

**Addenda**  
**Minnetonka City Council**  
**Meeting of Apr. 6, 2020**

**ITEM 11A (Formerly ITEM 10B) - Interim use permit, with setback variance, for a garden market at 17555 Highway 7**

This item was moved due to the vote requirement. The amended agenda reflects this change, and affected agenda items under Agenda Item 10 have been renumbered accordingly. An amended agenda and item report are attached for reference.



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**TO:** City Council  
**FROM:** McKaia Ryberg, Assistant to the City Manager  
**DATE:** April 6, 2020  
**SUBJECT:** Change Memo for April 6, 2020

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**ITEM 11A (Formerly ITEM 10B) - Interim use permit, with setback variance, for a garden market at 17555 Highway 7**

This item has been moved to Agenda Item 11 due to the vote requirement. All other items under Agenda Item 10 have been renumbered to reflect the change. An updated agenda has been attached for reference.



**Agenda  
Minnetonka City Council  
Regular Meeting  
Monday, April 6, 2020  
6:30 p.m.  
WebEx**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Calvert-Schaeppi-Coakley-Kirk-Schack-Carter-Wiersum
4. Approval of Agenda
5. Approval of Minutes:
  - A. February 24, 2020 regular council meeting
  - B. March 2, 2020 regular council meeting
6. Special Matters:
  - A. Earth Day Proclamation  
Recommendation: Read the proclamation
  - B. Arbor Day Proclamation  
Recommendation: Read the proclamation
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
  - A. Bids for the Excelsior Boulevard Trail project (Shady Oak Road to Baker Road) and agreement with Xcel Energy  
  
Recommendation: Award the contract, approve the agreement and amend the CIP (5 votes)

Due to the COVID-19 health pandemic, the city council's regular meeting place is not available. Pursuant to Minn. Stat. § 13D.021, city council members will participate in the meeting remotely via WebEx. Members of the public who desire to monitor the meeting remotely or to give input or testimony during the meeting can find instructions at <https://www.minnetonkamn.gov/government/city-council-mayor/city-council-meetings>.

- B. Bids and agreement for the 2020 Twelve Oaks Center Drive/Parkers Lake Road Improvements  
Recommendation: Award the contract and approve agreement (4 votes)
- C. Bids for the 2020 Mill & Overlay Project  
Recommendation: Award the contract (4 votes)
- 10. Consent Agenda - Items Requiring a Majority Vote:
  - A. Transfer the remaining fund balance from the 2010 Refunding Park Bond fund to the 2016 Park Referendum Bond fund  
Recommendation: Approve the transfer (4 votes)
  - B. Resolution approving a Joint Powers Agreement with the City of Plymouth for the Ridgemount Avenue Improvement Project  
Recommendation: Adopt the resolution (4 votes)
  - C. Contract correction for the Public Safety Facilities project  
Recommendation: Approve GMP amendment, award construction contracts and assign selected contracts to Kraus Anderson (4 votes)
- 11. Consent Agenda - Items Requiring Five Votes:
  - A. Interim use permit, with setback variance, for a garden market at 17555 Highway 7  
Recommendation: Adopt the resolution approving the permit (5 votes)
- 12. Introduction of Ordinances: None
- 13. Public Hearings:
  - A. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for F Y M, LLC., 1700 Plymouth Rd  
Recommendation: Open the public hearing and continue to May 4, 2020 (4 votes)
  - B. On-sale intoxicating liquor and Sunday on-sale intoxicating liquor licenses for Gold Nugget Tonka, LLC., dba Gold Nugget Tavern & Grille, 14401 Excelsior Boulevard  
Recommendation: Continue the public hearing from March 2, 2020, and grant the licenses (5 votes)
- 14. Other Business:
  - A. Resolution approving a conditional use permit for a 12-person licensed residential care facility at 3727 Shady Oak Road  
Recommendation: Adopt the resolution approving the request (4 votes)

- B. Resolution approving emergency forgivable loans to address the impacts of COVID-19 on small businesses within the City of Minnetonka

Recommendation: Adopt the resolution (4 votes)

- C. Emergency ordinance regarding city manager licensing authority, utility penalties, and temporary compensation and leave policies

Recommendation: Adopt the ordinance (5 votes)

15. Appointments and Reappointments: None

16. Adjournment

**City Council Agenda Item #11A  
Meeting of April 6, 2020**

**Brief Description** Interim use permit, with setback variance, for a garden market at 17555 Highway 7

**Recommendation** Adopt the resolution approving the permit

**Proposal**

Untiedt's Vegetable Farm, Inc. is proposing to operate a garden market within the existing parking lot at 17555 Highway 7. The market would be situated north of the Northern Tool and Equipment tenant space. It would consist of a greenhouse, two gazebos, and various display benches, all of which would be surrounded by a three-foot fence. As proposed, the market would be open seven days a week, May 1 through Oct. 31. Typical hours would be 9 a.m. to 7 p.m.

The proposal requires an interim use permit (IUP), with a setback variance from 100 feet to 75



feet.

**Planning Commission Hearing**

The planning commission considered the interim use permit on March 5, 2020. The commission report, associated plans, and meeting minutes are attached. Staff recommended approval of the proposal, finding the proposed garden market is an appropriate use of the site:

- The garden market would be located in an unutilized parking area.
- Aside from the setback variance, the market would meet all IUP standards.
- The setback variance is reasonable. Though the sales area technically is just 75 feet from the closest residential *property*, it would be over 300 feet from the closest residential *structure*

and would be further separated from this structure by existing vegetation, a public trail, and Purgatory Creek.

At the commission meeting, a public hearing was opened to take comment. No comments were received.

### **Planning Commission Recommendation**

On a 6-0 vote, the commission recommended that the city council approve the proposal. There have been no changes to the proposal or additional information received since the planning commission's meeting on this item.

