ordinances, see the attached Tree Preservation Ordinance Memo.

### **Ordinance Principles**

The existing ordinances are based on three key principles:

- **Focus on tree protection.** A focus on tree protection is different than a focus on tree removal. A protection ordinance identifies the natural environmental qualities of a site and applies protections accordingly. Generally, a removal ordinance simply regulates the replacement of trees, regardless of a site's existing ecosystem or natural qualities.
- **Focus on woodlands.** Greatest protections should be given to remnant woodland ecosystems, rather than individual trees.
- **Focus on new development.** Regulations should apply to new development and redevelopment, rather than to existing properties.

### **Ordinance Summary**

Within the framework of the three key principles, the existing tree ordinance is quite detailed. However, all of the detail is grounded in five basic definitions:

- **Woodland Preservation Area (WPA).** A remnant woodland ecosystem that is at least *two acres* in size regardless of property boundaries is generally mapped in the city's Minnesota Land Cover Classification System and, although it may be degraded, generally meets the criteria for one of seven types of ecosystems. These systems are the following: floodplain forest, lowland hardwood forest, maple basswood forest, mesic oak forest, oak woodland bushland, tamarack swamp, and willow swamp. (See attached maps.)
- **High-Priority Tree.** A tree that is not in a WPA, but is still important to the site and neighborhood character, that is structurally sound and healthy, and meets at least one of the following standards:
  - ✓ a deciduous tree that is at least 15 inches in diameter, except ash, box elders, elm species, poplar species, willow, silver maple, black locust, Amur maple, fruit tree species, mulberry, and Norway maple.



- ✓ a coniferous tree that is at least 20 feet in height, except a Colorado spruce that is not in a buffer as described in below; or
  - ✓ a tree that is in a group of deciduous trees that are at least eight inches diameter or coniferous trees that are at least 15 feet in height, that provide a buffer or screening along an adjacent public street, and that are within 50 feet of an arterial road and 35 feet of a minor collector, local, or private street and a trail.
- **Significant Tree.** A tree that is structurally sound and healthy and that is either a deciduous tree at least eight inches diameter or a coniferous tree at least 15 feet in height.
  - **Protected Tree.** A tree that is in a woodland preservation area, or is a high priority tree or significant tree.
  - **Basic Tree Removal Area.** The area consists of: (1) the area improved for reasonably-sized driveways, parking areas, and structures without frost footings and within ten feet around those improvements; (2) the area within the footprints of, and 20 feet around, buildings with frost footings; (3) areas within the footprints of, and 10 feet around, structures with post footings such as decks or porches; and (4) the area where trees are being removed for ecological restoration in accordance with a city-approved restoration plan.

Essentially, the ordinance allows the following removal without mitigation.

It is important to note that mitigation is required for removal of WPA, high priority, and significant trees removed outside of the basic tree removal areas during subdivision, development of existing vacant lots, redevelopment, and site improvements.

		WPA	High Priority	Significant
Lots with Existing Structures	R-1 properties	removal allowed	removal allowed	removal allowed
	All other properties	removal allowed if consistent with previously approved plans	removal allowed if consistent with previously approved plans	removal allowed if consistent with previously approved plans
Existing Vacant Lots, Redevelopment, Site Improvements	R-1 properties	removal allowed in a basic tree removal area	removal allowed in a basic tree removal area	removal allowed in a basic tree removal area
	All other properties	removal allowed in a basic tree removal area and within the width of required infrastructure improvements	removal allowed in a basic tree removal area and within the width of required infrastructure improvements	removal allowed in a basic tree removal area and within the width of required infrastructure improvements
<b>Subdivision</b>		<b>Max. 25 percent of area;</b> Mitigation required if any removal outside of: (1) basic tree removal area; or (2) the width of required infrastructure improvements	<b>Max. 35 percent of trees;</b> Mitigation required if any removal outside of: (1) basic tree removal area; or (2) the width of required infrastructure improvements	Mitigation required if any removal outside of: (1) basic tree removal area; or (2) the width of required infrastructure improvements

Also important to note:

- Existing Lots: The removal allowance for existing lots applies two years after issuance of a certificate of occupancy. At that point, “new” lots and Minnetonka residents are equitably given the same allowances as “older” lots and Minnetonka residents.
- Existing vacant lots, redevelopment, and site improvement on non-single-family lots: Landscaping is required through a different section of city code.
- Subdivision: If more than 25 percent of WPA or 35 percent of high priority trees are removed:
  1. There can be no more than one lot per developable acre of land; or
  2. The city may allow for the use of PUD to allow development up to the full density normally allowed under the applicable zoning district. In reviewing the PUD, the city will consider the extent to which steps are taken to preserve trees.

### Ordinance Comparisons

**National.** Staff recently reviewed literature produced by the American Planning Association and International Society of Arboriculture to understand current national trends in tree protection ordinances. Generally, tree protection ordinances around the country can be put into one of three categories:

- Woodland or Tree Canopy Protection. These types of ordinances focus protection on stands of woodlands rather than on individual trees, similar to the WPA protections in the Minnetonka ordinance.
- Special Tree Protection. These ordinances require the protection of trees that meet or exceed certain physical specifications. This would be similar to the high priority tree protection in the Minnetonka ordinance.
- Buffer Protection. All vegetation within a defined buffer zone between roadways and buildings on adjacent private property must be protected under these types of ordinances. This would be similar to the provision of the Minnetonka ordinances that defines, as a high priority, groups of trees along roadways.

Some ordinances noted in the national literature, apply tree protection standards not only to new residential and non-residential development, but also existing, single-family lots. Such ordinances generally require a property owner to: (1) obtain a city-issued permit for removal of a tree; and (2) to mitigate for the removal.

In summarizing legal issues associated with the tree protection ordinances, the American Planning Association notes: “Like all reasonable regulations, tree protection regulations must satisfy the due process requirements of the U.S. and state constitutions. To do so, the standards should be clear and understandable so that an average person does not have to guess what is required of them. Fairness and regulatory efficiency dictate that local ordinances contain clear standards that result in predictable decisions by staff and review commissions and limit administrative discretion.”<sup>1</sup>

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<sup>1</sup> Zoning Practice, Issue Number 7, July 2006

**Local.** Staff also reviewed the tree protection ordinances of ten communities in the Twin Cities Metro area. These communities are regularly used during the drafting or review of ordinances. An “apples-to-apples” comparison is difficult, particularly since each community has slightly different definitions for protected trees. The chart below generally outlines these community ordinances, with staff’s interpretation relative to the Minnetonka ordinance.

		Brooklyn Park	Burnsville	Eagan	Eden Prairie	Edina	Lakeville	Maple Grove	Minnetonka	Plymouth	St. Louis Park	Woodbury
Lots Applied to	Existing		x, over 2-acres		X, if construction	X, if construction		X, in WPA				X, for specimen
	Developing		X	X	X	X		X, in WPA	X	X		
Tree Definitions	WPA			X				X	X			
	Specimen			X	X							X
	High Priority								X			X
	Significant			X	X	X	X	X	X	X	X	X
Maximum Removal	“Hard” Maximum								X			
	Maximum, with mitigation for excess		X	X				X		X		X

Only the Minnetonka ordinance establishes a maximum threshold for tree removal, though this maximum is applied only during the subdivision process. Four other communities establish a maximum threshold but allow additional removal with mitigation or compensation.

