

**ORDINANCE NO. 2010-07**

**AN ORDINANCE APPROVING A REVISED MASTER DEVELOPMENT PLAN, WITH  
VARIANCES, AND APPROVING FINAL SITE AND BUILDING PLANS FOR PHASE II  
AT 9703 DATA PARK DRIVE**

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The City Of Minnetonka Ordains:

Section 1.

1.01 This ordinance hereby adopts a revised master development plan, with variances, to redevelop 9703 Data Park Drive with two office towers and two parking ramps. This ordinance also approves final site and building plans for phase II. (Project 06060.09b). Adoption is based on the findings in the March 18, 2010 staff report and the conditions listed below.

Approval includes the following variances:

- a. Floor area ratio: a floor area ratio variance from 100% to 154%.
- b. Setbacks:
  - 1) a building setback variance to the north property line from 100 feet to 35 feet.
  - 2) a building setback variance to the east property line from 100 feet to 9 feet.
  - 3) a building setback variance to the west property line from 100 feet to 35 feet for the main building and 0 feet for the enclosed walkway connection.

1.02 The property is legally described as follows:

Lot 2, Block 1 Data 100 2<sup>nd</sup> Addition

## Section 2.

### 2.01 This ordinance is based on the following findings:

**UNDUE HARDSHIP:** The variances allow the development of a cohesive campus master plan for the Data Park Expansion. Without the granting of the variances, the campus master plan would not include many project innovations.

**UNIQUE CIRCUMSTANCE:** The north building setback variance would be to a property occupied by the applicant which is part of the overall campus. The buildings on that parcel to the north exceed the minimum setback requirements. The east building setback is adjacent to the TH 169 right-of-way which acts as a buffer to properties directly east of the site. The east building setback variance is internal to the Data Park campus which is recognized in the master plan. Comprehensively, the building setback variances allow the reorientation of the building along an east-west axis which provides an increased opportunity for daylight and solar gain reducing the building's overall energy demands.

The floor to area ratio variance is mitigated by the roadway improvements and impervious surface coverage which is below the maximum allowed by city code. Incorporation of underground parking further minimizes setback variances and increases overall green space in the site.

**NEIGHBORHOOD CHARACTER:** The proposed variances would not negatively impact neighborhood character. The setback variances allow the building to be located in a more harmonious position in relation to the Phase I building which positively impacts the overall character of the neighborhood.

## Section 3.

### 3.02 Approval is subject to the following conditions:

- a) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Site plan date-stamped March 4, 2010
  - Grading plan date-stamped March 4, 2010
  - Landscaping plan date-stamped March 4, 2010
  - Building elevations date-stamped March 4, 2010
- b) A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed

by staff, and approved.

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

(a) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval. Revised plans must be submitted for approval after the issues below have been addressed prior to construction of the site improvements. All sheets must be signed by a professional engineer or architect as applicable, licensed in the state of Minnesota. Based on the plans received, the following was noted:

C100- Existing Conditions

- Show all existing easements.

C200 – Site Demolition Plan

- “Demolition Note 5” appears to call out a previous version of the Temporary Traffic Control Zone Layouts Field Manual. Revise.

C300 – Site Layout Plan

- Provide detail/standard plate for curb and gutter type.
- Provide additional information for “General Notes for Layout” note (e).
- Provide plan for any proposed signage or striping revisions to Data Park Drive and site areas.

C401 – Erosion Control Plan

- Confirm all erosion control meets current NPDES and regulatory agency requirements.
- “Keynotes” on the plans reference city details. All applicable city details must be included in the plan set.
- Provide datum used on plan.
- An estimate of the volume of material being moved within the site, onto the site, and away from the site should be included in the SWPPP. The SWPPP does state that the entire site will be disturbed; however the volume of material to be moved should be included in the SWPPP.
- Provide soil stockpile locations on the plan.
- The Erosion Control Plan note #12 states that temporary vegetative cover will be placed within 14 days as required by the city’s ordinance. The SWPPP states that areas not

worked for 21 days will be stabilized within 14 days. The SWPPP should be updated to agree with the Erosion Control Plan, and state that any areas not worked for 14 days will be stabilized.