### **Staff Recommendation**

Staff recommends that the city council adopt the resolution approving an interim use permit, with setback variance, for a garden market at 17555 Highway 7.

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

Originator:   Susan Thomas, AICP, Principal Planner

**MINNETONKA PLANNING COMMISSION**  
**March 5, 2020**

**Brief Description** Interim use permit, with setback variance, for a garden market at 17555 Highway 7

**Recommendation** Recommend the city council adopt the resolution approving the permit

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**Proposal**

Untiedt's Vegetable Farm, Inc. is proposing to operate a garden market within the existing parking lot at 17555 Highway 7. The market would be situated north of the Northern Tool and Equipment tenant space. It would consist of a greenhouse, two gazebos, and various display benches, all of which would be surrounded by a three-foot fence. As proposed, the market would be open seven days a week, May 1 through Oct. 31. Typical hours would be 9 a.m. to 7 p.m.

The proposal requires an interim use permit, with a setback variance.



**Interim Use Permits**

By definition, an interim use is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. In other words, an interim use is one that has an "end date or event" attached to it. This is significantly different than a conditional use, which can continue in perpetuity so long as the code required and other approved conditions continue to be met.

Transient sales – such as garden markets – are interim uses on commercial properties. One of the standards for transient sales is that no portion of the use may take place within 100 feet of any developed property zoned for residential uses. The proposed Untiedt's market would be 75 feet from the closest residential property.



**Staff Analysis**

Staff finds that the proposed garden market is an appropriate use of the site.



1. The site has an excess of parking area that is underutilized.
2. Aside from the setback variance, the market would meet all IUP standards. These standards are outlined in the Supporting Information section of this report.
3. The setback variance is reasonable. The sales area would be over 300 feet from the closest residential structure and would be further separated from this structure by existing vegetation, a public trail, and Purgatory Creek.

**Staff Recommendation**

Recommend that the city council adopt the resolution approving an interim use permit, with setback variance, for a garden market at 17555 Highway 7.

Originator: Susan Thomas, Assistant City Planner  
Through: Loren Gordon, AICP, City Planner

**Supporting Information**

**Surrounding Properties**

	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
Use	Highway 7	commercial building	Purgatory Creek and homes beyond	vacant restaurant building
Zoning	N/A	B-2	R-3	B-2
Guide Plan Designation	N/A	mixed-use	low-density	mixed-use

**Subject Property**

	<b>Existing</b>	<b>Proposed</b>
Use	Commercial building	No change
Zoning	B-2	
Guide Plan Designation	mixed-use	

**Parking**

The building on the subject property is roughly 120,000 square feet in size, requiring 480 parking stalls by city code. There are currently 469 striped parking stalls, with additional area available as proof-of-parking. Given this, and the evidence of significant underuse of the parking area, staff is confident that the proposed garden market would not create a parking demand issue.



April 19, 2019



Aug. 29, 2019



Sept. 24, 2019

**IUP Standards**

The proposed garden market would meet the general interim use permit standards as outlined in City Code 300.05 Subd.5.

1. The general performance standards in section 300.16, Subd. 2 will be met;

**Finding:** The proposed garden market would be consistent with city goals and policies, would not have an undue adverse impact on government facilities, utilities or services and would not impact public health safety, or welfare.

2. The use will not delay anticipated development or redevelopment of the site;

**Finding:** There is no redevelopment currently anticipated in the area. Nevertheless, as a seasonal transient use, the proposed garden center would not impact redevelopment potential of the site.

3. The use will not be in conflict with any provisions of the city code on an ongoing basis;

**Finding:** The proposed use would not impact required parking, access or setbacks.

4. The use will not adversely affect the adjacent property, the surrounding neighborhood, or other uses on the property where the use will be located;

**Finding:** Other than bringing more visitors to the commercial center, the seasonal use is not anticipated to impact the surrounding uses.

5. The property on which the use will be located is currently in compliance with all applicable city code standards;

**Finding:** Staff knows of no outstanding zoning violations.

6. The use is allowed as an interim use in the applicable zoning district;

**Finding:** Transient sales are allowed by IUP in the B-2 zoning district.

7. The date or event that will terminate the use can be identified with certainty;

**Finding:** As a condition of approval, the interim use permit would be granted to Untiedt's Market. If either Untiedt's Market decides

not to operate at the location or the property owner chooses not to renew a lease, the permit would be null and void.

8. The use will not impose additional unreasonable costs on the public; and

**Finding:** The proposed transient sales are not anticipated to result in any public costs.

9. The applicant agrees in writing to any conditions that the city council deems appropriate for the use, including a requirement for a financial security to ensure removal of all evidence of the use upon termination.

**Finding:** This has been included as a condition of approval.

Aside from setback, the proposed garden market would meet the specific interim use permit standards for transient sales as outlined in City Code 300.18 Subd.7(a).

1. Must be located in a suitable off-street location and shall not extend into adjacent right-of-way or other public property;

**Finding:** The garden center would be located in a currently unutilized area of parking.

2. Must not interrupt vehicular circulation on the site or obstruct parking spaces needed by permanent business established on the site;

**Finding:** The garden center would not obstruct site circulation. It would be located in a currently unutilized area of parking.

3. Must have written authorization from property owner;

**Finding:** A lease agreement has been submitted. As a condition of approval, a letter authorizing use of the site or the final lease agreement must be provided to the city prior to May 1.

4. Business operator must secure all applicable licenses and approvals from the city, Hennepin county or other appropriate jurisdictions;

**Finding:** This has been included as a condition of approval.

5. Sight visibility clearances at street intersections and access points must be provided in accordance with section 300.15, subd. 9(e) of this ordinance or as determined by the city to protect public safety;

**Finding:** The proposal has been reviewed by engineering and public works staff. Site visibility clearances would be provided.