In addition to the review of tree ordinance language, staff reviewed the findings of a tree canopy coverage study conducted by the City of Burnsville in June 2019. That study suggests that Minnetonka has the highest percentage of tree canopy coverage of the comparison cities.

City	Population	Square Miles	Estimated % Tree Canopy Coverage*
Brooklyn Park	81,697	26.6	29.6%
Burnsville	62,657	26.9	31.5%
Eagan	68,347	33.5	35.3%
Eden Prairie	63,456	35.3	45.0%
Edina	52,535	16.0	43.4%
Lakeville	64,334	37.9	28.8%
Maple Grove	66,903	35.3	30.9%
<b>Minnetonka</b>	<b>53,713</b>	<b>29.1</b>	<b>58.4%</b>
Plymouth	78,351	35.5	40.3%
St. Louis Park	48,910	10.8	38.1%
Woodbury	70,840	35.7	22.1%
AVERAGE	64,090	28.7	38.1

\* Estimate using USDA Forestry Service’s iTree Canopy software tool.

### Forestry Program

While a majority of this report is addressing ordinances that regulate private property, it is important to recognize the larger picture of forest management in the community. In 2019, Minnetonka received its 25<sup>th</sup> straight “Tree City USA” designation from the Arbor Day

Foundation for meeting specific benchmarks and its commitment to its community forest. Each year, the city hosts an online tree sale to allow residents to purchase a variety of trees at a reduced cost. More than 16,000 young trees have been sold since 2007, which increases the diversity and resilience of our community forest, not to mention the positive impact on the environment.

Through the city's natural resources division/forestry staff of the public works department, educational offerings to residents include a variety of programs, workshops, and volunteer opportunities, plus website information, *Minnetonka Memo* articles, monthly emails, and multi-faceted promotional campaigns.

The city's forestry staff have long been involved with addressing health threats to the city's urban forest, such as Dutch elm disease, oak wilt, and, most recently, Emerald ash borer (EAB) infestation. As noted in Council Policy 8.3 Plant Pest Program (discussed on [March 26, 2018](#) and adopted on [June 18, 2018](#)), responsibility for managing diseased trees and incurring the cost of required sanitation (and optional prevention and control measures) is as follows:

Public lands – the city is responsible for performing and paying the costs of plant pest control, prevention, and management on lands that are owned by the city.

Private property – the property owner is responsible for performing and paying the costs of plant pest control, prevention, and management on the property owner's land. If a public nuisance exists and the property owner fails to abate the nuisance, the city may perform the work and assess the costs against the owner's property in the manner provided by section 845 of the Minnetonka City Code.

Right-of-way – Property ownership generally extends to the centerline of the abutting street, which means the property owner owns the land and the trees on the land, and the city has an easement for street and utility uses. The property owner is responsible for performing and paying the costs of plant pest prevention and control; however, if a tree in the right-of-way is marked for removal, the city will pay for half the cost of diseased tree removal (up to half the city contractor's rate, not including tax), in recognition of the city's interest in protecting the traveling public.

#### Discussion Points:

- ***Does the city council have any questions about the tree ordinance or forestry program?***
- ***Does the city council still agree with the three basic principles of the tree protection ordinance?***
- ***Does the city council have any additional feedback regarding the tree ordinance, tree loss, or forestry program?***

#### Summary

Reviewing the historical context of the city's tree ordinance provides insight into past deliberative and intentional policy decisions made to expand tree protection from not only mitigation but also preservation. Minnetonka leads its peer communities in tree canopy coverage, and programs like the tree sale and educational offerings encourage property owners

to adopt sustainable practices. At the Oct. 21 study session, staff will review the current tree ordinance and forestry program, followed by addressing any council questions and concerns about tree loss.

Through:      GERALYN BARONE, City Manager  
                    Julie Wischnack, AICP, Community Development Director  
                    Loren Gordon, AICP, City Planner  
                    Will Manchester, PE, Director of Public Works  
                    Leslie Yetka, Natural Resources Manager

Originator:    Susan Thomas, AICP, Assistant City Planner



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | [eminnetonka.com](http://eminnetonka.com)

**FROM:** Susan Thomas  
**DATE:** Oct. 14, 2019  
**SUBJECT:** Tree Protection Ordinance Meetings

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The following outlines meetings/discussion occurring prior to adoption of the existing Tree Protection Ordinance. All items in quotation marks are taken directly from meeting minutes.

**March 2, 2004**                      **City Council Study Session**

Topic                                      General development policies.

Staff Request                              Staff specifically asked the council whether: (1) standards should be established to protect tree resources; (2) the standards should apply to both new development and current property owners; and (3) the standards should apply to all developments including those requiring no special consideration such as rezoning, variances, etc.

Discussion Highlights                      Councilmembers opinions and comments varied.

- “The council should look at how the community would benefit from [ordinance] change and define what the risks are.”
- “[A councilmember] said unless there is a compelling reason to change the rules, [the councilmember] does not believe any changes need to be made. The current look of Minnetonka was created under the ordinance the city now has in place.”
- “[A councilmember said] criteria could be established to define unique sensitive features. [The councilmember] would consider an overlay district that would include certain requirements. [The councilmember] thought there could be a protection standard established for topography and trees similar to the wetland protection standards.”

**April 14, 2004**                      **City Council Study Session**

Topic                                      General tree protection standards.

Draft Standards                              Staff presented draft standards for council discussion, including:

- No removal of significant trees would be allowed, unless the property owner or developer could demonstrate there is no alternative open area. (Note: the term “significant” had yet to be specifically defined.)
- If alternative area was available, the loss of significant trees must be minimized and mitigated on an inch-for-inch (diameter) basis, or cash payment provided in lieu of mitigation.

Discussion Highlights

Councilmembers opinions and comments varied.

- “[A councilmember] suggested a certain percentage of trees [should] be saved instead of a specific number of trees per acre ... the goal is to provide a definition of what is worth saving.”
- “[A councilmember] suggested adding a penalty if the applicant does not respect the terrain and trees.”
- “[Councilmembers] were concerned about applying tree preservation requirements to home additions.”

**June 7, 2004**

**City Council Study Session**

Topic

Revised tree protection standards.

Draft Standards

Staff presented revised draft standards for council discussion, including:

- No removal of Woodland Preservation Area (WPA) would be allowed.
- High-priority trees must be preserved. Notwithstanding this standard, the city would not reduce the number potential lots or the potential density by more the 1/3 to achieve greater tree preservation.

Discussion Highlights

Councilmembers opinions and comments varied.

- “This language would swing the pendulum to avoid doing anything that had impact.”
- “[The councilmember] read the language differently, and thought that it would provide specific standards in specific areas.”
- “[A councilmember] said there is a fundamental philosophical decision when looking at developable land in Minnetonka. There are scattered resources we’d like to protect, and some of those are easy to protect. [The councilmember] felt there was a difference between avoiding those resources versus minimizing impacts to the greatest extent possible.”

