

City Council Agenda Item #14B
Meeting of December 17, 2007

Background Description: Request for a time extension of the approvals for the Kinsel Point Condominiums located on Glen Lake.

Recommended Action: Approve the time extension.

Background

Applicant: Tom Wartman

Location: Site "C," Kinsel Point, Stewart Lane

Proposal: The applicant is requesting a one-year time extension for site plan approvals relating to Site C. (See the applicant's letter on page A1.)

Previous Council Action

On February 26, 2007, the city council extended approvals for the project as well as changes to Site B. The council extended Site C site plan approvals until December 31, 2007, and plat approvals for all sites until February of 2008.

City Code Provision

When reviewing requests for extensions, the city should consider if there has been a change in circumstances affecting the property. A change in circumstance may be an approved modification to the comprehensive guide plan, substantial changes to the surrounding development pattern or other items as determined by the city. Staff has reviewed this standard and finds the extension appropriate for the following reasons:

- The condominium market has had notable decline in the last several years. This is the primary reason for the request. The applicant has not requested a change in use of the building. An additional one-year period may allow time for the market to adjust.
- Construction on Site B, The Exchange, is progressing. While, Site C has not begun, other portions of the redevelopment are under construction. The progress on this portion of the redevelopment indicates commitment to proceeding with the project.
- There have been no significant code changes. While the city has been discussing many city code changes related to natural resources, no ordinances have been formally adopted.

- Extension requests are customary. The city receives many requests for development extensions, most of which are related to market conditions.

Staff Recommendation

EXTEND SITE C SITE PLAN APPROVALS

- 1) Approve extension of approval for the following:
 - a. Site plan approval for Site C until December 31, 2008.

Submitted through:

John Gunyou, City Manager
Ron Rankin, Community Development Director

Prepared by:

Julie Wischnack–AICP, City Planner

Dec. 10, 2007

City of Minnetonka
Julie Wischnack, City Planner
11522 Minnetonka Blvd.
Minnetonka, MN 55305

RE: Kinsel Point Condominium Development, Glen Lake

In thirty years of developing residential and commercial property, I have not experienced a market such as the one we've had for the past 12 months. By early fall we had 12 sales, two-thirds of what we needed to begin building, and were well on our way to meeting our timeframe. Our Kinsel Point sales team has continued to identify interested buyers, many of whom are transitioning out of large, single family homes.

During the past two months, these interested buyers have understandably become more cautious, in response to ongoing coverage in every national and local news outlet of the depressed housing market and turmoil in the credit markets relating to high default rates on sub-prime loans.

As a result, we have not signed the additional four to six sales necessary to begin the project this fall. By postponing ground breaking until next year, our sales office will benefit from the spring real estate market. We expect to break ground next spring, however, it will depend on overall market conditions and our ability to close on the final sales transactions needed for our financing.

I look forward to building Kinsel Point for the residents of Minnetonka and the surrounding communities. I am disappointed that we have had to delay the start of the building, but I am hopeful that the market will stabilize and provide us the opportunity to be actively selling through winter and into the historically active spring season.



Thomas B. Wartman
Glen Lake Grove, Minnetonka

City Council Agenda Item #14C
Meeting of December 17, 2007

Brief Description: Items concerning the reconstruction of CSAH 61:

- 1) Final plan approval request;
- 2) Cooperative Agreement with Hennepin County;
- 3) Agreement with Xcel Energy;
- 4) Zoning ordinance issues; and
- 5) Execution of easements.

Recommended Action: Approve plans and agreements, adopt resolutions, and authorize easement execution.

Introduction

Hennepin County is requesting final plan approval and execution of a cooperative agreement for the reconstruction of CSAH 61 (Shady Oak Road) between Bren Road and Excelsior Boulevard. They are also requesting approval of three zoning ordinance related matters and execution of easements across some small areas of city owned land.

Xcel Energy is requesting execution of an agreement that outlines the conditions for the burial of overhead power lines along this project corridor.

Council reviewed this issue on December 3 and tabled action on all items until December 17 to allow time for staff to provide council more information on several project issues. Staff reviewed these issues and thought it would be best to address them in four parts. The first is to step back from this project and review the entire county road system within the city to determine which county roads should be considered for reconstruction over the next ten years. The second part is to review the Shady Oak Road project to determine if there are ways to lower project costs. Third is to identify what the consequences are if the city postponed the project. Lastly, if the project was to go forward, is to determine what the long term effects of funding this project would be and how that would affect future county road projects.

Background information and planning approval primary issues from the December 3 council report are contained in the supporting information section of this report.

Part 1: County Road Reconstruction Analysis

In order to help analyze and prioritize the order of county road reconstruction projects within the city, staff prepared the attached city map which illustrates every unimproved county road within the city and factors that should be taken into account for prioritizing county road reconstruction. These factors include comprehensive plan focus areas

(internal traffic generators), significant external traffic generators, and existing average daily traffic (ADT). One factor not listed is potential or supplementary road funding sources such as state turnback funds. This factor only applies to future CR 101 projects and is addressed below.

After reviewing every unimproved county road segment within the city, staff has identified four county roads that, based on the prioritization factors mentioned above, should be the first four county roads considered for reconstruction. These roads are listed below with a brief explanation.

- *Shady Oak Road, Bren Road to Excelsior Boulevard*

This section of Shady Oak Road has the highest existing ADT of all county roads within the city, excluding CR 62. The southern half, for example, carries 50% more traffic than CR 101. It currently serves as a major connector to the OPUS area and will be a significant factor in shaping the redevelopment of this area. This is an extremely important factor considering TH 169 is not scheduled to have any additional capacity added to it in the near future. Although not currently scheduled, Shady Oak Road will also be impacted by future redevelopment of the Golden Triangle area in Eden Prairie.