6. No portion of the use may take place within 100 feet of any developed property zoned for residential use;

**Finding:** The proposed market would be 75 feet from the closest residential property. A variance is required; see the following section of this report.

7. Signs are subject to the following:
  - a. No more than four signs are allowed, which do not exceed 32 square feet in aggregate;
  - b. Incidental product or pricing signs must be placed directly next to the appropriate product;
  - c. Product advertising is permitted, but must be included in the maximum allowed sign area;
  - d. The signs must have a professional appearance and must be securely mounted or erected in a safe location; and
  - e. These limitations apply to all signs associated with the use, including those affixed to vehicles;

**Finding:** This has been included as a condition of approval.

8. Any display of items must be limited to representative samples and be arranged in as compact a manner as reasonably practicable;

**Finding:** This has been included as a condition of approval.

9. The interim use permit will be issued in the name of the person requesting the permit and will be for the purpose of selling a particular item or range of items at a specific location. Any change in the person, location or items sold will render the permit invalid; and

**Finding:** This has been included as a condition of approval.

10. Violation of the above standards or other conditions placed upon the interim use permit will result in immediate revocation of the interim use permit;

**Finding:** This has been included as a condition of approval.

**Variance Standard**

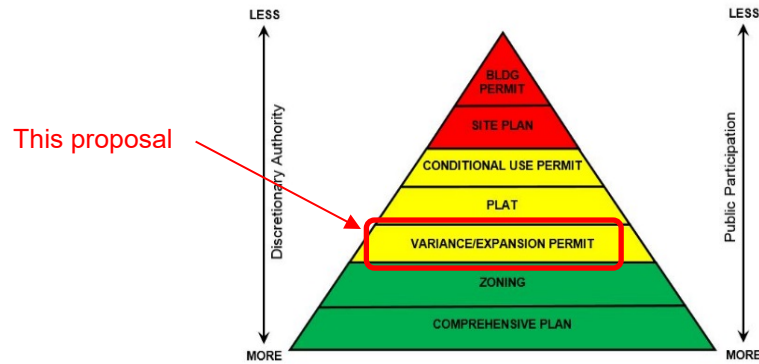
The proposed garden market's 75-foot setback from residential property would meet the variance standard as:

1. **Intent of the Ordinance.** The intent of the setback requirement pertaining to transient sales is to ensure appropriate separation between these areas and residential land uses, so as to minimize real and perceived nuisance impacts. The location of the garden center would meet this intent. Though it would be set back 75 feet from the closest residential property line instead of the required 100 feet, the area would be over 300 feet from the closest residential structure and would be further separated from this structure by existing vegetation, a public trail, and Purgatory Creek.
2. **Consistent with Comprehensive Plan.** The subject property is located in the Highway 7/County Road 101 Area village center. One of the overall themes outlined in the comprehensive plan is to "provide development and redevelopment opportunities that encourage vitality, promote identity, and improve livability" in village centers. The requested variance is consistent with this goal.
3. **Practical Difficulties.** There are practical difficulties in complying with the ordinance:
  - **Reasonableness and Neighborhood Character.** The proposed 75-foot setback is reasonable and would not impact the character of the surrounding area. Though the garden center would be set back 75 feet from the closest residential property line instead of the required 100 feet, the area would be over 300 feet from the closest residential.
  - **Unique Circumstance.** The existing shopping center property on which the garden center would be located technically abuts four residential properties. However, the usable area of the commercial property is separated from the useable area of the residential properties by existing vegetation, a public trail, and Purgatory Creek. In total, this a unique circumstance not common to similar commercial properties.

**Neighborhood Comments**

The city sent notices to 40 area property owners and has received no comments to date.

### Pyramid of Discretion



### Motion Options

The planning commission has three options:

1. Concur with staff's recommendation. In this case a motion should be made recommending the city council approve the IUP.
2. Disagree with staff's recommendation. In this case a motion should be made recommending denial of the request. This motion must include a statement as to why the request is denied.
3. Table the request. In this case a motion should be made to table the item. The motion should be made include a statement as to why the request is being tabled with direction to staff, the applicant or both.

### Voting

The planning commission will make a recommendation to the city council, which has final authority on the applicant's request. Approval of the requested IUP requires the affirmative vote of five councilmembers, due to the variance.

### Deadline for Decision

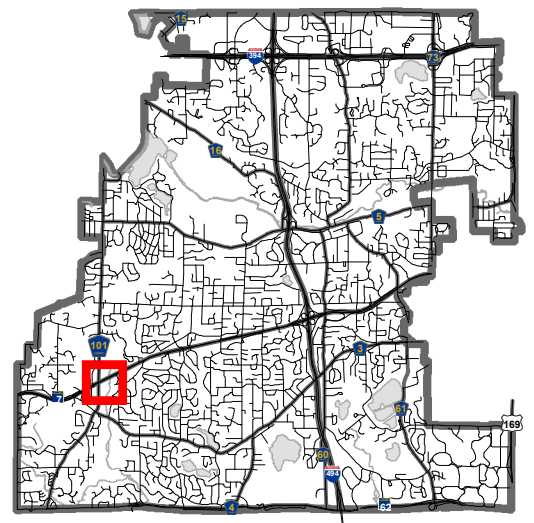
May 4, 2020





### Location Map

Project: Untiedt's  
Address: 17555 Hwy 7





To: City of Minnetonka

From: Craig Gilb (Untiedt's Vegetable Farm)

Date: January 17, 2020

Re: Interim use permit

### Reason for Request

In October of 2019 Westwind Plaza broke its lease with Untiedt's to pursue plans of building a bank. Untiedt's operated a garden center there for 14 years (seasons). This past few months Untiedt's has been talking with Daniel Cohen who represents Minn Associates, Limited Partnership who owns the property known as 17501 Highway 7, Minnetonka, Minnesota about relocating our garden center to their property. We have a lease in place pending city approval.