The city planner noted, "Staff was aiming at establishing fairly restrictive standards. Planning would like objective standards. He noted that variances could be allowed with proper legal basis."

**March 20, 2006**

**City Council Study Session**

Topic

Revised tree protection standards, based on three categories of site activity.

Draft Standards

Staff presented revised draft standards for council discussion, including:

- No construction. Tree removal would be allowed and no mitigation is required.
- New construction. Tree removal would be allowed during construction of a new building on an existing lot. Removal could occur within the footprints of the improvements and within a 20 ft perimeter.
- New Subdivision. Removal of WPA or high priority trees would be allowed only if the council determined there would be a greater public good.

Discussion Highlights

Councilmembers opinions and comments varied.

- "[A councilmember] expressed concern about the overall direction of the proposed ordinance."
- "[A councilmember] liked the staff approach of a basic set of standards, with a PUD option."
- "[A councilmember] thought the tools were too heavy-handed and would increase the cost of development, even if the cost were reasonable. [The councilmember] was concerned about exclusionary zoning that would allow only more expensive homes."
- "[A councilmember] wanted the rules to be easily understood. [The councilmember] wanted to balance property rights and also protect trees. The ordinance needs to be fair."

The city attorney cautioned that a PUD is essentially a negotiation with no effective standard. PUD can be legally problematic, because a developer has the right to know what they need to do develop a property.

**June 4, 2007**

**City Council Meeting**

Topic

Development moratorium.



Discussion Highlights Following the review and approval of several developments that removed or negatively impacted significant natural resources, the council discussed a development moratorium. The moratorium was to allow time for the drafting and adoption of natural resources ordinances, including the Tree Protection Ordinance.

**Feb. 4, 2008 City Council Study Session**

Topic General principles for draft ordinance.

Draft Principles Staff requested council comment on three general principles for crafting the ordinance:

- Development Standards would be consistently applied, while allowing exceptions as tradeoffs for public benefit.
- Natural resource protection standards would require strict performance, but be flexible to encourage best practices by responsible developers.
- Standards would focus on mitigating potential environmental impacts of new development and redevelopment, rather than on existing residential properties.

Discussion Highlights Councilmembers opinions and comments varied.

- “[A councilmember] said the proposed tree ordinance goes too far.”
- “[A councilmember] did not understand the goal of what was trying to be accomplished. Is it the city having control over larger problems like clear cutting trees or is a matter of define the natural resources characteristics that should be preserved? [The councilmember] said both are good goals that would require different tactics to achieve.”
- “[A councilmember] said the city learned from the shoreland ordinance process that there was a difficult line between having some standards that preserve the things that are valued versus getting heavy-handed and infringing on people’s property rights.”

**April 21, 2008 City Council Meeting**

Topic Tree Protection Ordinance Introduction.

Draft Ordinance Staff presented the tree protection ordinance for introduction. Highlights included:

- WPA could be removed only if the site was developed at no more than one lot per acre, unless the property was rezoned to PUD. At any density, only 25 percent of the WPA could be removed.

- High priority and significant trees could be removed within the basic tree removal area and the width of required easements for streets and utilities.

Discussion Highlights

Councilmembers opinions and comments varied.

- “[A councilmember] said after the numerous study sessions and discussion on the tree protection issue there are no simple answers.”
- “[A councilmember] cautioned against language that overly regulates somebody’s yard.”
- “[A councilmember] wasn’t sure if the ordinance goes far enough for large subdivisions of property.”
- “It is easy to say a neighbor shouldn’t be able to do something.”

Action

The city council introduced the ordinance and referred it to the planning commission.

**May 1, 2008**

**Planning Commission Meeting**

Topic

Tree Protection Ordinance.

Draft Ordinance

Staff presented the tree protection ordinance. Highlights included:

- WPA could be removed only if the site was developed at no more than one lot per acre, unless the property was rezoned to PUD. At any density, only 25 percent of the WPA could be removed.
- High priority and significant trees could be removed, without mitigation, within the basic tree removal area and the width of required easements for streets and utilities.

Discussion Highlights

Planning Commissioners asked questions and accepted varying comment from public hearing participants.

- “[A resident] has two acres and a residence. He considered an acre of this land his financial backup. He was troubled that that option might not be available.”
- “[A resident] has many oak trees. It bothers him that the ordinance would tell him what to do with his trees when he has been taking care of them for 50 years.”
- “[A resident] has gained a sense of confidence that staff is trying to reasonably preserve natural resources.”

Action The planning commission continued the public hearing to the next meeting.

**May 15, 2008 Planning Commission Meeting**

Topic Tree Protection Ordinance.

Draft Ordinance Staff presented a 2<sup>nd</sup> draft of the ordinance based on the comments of commissioners and property owners. Highlights of the 2<sup>nd</sup> draft included:

- Within a WPA, property must be divided at one lot acre and only 25 percent of the WPA may be removed; OR

Within a WPA, property could be divided under the standards of the traditional zoning of the property, so long as no more the 25 percent of the WPA was removed; OR

The property could be rezoned to PUD.

- High priority and significant trees could be removed, without mitigation, within the basic tree removal area and the width of required easements for streets and utilities.

Discussion Highlights Planning Commission and public hearing participant opinions and comments varied.

- “[A resident stated] it would be a severe hardship for retired property owners counting on subdividing property to fund retirement. It would be a huge loss in the value of the property. It does not impact the developer. It impacts the property owner.”
- “[A resident] supports the tree ordinance.”
- “[A commissioner] felt that classification makes sense. Some trees are more valuable than others.”
- “[A commissioner] felt the different species of trees should be kept. Property owners want the right to use his or her land in a meaningful way that is fair to the owner.”
- “[A commissioner] it is inherently unfair that a property without a woodland preservation area adjacent to a property with a woodland preservation area would not be subject to the same requirements.”

Action The planning commission tabled consideration of the ordinance.

**June 19, 2008 Planning Commission Meeting**

Topic Tree Protection Ordinance.

## Draft Ordinance

Staff presented the 3<sup>rd</sup> draft of the ordinance based on the comments of commissioners and property owners. Highlights of the 3<sup>rd</sup> draft included:

- No more than 25 percent of WPA and 25 percent of high priority trees could be removed except if there is no more than one unit per acre.
- At any density, no more than 25 percent of WPA and 25 percent of high priority trees could be removed from the width of easements for public streets and utilities.
- Significant trees could be removed, without mitigation, within the basic tree removal area and the width of required easements for streets and utilities.

## “In Meeting” Changes

Staff made additional revisions during a meeting recess to address commissioner comments. Specifically, the commissioners requested removal of the one-unit per acre requirement and the PUD incentive from the ordinance. Under the 4<sup>th</sup> draft of the ordinance created and presented “in meeting”:

- No more than 25 percent of WPA and 25 percent of high priority trees could be removed from the basic tree removal area for home construction; AND
- No more than 25 percent of WPA and 25 percent of high priority trees could be removed from the width of easements for public streets and utilities.
- The city council could, at its sole discretion, allow greater tree removal if it deems appropriate mitigation is provided on-site.
- Significant trees could be removed, without mitigation, within the basic tree removal area and the width of required easements for streets and utilities.