#### C500 – Site Utility Plan

- Gate valves must be installed on Blue Circle Drive at Data Park Drive and approximately 700-ft south of Data Park Drive to separate city water lines from private water lines created from the vacation of Data Park Drive.
- As discussed previously, an alternative to bypass the existing storm sewer system along the east side of the property, extending south through the Comcast property, must be explored. Provide alternative plan for review.
- Core drill must be provided on connections to all existing sanitary manholes.
- Provide invert elevation for the proposed 8-inch sanitary sewer service. Confirm 8-inch service line capacity is adequate for proposed demands.
- Confirm all proposed watermain crossings do not conflict with existing or proposed storm sewer.
- City of Minnetonka Fire Department must confirm hydrant placement and fire protection is adequate.
- Label all storm sewer casting types.
- Consider drain tile at low point catch basins.

#### Stormwater Management

The stormwater review was based on the UHG Data Park Expansion Phase II Plans revised March 4, 2010, the UHG Data Park Expansion Phase II Stormwater Management Plan revised March 4, 2010, and the UHG Data Park Expansion Phase I Storm Water Management Calculations dated November 20, 2006.

- Runoff rates and volumes need to be restricted to the pre-development conditions. The Phase II Stormwater Management Plan (March 4, 2010) shows that rates and volumes increase with the construction of Phase II when compared to Phase I, however it is noted in the Plan that the overall rates and volumes decrease with the construction of Phases I and II when compared to predevelopment conditions. The rates and volumes calculated in the Phase I Storm Water Management Plan (November 20, 2006) for

predevelopment conditions are based on a 12.94 acre watershed and the rates and volumes for proposed conditions are based on a 10.02 acre watershed. If the 2.92 acres has been diverted to the west instead of the south, provide calculations showing that the rates and volumes leaving the site to the west have not increased with Phase I and Phase II construction.

- Provide detailed maintenance plan for all stormwater management including tank operations. Submittal must include irrigation plan and tank connections to full irrigation system.
- (b) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.
- (c) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
2. Prior to issuance of a grading permit:
- (a) Submit an electronic PDF copy of the plans and specifications.
- (b) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
- (c) Submit all required administration and engineering fees.
- (d) Submit a SWPPP.
- (e) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- (f) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Nine Mile Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required

permits must be submitted to the city.

c) Prior to issuance of a building permit:

1. Submit the following items for staff review and approval:

- (a) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and/or topography.
- (b) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- (c) An illumination plan for staff approval.
- (d) All required hook-up fees.
- (e) Evidence of the release of the obsolete access easements to 9705 Data Park Drive (Comcast site) and a copy of a deed for a new access easement to 9705 Data Park Drive for the relocated access drive.
- (f) Payment for public and on-site traffic signs and installation, as required by the city engineer.
- (g) Record this ordinance with the county.
- (h) The project architect must verify the required volume of water for the building and ensure that there will be adequate fire flow to the building.
- (i) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
- (j) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city

attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

- (k) Payment of fees as calculated under the Opus Area Overlay Ordinance.
- (l) A signed and executed development agreement with the city. The agreement must obligate the developer to the conditions contained in all project develop approvals and payment of all related project fees. The agreement must guarantee that the developer will complete all public improvements and meet all city requirements. Aside from this and other standard items outlined in the city's template agreement, the agreement must outline the developer's responsibility associated with necessary repair of existing public streets. The developer is responsible for any and all repairs deemed necessary to bring the roadway back to "predevelopment" conditions.
- (m) The following conditions must be completed before occupancy of the Phase II building.
- 1) Bren Road West must be expanded to three westbound lanes from the Highway 169 interchange to Green Oak Drive.
  - 2) The Highway 169 bridge over Bren Road must be widened and improved, as required by the city and MnDOT, including the addition of a free-right-turn lane from eastbound Bren Road to southbound Highway 169.
  - 3) Addition of a third lane on Bren Road East, from Green Oak Drive to Data Park Drive, including widening the one-lane drive that connects Bren Road East to Data Park Drive.
- (n) The north-south storm sewer easement must be vacated, subject to city council approval.

- (o) Implementation of an alternative storm water system design if feasible and agreeable to United Health Group, Comcast Cable, and the city.
- (p) Vacation of Data Park Drive subject to the following conditions:
  - 1) The city will retain easements over the vacated right-of-way for drainage, utilities and trail purposes.
- (q) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.

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

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

Section 5. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on April 5, 2010.

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Terry Schneider, Mayor

ATTEST:

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David Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: January 4, 2010

Date of adoption: April 5, 2010

Motion for adoption: Hiller

Seconded by: Allendorf

Voted in favor of: Ellingson, Allendorf, Greves, Wiersum, Hiller, Wagner, Schneider

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on April 5, 2010.

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David Maeda, City Clerk