### Background on Untiedt's Vegetable Farm

Untiedt's has operated for the past 49 years on approximately 600 acres of land, in the Montrose and Waverly area. Untiedt's is committed to providing quality produce at competitive prices to Twin Cities area residents. The operation is a family farm that includes Jerry Untiedt, his wife Sue and four daughters.

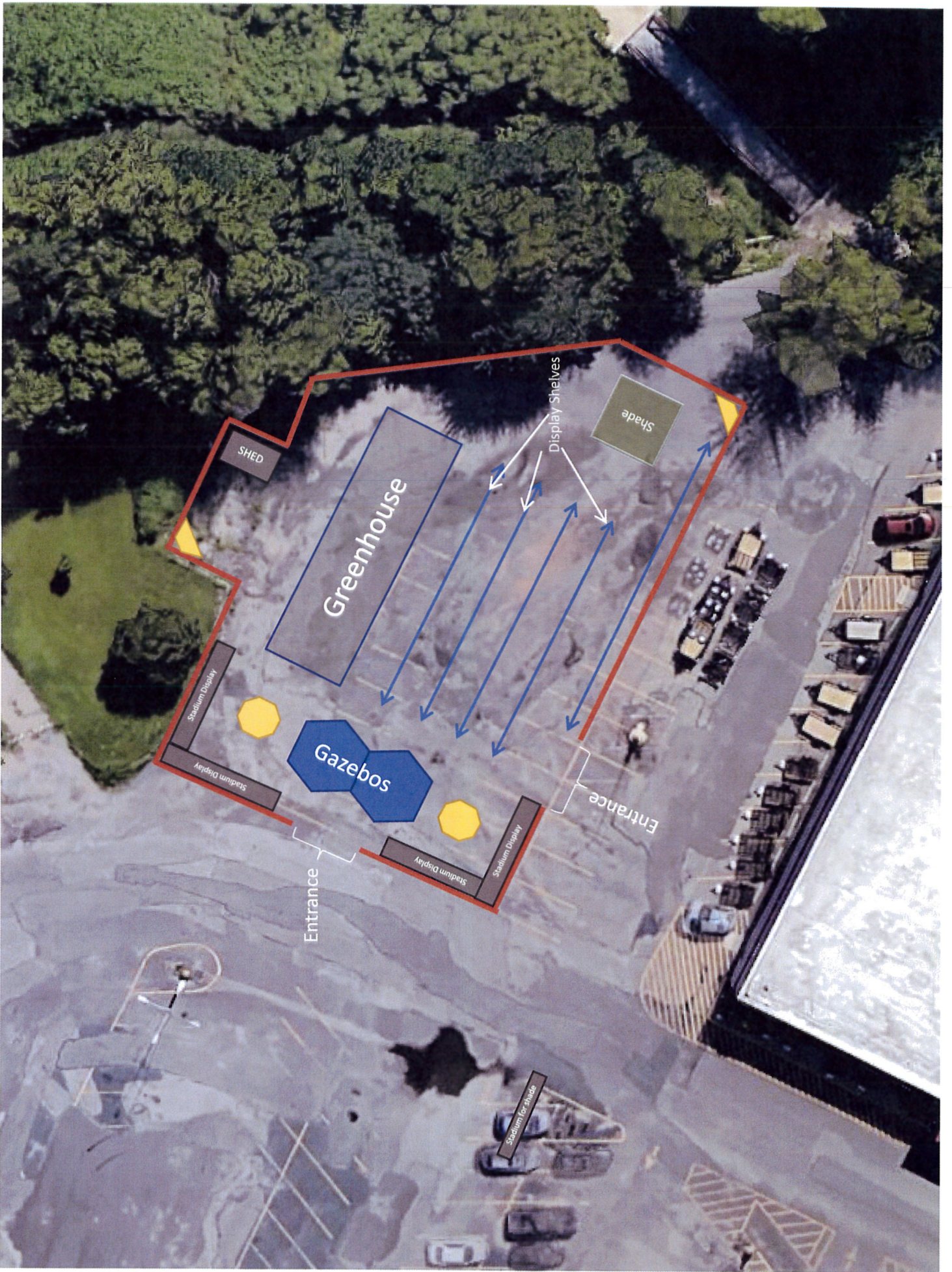
For 47 years, the Untiedt's have offered fresh produce to the Twin Cities markets from the Minneapolis Farmers Market, garden centers, and vegetable stands in 26 locations throughout the Twin Cities. Untiedt's puts a premium on the lay-out of their Garden Markets, the aesthetics of its vegetable/produce stands and the quality of its customer service.

### Site Layout

The new garden center will be built in the Northeast corner of the parking lot next to the Northern Store. The Market will be situated away from the storefronts and will not interfere with parking, traffic circulation, or emergency vehicle access. The area will consist of a Greenhouse, 2 covered gazeboes, and display benches placed around the perimeter of the sales area. In addition, a three-foot fence will be placed around the sales area.

The gazeboes measure approximately 16 feet in width and 11 feet in height and will be used to display produce and serve as a checkout area. The Greenhouse measures 21 feet in width and 60 feet in length. The display benches are approximately three to four feet in height. The Market will start May 1<sup>st</sup> and be open everyday thru October 31<sup>st</sup>. Hours of operation will be 9:00 a.m. – 7:00 p.m.