## Discussion Highlights

Planning Commission comments on both drafts varied.

- “[A commissioner] saw a significant improvement. He did not support the one-acre minimum requirement.”
- “[A commissioner] felt the proposal should have jurisdiction over additional trees and properties. It would be a baby step”

## Action

The planning commission tabled consideration of the ordinance.

**July 3, 2008**

**Planning Commission Meeting**

Topic

Tree Protection Ordinance.

Draft Ordinance

Staff presented the 5<sup>th</sup> draft of the ordinance to reflect the commissioner comments on the “in meeting” draft. Highlights of the 5 draft included:

- No more than 25 percent of WPA and 25 percent of high priority trees could be removed from the basic tree removal area for home construction; AND
- No more than 25 percent of WPA and 25 percent of high priority trees could be removed from the width of easements for public streets and utilities.
- The city council could approved greater tree removal if it deems appropriate mitigation is provided on-site.
- Significant trees could be removed, without mitigation, within the basic tree removal area and the width of required easements for streets and utilities.

Action

The planning commission recommended approval of the ordinance.

**July 14, 2008**

**City Council Meeting**

Topic

Tree Protection Ordinance.

Draft Ordinance

Staff presented two ordinance drafts for council consideration: (1) the staff recommendation, which generally reflected the ordinance as originally introduced to the council; and (2) the planning commission recommendation.

Staff recommendation:

- WPA and high priority trees could be removed only if the site was developed at no more than one lot per acre, unless the property was rezoned to PUD. At any density, only 25 percent of the WPA and 25 percent of high priority trees could be removed.
- Significant trees may be removed, without mitigation, within the basic tree removal area and the width of required easements for streets and utilities.

Planning Commission recommendation:

- No more than 25 percent of WPA and 25 percent of high priority trees could be removed from the basic tree removal area for home construction; AND

- No more than 25 percent of WPA and 25 percent of high priority trees could be removed from the width of easements for public streets and utilities.
- The city council could approved greater tree removal if it deems appropriate mitigation is provided on-site.
- Significant trees could be removed, without mitigation, within the basic tree removal area and the width of required easements for streets and utilities.

Discussion Highlights

Council opinions and comments varied.

- “[A councilmember] said [they] were torn because having someone come in and cut down all the trees is within the realm of possibility, while being outside the realm of likelihood.
- “[A resident] said there was comment made at the planning commission hearing that the ordinance would primarily affect developers rather than ordinary citizens. He said developers do not buy land assuming they will get a subdivision. Rather, they offer an amount of money contingent on getting approval for a certain number of lots.”
- “[A council member] said the focus of much of the conversation was on reducing the number of lots and that was not the council’s intent. The council was looking for ways to be more sensitive to the land, and to do a better job in placing properties.”
- “[A councilmember] agreed the staff recommendation was too draconian. [The council member] said the planning commission recommendation is too close to the existing ordinance and doesn’t forward the objective of saving trees and balancing the property owner’s right to develop.”
- “[A councilmember] said the best compromise would be to approve the planning commission recommendation that would provide enough tree protection and consistency for people to understand.”

Action

The city council tabled consideration of the ordinance.

**Aug. 11, 2008**

**City Council Meeting**

Topic

Tree Protection Ordinance.

“Key Points”

Staff requested council comment on several “key points” for a 6<sup>th</sup> ordinance draft. The two primary points were:

- If either 25 percent of a WPA or 35 percent of high priority trees would be impacted by a subdivision, one lot per acre would be

allowed, but the property could be developed up to R-1 densities under PUD if steps are taken to preserve trees, such as: creative site design, developing at WPA edges rather than core, or evidence of good faith stewardship.

- The rights of existing homes owner would be respected; no tree restrictions would apply to homes after two years of occupancy.

Discussion Highlights      The council was generally comfortable with these key points.

- “[A councilmember] said if the ordinance can be kept reasonably simple it would be a major move forward for the city.”

**Aug. 28, 2008                      City Council Meeting**

Topic                              Tree Protection Ordinance.

Draft Ordinance                Staff presented the 6<sup>th</sup> draft, and now existing, ordinance.

Discussion Highlights      The council generally supported the ordinance.

- “[A councilmember said the ordinance strikes a good balance between maintaining the WPA and the neighborhood character while allowing people to do reasonable development.”
- “[A councilmember] said the ordinance is reasonably clean, clear, and simpler than [they] thought was possible.”

Action                              The Tree Protection ordinance was adopted.

# Woodland Preservation Areas



# Definition

A woodland preservation areas is a remnant woodland ecosystem that:

- Is at least two acres in size regardless of property boundaries;
- Is generally mapped in the city's Minnesota Land Cover Classification System; and
- Although it may be degraded, generally meets the criteria for one of the following types of ecosystems as reasonably determined by natural resources staff.