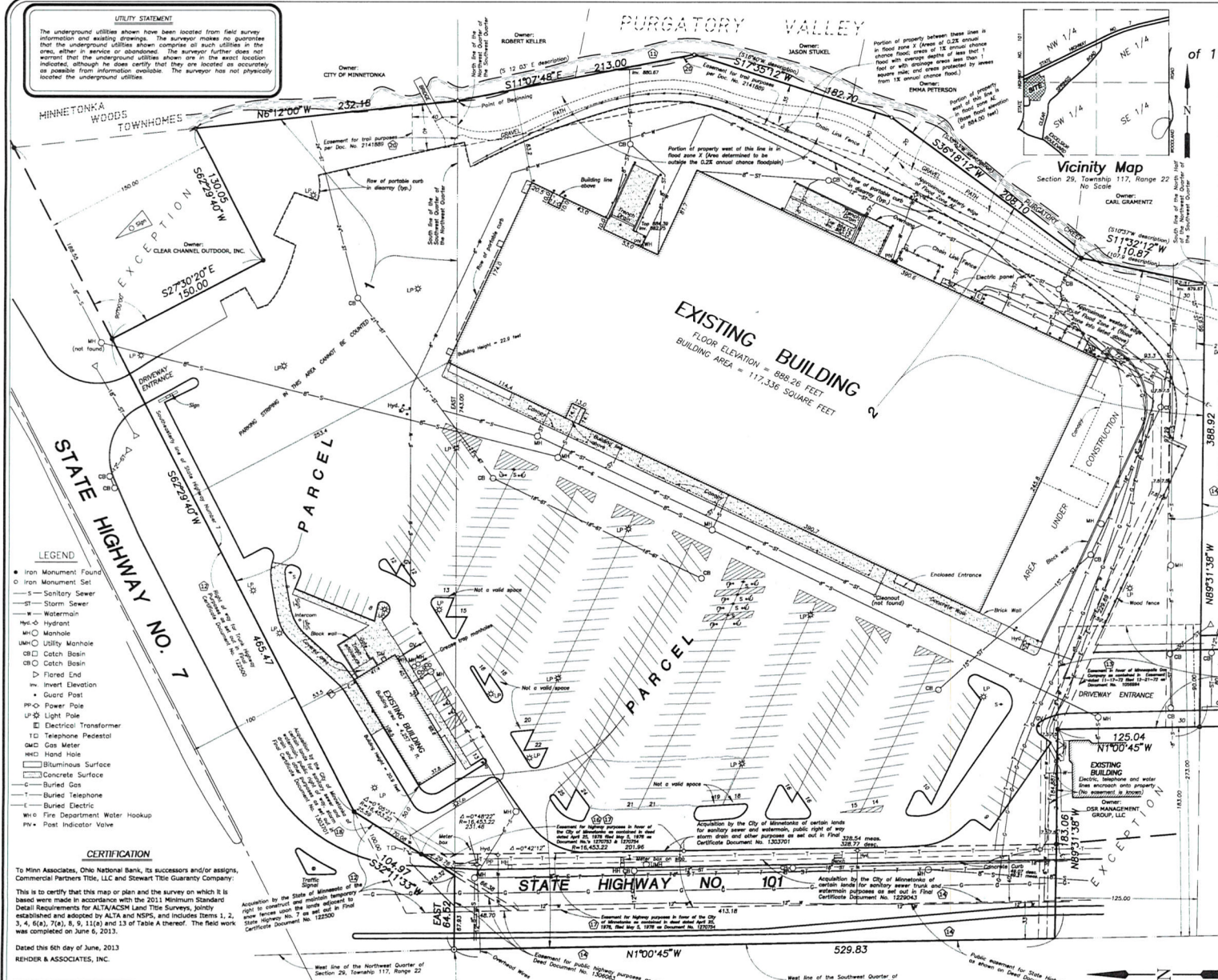






**UTILITY STATEMENT**  
 The underground utilities shown have been located from field survey information and existing drawings. The surveyor makes no guarantee that the underground utilities shown compare to such utilities in the area, either in service or abandonment. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated, although he does certify that they are located as accurately as available from information available. The surveyor has not physically located the underground utilities.

**ALTA/ACSM Land Title Survey for:**  
**MINN ASSOCIATES**  
 of 17501 State Highway No. 7 - Minnetonka, Minnesota  
**PROPERTY DESCRIPTION TAKEN FROM COMMERCIAL PARTNERS TITLE, LLC COMMITMENT FILE NO. 37085**



- LEGEND**
- Iron Monument Found
  - Iron Monument Set
  - Sanitary Sewer
  - Storm Sewer
  - Watermain
  - Hydrant
  - Manhole
  - Utility Manhole
  - Catch Basin
  - Catch Basin
  - Flooded Area
  - Invert Elevation
  - Guard Post
  - Flower Pole
  - Light Pole
  - Electrical Transformer
  - Telephone Precast
  - Gas Meter
  - Hand Hole
  - Bituminous Surface
  - Concrete Surface
  - Buried Gas
  - Buried Telephone
  - Buried Electric
  - Fire Department Water Hookup
  - Post Indicator Valve

**CERTIFICATION**  
 To Minn Associates, Ohio National Bank, its successors and/or assigns, Commercial Partners Title, LLC and Stewart Title Guaranty Company:  
 This is to certify that this map or plan and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 7(a), 8, 9, 11(a) and 13 of Table A thereof. The field work was completed on June 6, 2013.  
 Dated this 6th day of June, 2013.  
 Thomas J. Adam, Land Surveyor  
 Minnesota License No. 43414

**PARC 1:**  
 That part of the Southwest Quarter of the Northwest Quarter of Section 29, Township 117, Range 22, described as follows: Beginning at a point on the South line of said tract 743 feet East of the Southwest corner thereof; thence North 6 degrees and 12 minutes West to its intersection with the Southwestern line of State Highway Number 7; thence South 6 degrees and 12 minutes West along the Southwestern line of State Highway Number 7 to its intersection with the South line of said Southwest Quarter of the Northwest Quarter of said Section, Township and Range; thence East along the South line of said Southwest Quarter of the Northwest Quarter of said Section, Township and Range, except that part of the Northwest 150.00 feet of the above described property which lies Northeast of a line described as follows: Beginning at a point on the Northwest line of the above described property distant 188.55 feet Southwesterly from the Northeast corner of said above described property; thence South 81 degrees and 11 minutes East to said Northwest line a distance of 150.00 feet and said line there terminating.

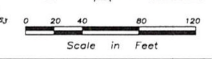
**PARC 2:**  
 That part of the North half of the Northwest Quarter of the Southwest Quarter of Section 29, Township 117, Range 22, lying West of a line described as follows: Commencing at a point on the North line of said North half of the Northwest Quarter of the Southwest Quarter 743 feet East of the Northwest corner thereof; thence running South 12 degrees and 3 minutes East 213 feet; thence South 14 degrees and 40 minutes West 182.7 feet; thence South 15 degrees and 23 minutes West 208.1 feet; thence South 10 degrees and 37 minutes West 107.9 feet to the South line of said North half of the Northwest Quarter of the Southwest Quarter of said Section 29, except the South 125.00 feet of the said North half of the North half of the Northwest Quarter of the Southwest Quarter of said Section 29.

- EASEMENT NOTES CORRESPONDING TO SCHEDULE B - PART II, COMMERCIAL PARTNERS TITLE, LLC COMMITMENT NUMBER 37085**
- Item 11 - Subject to Judicial Ditch No. 2 as shown by Warranty Deed filed as Document No. 1306063 and by record on the Certificate of Title affects the property and is shown on the survey. (Affects Parcels 1 and 2)
  - Item 12 - Easement for truck highway purposes, together with the right to construct and maintain temporary access lanes, in favor of State of Minnesota, as created in document dated July 6, 1926, filed September 5, 1930, as Document No. 122500 affects the property and is shown on the survey. (Affects Parcels 1 and 2)
  - Item 13 - Easement for underground gas lines, gas mains, service pipes, and other fixtures and appurtenances, in favor of Minneapolis Gas Company, as created in document dated November 17, 1975, filed December 21, 1972, as Document No. 1056804 affects the property and is shown on the survey. (Affects Parcel 2)
  - Item 14 - Easement for sanitary sewer purposes, in favor of the City of Minnetonka, a municipal corporation, as created in document dated June 13, 1977, filed July 28, 1977, as Document No. 1229043, and as shown by Warranty Deed filed as Document No. 1508363 and by record on the Certificate of Title affects the property and is shown on the survey. (Affects Parcel 2)
  - Item 15 - Easement for ingress and egress, for the benefit of City of Minnetonka, a Minnesota municipal corporation, over the South 125.00 feet of the West 143.00 feet of the North half of the Northwest Quarter of the Southwest Quarter of Section 29, Township 117, Range 22, as created in document dated May 4, 1978, filed May 6, 1978, as Document No. 1270732 affects the property and is shown on the survey. (Affects Parcel 2)
  - Item 16 - Easement for highway purposes, in favor of the City of Minnetonka, as created in document dated April 25, 1978, filed May 5, 1978, as Document No. 1270753 affects the property and is shown on the survey. (Affects Parcel 1)
  - Item 17 - Easement for highway purposes, in favor of the City of Minnetonka, as created in document dated April 25, 1978, filed May 5, 1978, as Document No. 1270754 affects the property and is shown on the survey. (Affects Parcel 2)
  - Item 18 - Easement for public right-of-way, sanitary sewer and watermain, storm drain and drainage and other public purposes, in favor of City of Minnetonka, as created in document dated May 6, 1978, filed November 14, 1978, as Document No. 1303701 affects the property and is shown on the survey. (Affects Parcels 1 and 2)
  - Item 19 - Terms and conditions of and easements contained in Reciprocal Easement Agreement dated January 1, 1977, filed November 20, 1976, as Document No. 1300565 affects the property and is based in nature and therefore is not shown on the survey. (Affects Parcels 1 and 2)
  - Item 20 - Easement for recreational trail purposes, in favor of City of Minnetonka, a Minnesota municipal corporation, as created in document dated July 13, 1990, filed December 10, 1990, as Document No. 2141689 affects the property and is shown on the survey. (Affects Parcels 1 and 2)

**HUTCHINS DRIVE**  
 Easement for ingress and egress in favor of the City of Minnetonka and covenants as contained in deed dated May 4, 1978, filed May 5, 1978, as Document No. 1270752

**NOTES**  
 Bearings shown are based on an assumed datum.  
 Utilities shown are from information furnished by the City of Minnetonka, Xcel Energy, Retient Energy, and Oweat in response to Cooper State One Call Ticket No. 80293746 and 131512885. All other utility companies failed to respond.  
 Contact Cooper State One Call at 800-252-1156 for precise utility locations before any construction shall begin.  
 Area of property = 545,792 square feet (12.99 acres)  
 Area of property excluding roadway = 521,903 square feet (11.98 acres)  
 Number of striped parking stalls: 347 regular and 12 handicap.  
 Zoning of property: B-2 (Limited Business District)  
 This property is located in Flood Zone AE, X and Y (two classes of flood zone X). The lines shown hereon were taken from a FEMA map and are shown in an approximate location only. The actual lines would need to be field located as directed by FEMA. This information was taken from Flood Zone Panel No. 2705328175 with an effective date of September 2, 2004. The definition of the flood zones are printed on the survey face.  
 Building setbacks, zoning and flood zone information obtained from the City of Minnetonka.  
 Easements shown were taken from Commercial Partners Title, LLC, Title Commitment File No. 37895, with an effective date of May 18, 2013.

**Rehder and Associates, Inc.**  
 CIVIL ENGINEERS AND LAND SURVEYORS  
 3440 Federal Drive - Suite 110 - Eden, Minnesota • Phone: (601) 452-5001  
 JOB: 134-2652.010



**7. Public Hearings: Consent Agenda**

No item was removed from the consent agenda for discussion or separate action.