# Floodplain Forest





# Lowland Hardwood Forest





# Maple Basswood Forest





# Lowland Hardwood Forest





# Oak Woodland Brushland





# Tamarack Swamp





# Willow Swamp

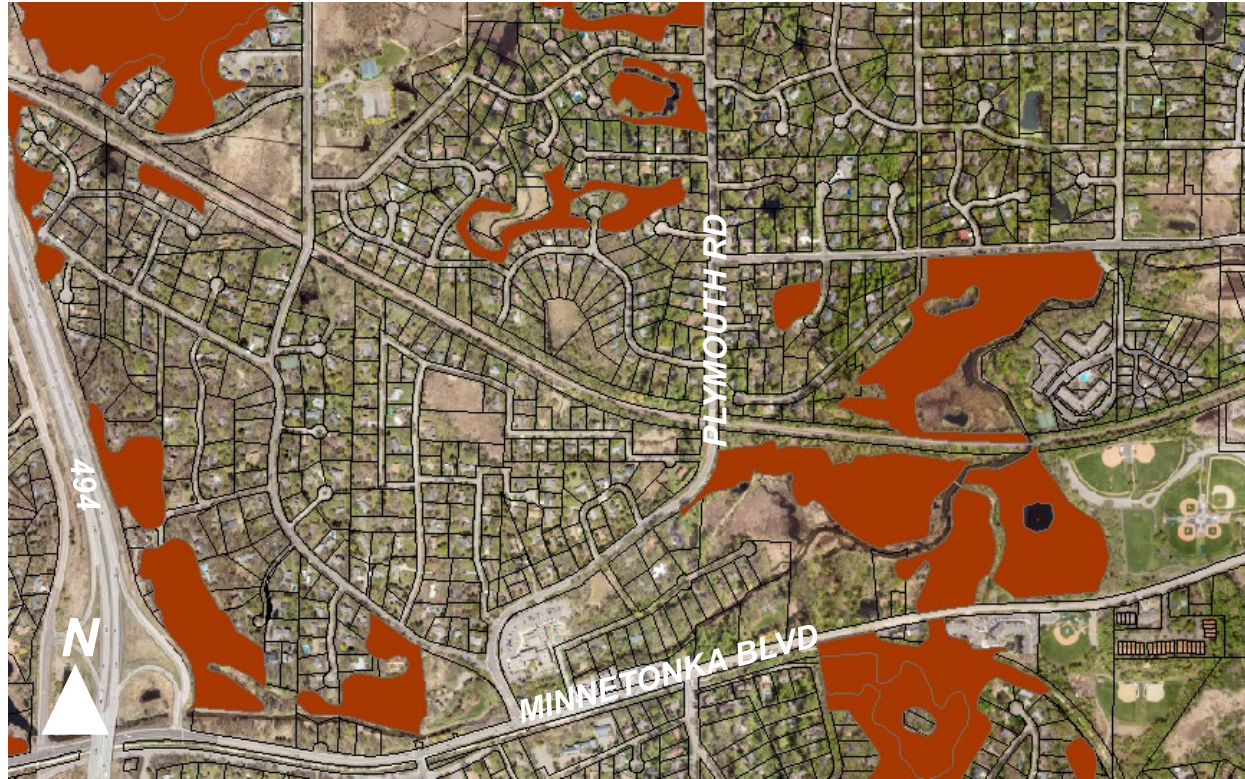




# Woodland Preservation Areas



# Woodland Preservation Areas





# Woodland Preservation Areas



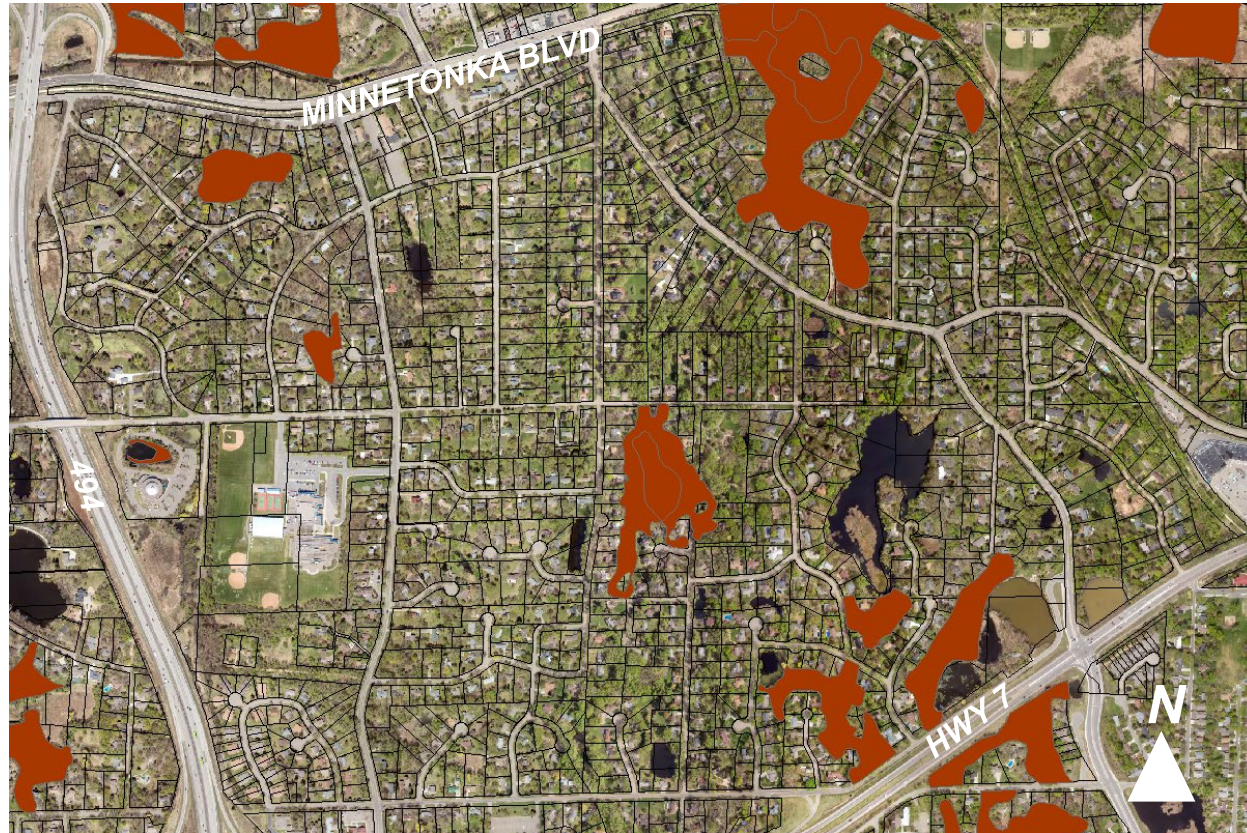


# Woodland Preservation Areas





# Woodland Preservation Areas





# Woodland Preservation Areas



# High Priority Trees

# Definition

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

- a deciduous tree that is at least 15 inches diameter, except ash, box elders, elm species, poplar species, willow, silver maple, black locust, amur maple, fruit tree species, mulberry, and Norway maple;
- a coniferous tree that is at least 20 feet in height, except a Colorado spruce that is not in a buffer as described in (c) below; or
- a tree that is in a group of deciduous trees that are at least eight inches diameter or coniferous trees that are at least 15 feet in height, that provide a buffer or screening along an adjacent public street, and that are within 50 feet of an arterial road and 35 feet of a minor collector, local, or private street and a trail.



# High Priority Trees





# High Priority Trees



# Significant Trees

# Definition

A significant tree is a tree that is structurally sound and healthy and that is either a deciduous tree at least eight inches diameter or a coniferous tree at least 15 feet in height.