***Waterman moved, second by Powers, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:***

**A. Front yard setback variance for an entry feature at 10101 Minnetonka Blvd.**

Adopt the resolution approving the front yard setback variance for an entry feature at 10101 Minnetonka Blvd.

***Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried and the item on the consent agenda was approved as submitted.***

**8. Public Hearings**

**A. Interim use permit for a garden market at 17555 Hwy 7.**

Chair Sewall 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.

Powers confirmed with Thomas that no comments were received from neighboring property owners.

Craig Gilb, operations manager for Untiedt's Vegetable Farm, representing the applicant, stated that the business has been operating at Westwinds Plaza for 13 years.

Chair Sewall asked if generators would be used. Dr. Gilb answered in the negative.

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

Powers was familiar with the business operating at Westwinds Plaza. It operated well. He supports staff's recommendation.

Waterman found the use to meet the interim use permit requirements and the variance seems reasonable given the natural barriers that exist on the trail.

Hanson looked forward to shopping there.

Chair Sewall thought the plants would make the parking lot look better. There would be a nice buffer between the business and the residential houses.

*Powers moved, second by Waterman, to recommend that the city council adopt the resolution approving an interim use permit with a setback variance for a garden market at 17555 Hwy 7.*

*Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.*

**B. Conditional use permit for licensed residential care facility at 3727 Shady Oak Road.**

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

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

Hanson asked how many parking spots would be available for visitors. Gordon explained that the resident and employees would not be there at the same time very often. There is a possibility that more than four vehicles could show up at the same time. A five-minute window for a delivery would not trigger enforcement of a no parking violation on the street.

Waterman asked if the utilities would be impacted. Gordon noted that the consumption of water, sewer, and electric services would be higher for the site than a typical residential house, but not a burden to the system.

Hanson asked if seven vehicles parked at the site would cause an impediment to emergency vehicles. Gordon answered that fire department staff reviewed the application and found no problem.

Dr. Ilitch Diaz Gutierrez, representing Spirit Care Homes, applicant, thanked Ingvalson for his work helping him complete the application process and Gordon for giving the staff report. He stated that:

- The proposal would increase the potential occupancy to 12 residents who would be elderly and disabled or who would require memory care.
- There is a huge need for this type of residence. Every day 10,000 people turn 65 years of age and 4,000 people turn 55 years of age in the United States. Most of the seniors would require assistance.
- In the state of Minnesota, there are 800 assisted living communities that provide 30,000 beds. In 2015, half a million people reported disabilities.
- In the Midwest, there are 24 beds for every 1,000 people 65 or older.
- In Minnetonka, most of the residential care homes are full and the wait lists are long.

**Resolution No. 2020-**

**Resolution approving an interim use permit, with setback variance,  
for a garden market at 17555 Highway 7**

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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 subject property is located at 17555 Highway 7. It is legally described as:

Parcel 1:

That part of the Southwest Quarter of the Northwest Quarter of Section 29, Township 117, Range 22, described as follows: Beginning at a point on the South line of said tract 743 feet East of the Southwest corner thereof; thence North 6 degrees and 12 minutes West to its intersection with the Southeasterly line of State Highway Number 7; thence Southwesterly along the Southeasterly line of State Highway Number 7 to its intersection with the South line of the Southwest Quarter of the Northwest Quarter of said Section, Township and Range; thence East along the South line of said Southwest Quarter of the Northwest Quarter to the point of beginning, except that part of the Northwesterly 150.00 feet of the above described property which lies Northeasterly of a line described as follows: Beginning at a point on the Northwesterly line of the above described property distant 188.55 feet Southwesterly from the Northeast corner of said above described property; thence Southeasterly at a right angle to said Northwesterly line a distance of 150.00 feet and said line there terminating.

1.02 Untiedt's Vegetable Farm, Inc., has requested an interim use permit to operate a seasonal garden market on the subject property annually from May 1<sup>st</sup> through Oct. 31<sup>st</sup>. The request includes a setback variance from 100 feet to 75 feet.

1.03 On March 5, 2020, the planning commission held a hearing on the request. 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 permit, with setback variance.

Section 2. Standards.

2.01 By City Code §300.05 Subd.5, no interim use permit may be issued unless the

following standards are met:

1. The general performance standards in §300.16 Subd.2 will be met;
2. The use will not delay anticipated development or redevelopment of the site;
3. The use will not be in conflict with any provisions of the city code on an ongoing basis;
4. The use will not adversely affect the adjacent property, the surrounding neighborhood, or other uses on the property where the use will be located;
5. The property on which the use will be located is currently in compliance with all applicable city code standards;
6. The use is allowed as an interim use in the applicable zoning district;
7. The date or event that will terminate the use can be identified with certainty;
8. The use will not impose additional unreasonable costs on the public; and
9. The applicant agrees in writing to any conditions that the city council deems appropriate for the use, including a requirement for a financial security to ensure removal of all evidence of the use upon termination.

2.02

City Code §300.18 Subd.7 outlines the following specific interim use permit standards for transient sales:

1. Must be located in a suitable off-street location and shall not extend into adjacent right-of-way or other public property;
2. Must not interrupt vehicular circulation on the site or obstruct parking spaces needed by permanent business established on the site;
3. Must have written authorization from the property owner;
4. Business operator must secure all applicable licenses and approvals from the city, Hennepin County or other appropriate jurisdictions;
5. Sight visibility clearances at street intersections and access points must be provided in accordance with §300.15, Subd.9(e) of this ordinance or as determined by the city to protect public safety;
6. No portion of the use may take place within 100 feet of any developed property zoned for residential use;

7. Signs are subject to the following:
  - a. No more than four signs are allowed, which do not exceed 32 square feet in aggregate;
  - b. Incidental product or pricing signs must be placed directly next to the appropriate product;
  - c. Product advertising is permitted, but must be included in the maximum allowed sign area;
  - d. The signs must have a professional appearance and must be securely mounted or erected in a safe location; and
  - e. These limitations apply to all signs associated with the use, including those affixed to vehicles;
8. Any display of items must be limited to representative samples and be arranged in as compact a manner as reasonably practicable;
9. The interim use permit will be issued in the name of the person requesting the permit and will be for the purpose of selling a particular item or range of items at a specific location. Any change in the person, location or items sold will render the permit invalid; and
10. Violation of the above standards or other conditions placed upon the interim use permit will result in the immediate revocation of the interim use permit.

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

Section 3. Findings.

3.01 The request would meet the general standards outlined in City Code §300.05 Subd.5.

1. The proposed garden market would be consistent with city goals and policies, would not have an undue adverse impact on government facilities, utilities, or services, and would not impact public health safety or welfare.



2. There is no redevelopment currently anticipated in the area. Nevertheless, as a seasonal transient use, the proposed garden center will not impact the redevelopment potential of the site.
3. The proposed use would not impact the required parking, access, or setbacks.
4. Other than bringing more visitors to the commercial center, the seasonal use is not anticipated to impact the surrounding uses.
5. There are no outstanding zoning violations on the property.
6. Transient sales are allowed by interim use permit in the B-2 zoning district.
7. The proposed transient sales are not anticipated to result in any public costs.
8. As a condition of this resolution:
  - a) The interim use permit is granted to Untiedt's Vegetable Farms, Inc. If either Untiedt's decides not to operate at the location or the property owner chooses not to renew a lease, the permit would be null and void.
  - b) The applicant must agree in writing to the conditions of resolution.

3.02 The request would meet the specific standards outlined in §300.18 Subd.7

1. The garden center would be located in a currently unutilized area of parking.
2. The garden center would not obstruct site circulation. It would be located in a currently unutilized area of parking.
3. The proposal has been reviewed by engineering and public works staff. Site visibility clearances would be provided.
4. Though a setback variance is required, the proposal would meet the variance standard.
6. As conditions of this resolution:
  - a) The business operator is responsible for securing all necessary permits and licenses.
  - b) Prior to beginning operation on May 1, 2020, one of the following must be submitted: (1) a letter from the property owner authorizing use of the site; or (2) a copy of the final signed lease agreement.

- c) The applicant must apply for a temporary sign permit each year. Any proposed signage must comply with ordinance standards.
- d) Display of items must be limited to representative samples and be arranged in as compact a manner as reasonably practicable.

3.03 The request would meet the variance standard as outlined in City Code §300.07 Subd.1:

1. Intent of the Ordinance. The intent of the setback requirement pertaining to transient sales is to ensure appropriate separation between these areas, and residential land uses, so as to minimize real and perceived nuisance impacts. The location of the garden center would meet this intent. Though it would be set back 75 feet from the closest residential property line instead of the required 100 feet, the area would be over 300 feet from the closest residential structure and would be further separated from this structure by existing vegetation, a public trail, and Purgatory Creek.
2. Consistent with Comprehensive Plan. The subject property is located in the Highway 7/County Road 101 Area village center. One of the overall themes outlined in the comprehensive plan is to “provide development and redevelopment opportunities that encourage vitality, promote identity, and improve livability” in village centers. The requested variance is consistent with this goal.
3. Practical Difficulties. There are practical difficulties in complying with the ordinance:
  - a) Reasonableness and Neighborhood Character. The proposed 75-foot setback is reasonable and would not impact the character of the surrounding area. Though the garden center would be set back 75 feet from the closest residential property line instead of the required 100 feet, the area would be over 300 feet from the closest residential structure.
  - b) Unique Circumstance. The existing shopping center property on which the garden center would be located technically abuts four residential properties. However, the usable area of the commercial property is separated from the useable area of the residential property by existing vegetation, a public trail, and Purgatory Creek. In total, this is a unique circumstance not common to similar commercial properties.

Section 4. City Council Action.

4.01 The above-described conditional use permit is approved, subject to the following

conditions:

1. The applicant must agree, in writing, to the conditions of this resolution, and the resolution must be recorded with Hennepin County.
2. This permit is issued for Untiedt's Vegetable Farm, Inc. to annually operate a garden market on the subject property from May 1 through Oct. 31. The market may be open daily from 10 a.m. to 7 p.m. Any change in the operator or dates of operation will render this permit void.
3. Untiedt's Vegetable Farm, Inc is responsible for obtaining all necessary licenses and approvals from the city, Hennepin County, or any other appropriate jurisdictions.
4. Prior to beginning operation on May 1, 2020:
  - a) Submit one of the following: (1) a letter from the property owner authorizing the use of the site; or (2) a copy of the final signed lease agreement.
  - b) Submit a plan for treating or preventing runoff to Purgatory Creek. The plan should outline the on-site use of fertilizers, pesticides, and watering practices.
5. The garden market must be generally located in the parking lot north of the northernmost retail tenant space. However, city staff may administratively approve a change in the location within the parking lot, so long as the square footage of the area occupied does not increase.
6. The market must display items such that existing sightlines and parking lot access lanes are not obstructed. Items must be displayed in the most compact manner reasonably practicable.
7. The approval does not approve any signs. A sign permit application must be submitted for staff review and approval.
8. The site must be cleaned of all merchandise, equipment, and debris within three days of the last day of operation.
9. The city council may reasonably add or revise conditions to address any future unforeseen problems. Further, the city council may revoke the interim use permit if any future traffic, parking, or public safety issues arise as a result of the market's operation.
10. Violation of any of the above standards would result in immediate revocation of the interim use permit.

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

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Becky Koosman, City Clerk