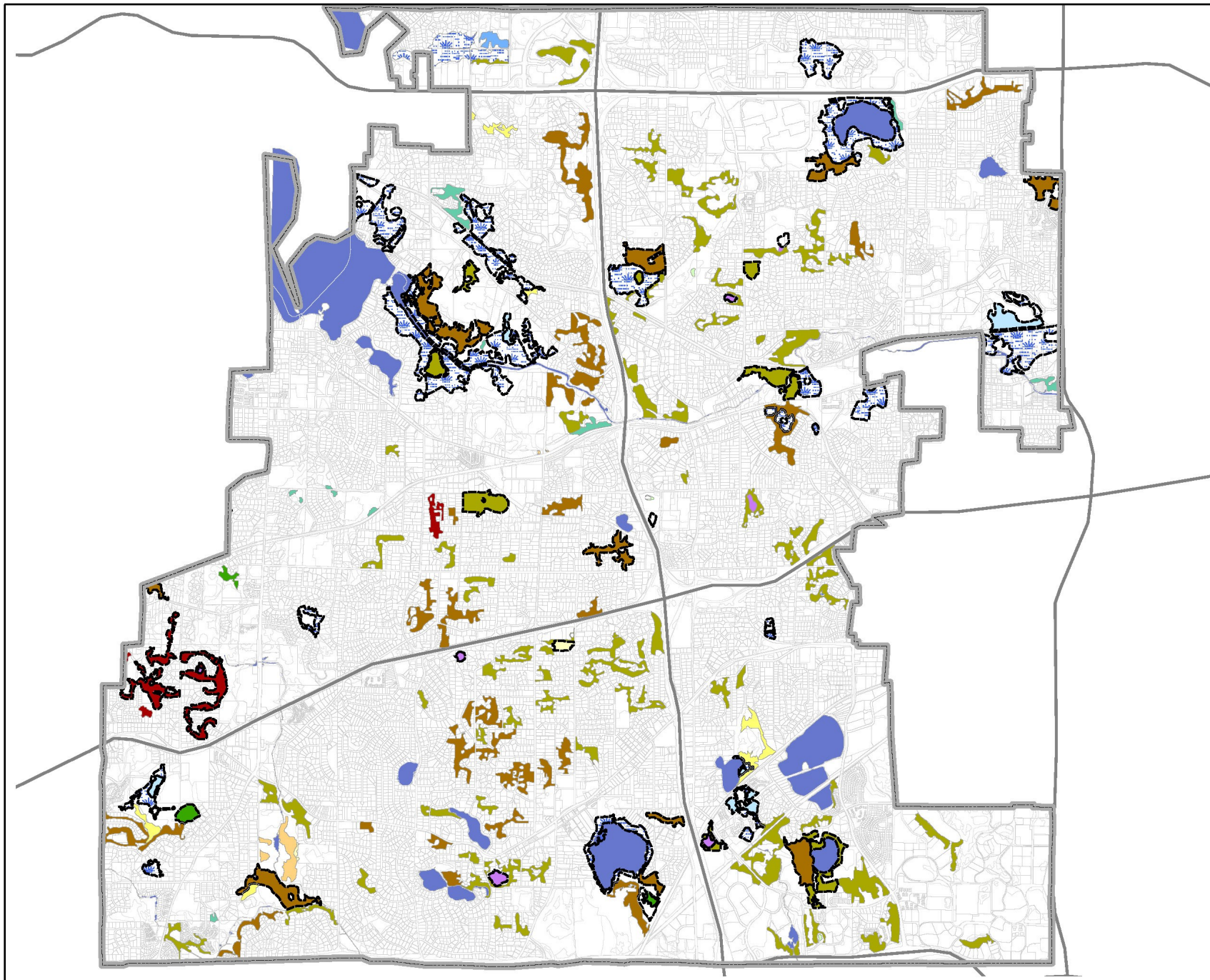


CITY OF  
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# Tree canopy in Minnetonka







- Natural Communities**
- Dry prairie
  - Mesic prairie
  - Wet meadow
  - Mixed emergent marsh
  - Rich fen
  - Cattail marsh
  - Willow swamp
  - Oak woodland-brushland
  - Floodplain forest
  - Lowland hardwood forest
  - Tamarack swamp
  - Oak forest mesic
  - Maple-basswood forest

- Natural Heritage Ranking**
- C
  - D

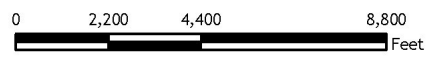
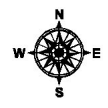


Figure VI-3  
Natural Communities

Source: Minnesota Department of Natural Resources



**2018**

**Tree canopy covers 58.4 percent of  
the city**





# How Minnetonka compares to other suburban cities

**Burnsville Comparison City Tree Canopy Coverage**

City	County	Population	City Area (Sq Miles)	Est % Tree Coverage*	Cohort Percentile	Tree Area Per Capita	Cohort Percentile
Apple Valley	Dakota	53,429	17.7	27.8%	14	0.059	14
Blaine	Anoka	66,667	34.0	39.5%	64	0.129	86
Brooklyn Park	Hennepin	81,679	26.6	29.6%	29	0.062	21
<b>Burnsville</b>	<b>Dakota</b>	<b>62,657</b>	<b>26.9</b>	<b>31.5%</b>	<b>43</b>	<b>0.086</b>	<b>43</b>
Coon Rapids	Anoka	63,899	23.3	42.4%	79	0.099	50
Eagan	Dakota	68,347	33.5	35.3%	50	0.111	71
Eden Prairie	Hennepin	63,456	35.3	45.0%	93	0.160	93
Edina	Hennepin	52,535	16.0	43.4%	86	0.084	36
Lakeville	Dakota	64,334	37.9	28.8%	21	0.109	64
Maple Grove	Hennepin	66,903	35.1	30.9%	36	0.104	57
<b>Minnetonka</b>	<b>Hennepin</b>	<b>53,713</b>	<b>29.1</b>	<b>58.4%</b>	<b>100</b>	<b>0.202</b>	<b>100</b>
Plymouth	Hennepin	78,351	35.5	40.3%	71	0.117	79
St. Louis Park	Hennepin	48,910	10.8	38.1%	57	0.054	7
Woodbury	Washington	70,840	35.7	22.1%	7	0.071	29

2-2

Burnsville Tree Canopy Survey and Carbon Sequestration Study

paleBLUEdot LLC

- Comparison cities avg. - 36.7 %
  - Twin cities metro - 27 %
  - National city avg. - 27.1 %

# Example of Minnetonka's landscape transformation

*Woodland Hills/Temple Village neighborhoods*



# 1937

The landscape was characterized by:

- woodlands
- agricultural fields
- wetlands

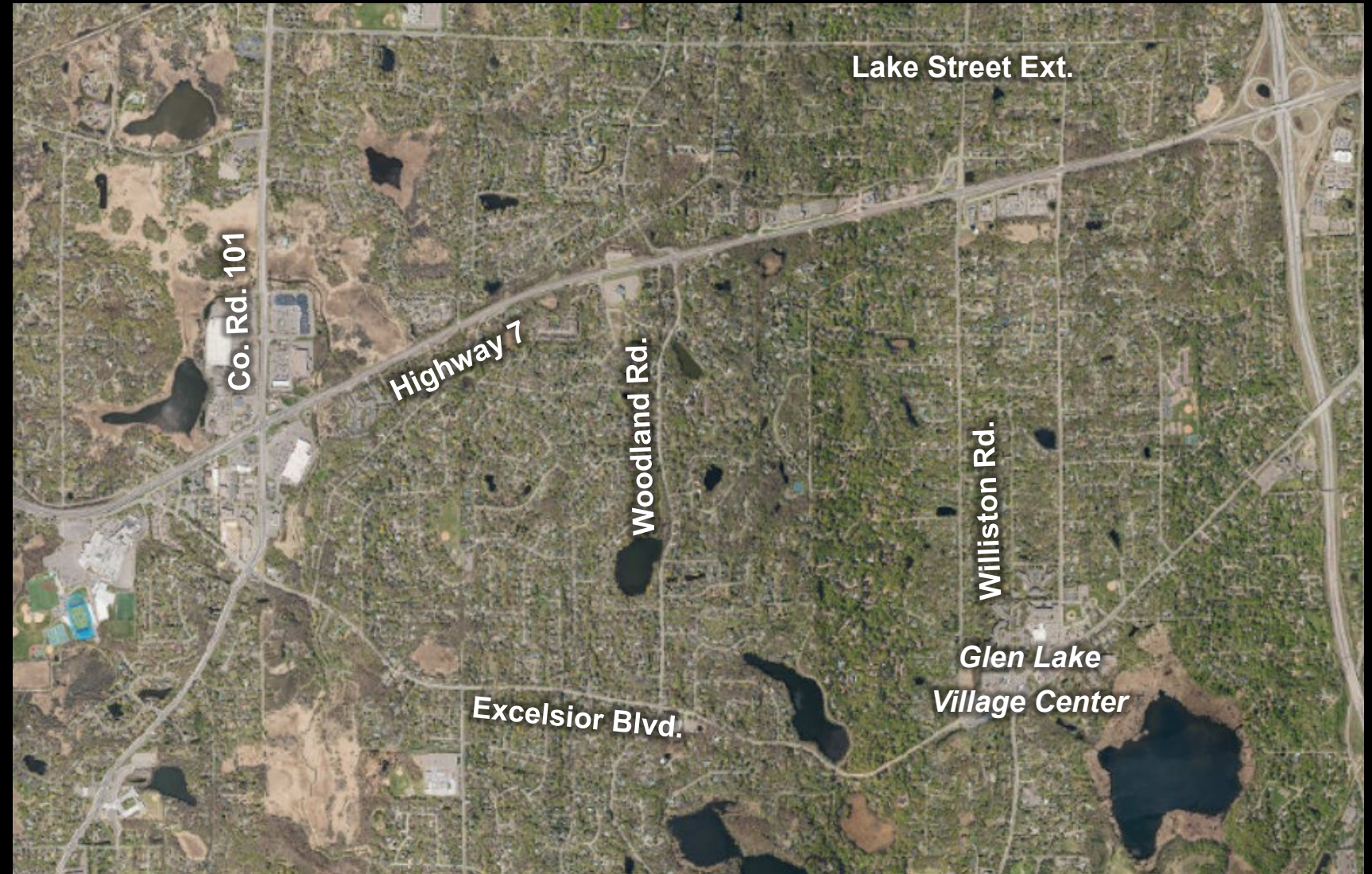




# 2018

The landscape has converted to urban development.

- Homes now exist in former field and woodland areas.
- Existing tree canopy is created mostly by residential property owners.





# Progression of landscape change

*Woodland Hills/Temple Village neighborhoods*

1937 (pre-development)

- mostly field, little canopy



1962 (development)

- residents plant trees



2018 (est. neighborhoods)

- Mature tree canopy





# Example of Minnetonka's landscape transformation

Tonka Wood-Croft and surrounding neighborhoods



# 1937

The landscape is characterized by:

- woodlands
- agricultural fields
- wetlands





# 2018

The landscape has converted to urban development.

- Homes now exist in former field and woodland areas.
- Existing tree canopy is created mostly by residential property owners.





# Progression of landscape change

Tonka Wood-Croft and surrounding neighborhoods

1937 (pre-development)

- Woods and fields



1962 (development)

- Trees planted and removed



2018 (today)

- Mature tree canopy





# Lone Lake Park

More trees exist in the park today than pre-development

1937



2018



---

**Policy Number 8.3  
Plant Pest Program**

**Purpose of Policy:** This policy establishes a plant pest program as authorized by Minn. Stat. § 18G.13 and Minnetonka City Code § 840.015

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**Authority for establishing program**

This plant pest program is established pursuant to Minnesota Statutes, section 18G.13, subdivision 7, Minnetonka City Code section 840.015.

**Determination of plant pests to be prevented, controlled, managed or eliminated**

The Minnetonka city council finds that the following plant pests may cause significant damage or harm to the city's economy, environment or human health:

- **Dutch elm disease fungus**, *Ophiostoma novo-ulmi*
  - **Elm bark beetles**, *Scolytus multistriatus*, *Scolytus schevyrewi* or *Hylurgopinus rufipes*
- **Emerald ash borer beetle**, *Agilus planipennis* Fairmaire
- **Oak wilt disease fungus**, *Ceratocystis fagacearum*

**Responsible parties**

City staff survey the entire city—including public lands, private property, and the right-of-way (road edge)—for the above-listed plant pests. Responsibility for managing diseased trees and incurring the cost of required sanitation (and optional prevention and control measures) is as follows:

- Public lands – the city is responsible for performing and paying the costs of plant pest control, prevention, and management on lands that are owned by the city.
- Private property – the property owner is responsible for performing and paying the costs of plant pest control, prevention, and management on the property owner's land. If a public nuisance exists and the property owner fails to abate the nuisance, the city may perform the work and assess the costs against the owner's property in the manner provided by section 845 of the Minnetonka City Code.
- Right-of-way – Property ownership generally extends to the centerline of the abutting street, which means the property owner owns the land and the trees on the land, and the city has an easement for street and utility uses. The



property owner is responsible for performing and paying the costs of plant pest prevention and control; however, if a tree in the right-of-way is marked for removal, the city will pay for half the cost of diseased tree removal (up to half the city contractor's rate, not including tax), in recognition of the city's interest in protecting the traveling public.

### **Dutch elm disease fungus and elm bark beetles**

Since the 1930s, hundreds of thousands of elms have died from Dutch elm disease (DED). Despite its common name, this fungus probably originated in Asia, then spread to Europe and the United States. Although disease-resistant varieties are being developed, all native elm species are susceptible to DED, which is carried from infected to healthy elms by native or European elm bark beetles. After the fungus is introduced into an elm's water conducting system, leaves (typically at the branch tips) wilt, turn yellow, and often drop from the branches. An infected elm dies because, in its attempt to stop the spread of the fungus, it blocks its own ability to transport water. Because the root systems of adjacent elms often graft (fuse together), DED can spread directly between trees generally growing 50-100 feet apart.

#### Signs and Symptoms:

- Are most obvious between late spring and late summer, though trees infected the previous year may become symptomatic as soon as they leaf out in early spring.
- Visible wilting
- Discoloration of the leaves (yellow or brown)
- Branch death
  - If beginning in the crown, wilting begins first at branch tips ("flagging") and progresses through the crown
  - When infection occurs through root grafting (less common), branch death may begin in the lower crown on the side nearest the graft; it then spreads to the entire crown, sometimes quite rapidly
- Brown staining of the year's new wood, just under the bark

#### Prevention and Control Measures:

- Before removing diseased trees, property owners are advised to:
  - Have a qualified tree care professional inject healthy adjacent elm trees with a fungicide and reevaluate every two or three years (depending on the chemical used) for continued protection. This systemic chemical spreads to all parts of the plant, reducing the risk of above - and below-ground spread of the DED fungus.
  - Where terrain permits, a root-graft barrier should be installed between diseased elms and any healthy trees of the same species within a 100-foot

radius, in order to prevent the spread of DED between the shared root systems of adjacent elm trees.

- Replace removed trees with species outside the elm family. A diverse community forest is more resistant to the spread of epidemic-level diseases and pests.

Required Sanitation Measures:

- City staff will identify and mark infected elm trees throughout Minnetonka.
- Tree removal and all associated work must be completed by the indicated deadline (typically 30 days after marking):
  - Dispose of marked tree(s) and all branches and logs by chipping or removal to an approved brush drop site.
  - Debark stump(s), or cut to within one inch of ground level, or have the stump(s) removed.

**Emerald ash borer beetle**

Emerald ash borer, often called EAB, is a non-native (invasive) insect from Asia that kills ash trees and related species in the Oleaceae family (such as white fringetree). According to the Minnesota Department of Agriculture, no North American ash population is resistant to EAB. In areas where emerald ash borer is established, ash tree mortality rates approach 100 percent. Once EAB infests an area, it cannot be eradicated. Minnesota is home to approximately 900 million ash trees, the highest population of any state. The life cycle of emerald ash borer begins when an adult lays eggs in the bark crevices of ash trees. Hatched larvae burrow into the wood and begin to feed, creating S-shaped galleries under the bark as they move. Over a period of three to five years, subsequent generations of larvae damage the wood and disrupt the tree's ability to draw water and nutrients from the soil, eventually killing the tree. In Minnesota, larvae typically overwinter for one or two years before hatching out in early summer. The new adults chew characteristic D-shaped exit holes in the bark and feed minimally on ash leaves before flying short distances (up to two miles) to mate and lay eggs on ash trees in new locations. People accelerate the movement of this pest by carrying EAB-infested firewood to new locations.

Signs and Symptoms:

- Increased woodpecker activity (as the birds feed on larvae in the living branches)
- "Blonding," pale coloration of bark due to woodpecker activity
- Thinning foliage in the top third of the crown (less diagnostic)
- Small D-shaped exit holes
- S-shaped galleries under the bark
- Vertical splits in the bark

Prevention and Control Measures:

- Educate property owners to avoid pruning and removal of ash trees between May and September, when emerald ash borers are most active.
- Have a qualified tree care professional inject healthy ash trees 10” in diameter or larger with emamectin benzoate, an insecticide that kills EAB larvae. Reevaluate every two or three years (depending on the dosage used) for continued protection.
- Develop a plan to gradually remove smaller ash trees, and those in poor health or structure, from the landscape.
- Replace removed trees with species outside the Oleaceae family. A diverse community forest is more resistant to the spread of epidemic-level diseases and pests.
- Never transport ash wood or brush outside the state’s designated quarantined area (which includes the Twin Cities metro). Quarantine information is regularly updated on the Minnesota Department of Agriculture website (search “emerald ash borer quarantine”).

Required Sanitation Measures\*:

- City staff will scout for EAB-infested trees in summer, and mark them for removal in the fall/winter.
- Tree removal and all associated work must be completed by the indicated deadline (between October 15 and March 1):
  - Dispose of marked tree(s) and all associated debris by chipping or removal to an approved brush drop site.
  - Debark the stump(s), or cut to within one inch of ground level, or have the stump(s) removed.

\*City staff will request that the city council amend these requirements when EAB has spread throughout the city and the city has determined that the population can no longer be managed. At that time, city staff will recommend that the city council require removal of ash trees infested with EAB only if they pose a risk to public safety or public property.

**Oak wilt disease fungus**

Oak wilt is caused by a fungal pathogen that most commonly spreads between the interconnected (grafted) root systems of trees growing within 50-100 feet of each other. When the fungus is introduced into the water-conducting system of a red oak tree, the leaves wilt, brown, and drop from the branches. The disease can kill a red oak within a few weeks. The tree dies because, in its attempt to stop the spread of the fungus, it blocks its own ability to transport water. To prevent new infections throughout the community, diseased red oaks should be removed before they can produce a fungal spore mat the following spring. Without good sanitation, the spore mat attracts sap beetles that carry the disease to oaks with fresh pruning or storm damage wounds, starting new oak wilt pockets across the wider landscape.



Signs and Symptoms:

- Foliage wilts from the top down, spreading throughout the crown
- Individual leaves wilt from the leaf tip and margins inward, turning bronze or brown
- Rapid and complete wilting within 2-6 weeks
- When the bark is pulled back from a branch with wilting leaves, the wood below is typically discolored

Prevention and Control Measures:

- Educate property owners to avoid pruning oak trees between mid-March and October, when the oak wilt fungus and its insect vectors are most active.
- Before removing diseased trees, property owners are advised to:
  - Have a qualified tree care professional inject healthy adjacent red oak trees with the fungicide propiconazole and reevaluate every other year for continued protection. This systemic chemical spreads to all parts of the plant, reducing the risk of above- and below-ground spread of the oak wilt fungus.
  - Where terrain permits, a root-graft barrier should be installed between diseased red oaks and any healthy red oak trees within a 100-foot radius, in order to prevent the spread of oak wilt fungus between the shared root systems of adjacent red oak trees.
- The city does not require the removal of white and bur oak trees infected with oak wilt disease. Both species of tree are more tolerant of the oak wilt disease than red oak trees, and through removal of infected branches and chemical injection, can be preserved. In addition, neither a white nor a bur oak tree will produce a spore mat in the spring after its death.
- Replace removed trees with species other than oak (and preferably outside the beech family, to which oaks belong). A diverse community forest is more resistant to the spread of epidemic-level diseases and pests.

Required Sanitation Measures:

- City staff will identify and mark infected red oak trees throughout Minnetonka.
- Tree removal and all associated work must be completed by the indicated deadline (February 1) to prevent the formation of a spore mat:  
Dispose of the tree(s) and all associated debris by chipping or removal to an approved brush drop site. (With prior approval and oversight by Natural Resources staff, oak wood may be retained as firewood, see below)
  - Debark the stump(s), or cut to within one inch of ground level, or have the stump(s) removed.
- With prior approval, firewood may be kept using one of the following methods:

- Cut, split and then stack wood loose for air flow (enough space for a chipmunk to crawl between pieces). Then, call forestry staff for an inspection by October 15.
  - If firewood is not dry when inspected, then the wood must be covered with plastic that is 5 millimeters thick or more. Edges of plastic must be buried in the ground to create a tight seal. The wood must then be re-inspected by November 15.
    - If the wood has not been properly covered, it will be deemed a nuisance and the property owner will need to remove all of the wood by February 1.
- Cut wood into three foot sections, creating space between ends of each log to allow for air flow. Perform this work as soon as possible to allow each section to dry. Then, call forestry staff for an inspection by October 15.
  - If the wood is not sufficiently dry, all wood must be covered with plastic that is 5 millimeters thick or more. Edges of plastic must be buried in the ground to create a tight seal. The wood must then be re-inspected by November 15.
    - If wood has not been properly covered, it will be deemed a nuisance and the property owner will need to remove all of the wood by February 1.
- Firewood must remain covered until July 4 of the following year, to prevent sap-feeding beetles from spreading the oak wilt fungus. City staff will perform random firewood inspections to check that control measures remain in place during this time frame.

**Amendments to Policy**

This policy may be amended only after a public hearing as required by City Code section 840.015.

Adopted by Resolution No. 2018-  
Council Meeting of \_\_\_\_\_