- *Shady Oak Road, Excelsior Boulevard to TH 7*

This section of Shady Oak Road is a natural extension of the section south of Excelsior Boulevard. It serves many of the same purposes as well as providing an important link to TH 7. The ADT for this road is currently above average for a Minnetonka county road and is expected to grow due to anticipated redevelopment to the south, and its natural function as a reliever for TH 169.

- *CR 101, Minnetonka Boulevard to TH 12, and*
- *CR 101, CR 62 to Excelsior Boulevard*

Traffic along the CR 101 corridor is heavily influenced by external traffic generators southwest of the city. In fact, the intersection at TH 7 and CR 101 is one of the busiest on-grade intersections in the metro area. The existing ADT on this corridor is over 13,000 and is expected to grow as development increases south and west of the city.

The decision to upgrade this corridor is made much easier by the fact that it qualifies for the use of state turnback funds. Since it was originally a state highway and turned over to the county, the state allows most of the reconstruction costs to be funded by turnback funds. This essentially equates to the city paying roughly 20% of what we normally would on a county road reconstruction project.

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Part 2: Project Cost Analysis

Since the traffic analysis for this project demonstrated that a 4 lane section was needed and that federal and state aid funding are contingent on building a 4 lane section, staff reviewed the project costs with this design feature as a minimum condition. Staff also concluded that it did not make sense to consider building a smaller street section similar to a three lane design if the road would be over capacity in approximately 15 years, and require additional lanes to be constructed at that time. The items listed below summarize the higher cost items the city contributes towards, such as right of way acquisition, retaining wall construction, and storm sewer.

Right of Way Acquisition

Although right of way acquisition is currently 50% complete with the remaining acquisition well underway, staff still reviewed this matter to see if there were ways acquisition could have been reduced to lower project costs. In reviewing this matter, staff determined that significant costs were already saved by the proposed retaining wall construction. Minimizing acquisition costs further would require narrowing the overall road width. There are only two ways to accomplish this – to reduce the median width by 1-2 feet where allowable, and eliminate the westerly trail. Eliminating the trail would save some acquisition costs, but it would be at the expense of losing the only walkway along the corridor and eliminate the most sought after project component.

Retaining Wall Construction

The necessity of each retaining wall was reviewed and recorded on the attached retaining wall analysis report. As mentioned above, constructing the retaining walls clearly saved right of way acquisition costs, and prevented impacts to wetlands, buildings, driveways, and even Shady Oak Lake. The analysis also proved that the cost to construct the retaining walls is significantly less than the cost to acquire the right of way if the walls weren't built. For example, the wall on the east side of Shady Oak Road, north of K-Tel Drive, saved over \$2.5 million in acquisition costs.

The current plans call for the walls to be built very similarly to the walls along I-494 and CR 101, with the architectural formed painted facing and ornamental railing. Construction costs could be saved if these architectural features were eliminated, and the walls were instead constructed with a flat white finish and a chain link fence. If these items were removed from the contract, the city would save approximately \$600,000 for eliminating the architectural formed painted facing, and \$250,000 for switching to a chain link fence. The walls would essentially look like the stark walls along TH 12 and I-394.

Many of the proposed walls along this corridor face the road or are highly visible from residential areas and public areas like Shady Oak Beach and Shady Oak

Lake. Many of them are also quite tall ranging from 10-16 feet high. Constructing the walls with the proposed architectural features was one of the project features that helped residents accept this project. Eliminating these features would therefore likely change residents' perceptions of this project.

Storm Sewer

The city's share of the storm sewer cost is \$1.2 million. This cost is calculated based on contributing drainage area. The county basically pays for drainage within the right of way, and the city pays for drainage outside of the right of way. The higher costs are reflective of the water quality features that were incorporated into this project in order to protect Shady Oak Lake and area wetlands.

Following the December 3 council meeting, the city also asked the county to review Minnetonka's project concerns related to cost and funding. The attached letter just recently received from the county indicates they closely reviewed the cost they were charging for design engineering. Typically the county charges cities 10% of the construction cost for design engineering. This method is usually fairly close to actual costs. However, in this case, the county determined that the wall design was fairly easy and repetitive, and did not cost much to design when compared to the overall wall construction cost. The county's actual design costs were therefore much less than the standard 10% that they normally charge.

County staff reviewed this matter with city staff and concluded that their design charges should be significantly reduced from what is listed in the cooperative agreement. The city's design engineering cost listed in the agreement is \$455,442. County staff has offered to reduce this cost to \$100,000, resulting in a \$355,442 reduction in the city's share of this project.

Hennepin County has also acknowledged that the city's share of this project is much higher than a typical roadway project. As a result, the county has offered to spread out the city's payments to them over a longer period of time, from two years to four years. Doing so will lower the annual deficit to the MSA account and reduce the amount of annual internal borrowing needed.

Staff's cost and funding analysis illustrated below takes into account the design fee reduction and longer payment schedule.

Part 3: Delay or Postponement of Project

One option that council wanted staff to provide more information on was postponement of the project. Council felt knowing the consequences of this action would be helpful in light of the increased project costs.

- *Loss of Federal Funding*

The \$5.4 million in federal funding that has been allocated for this project has a sunset date for completing the project. If the project is not done by the sunset date, the funding is lost. The city's share of this funding is \$1.2 million. Postponing the project more than a few months will delay the start of the project, and likely cause the funding to be lost. Reallocation of this funding is not likely.

- *Right of Way Acquisition*

A good portion of the right of way has already been acquired. The city's current share of this cost is \$658,000. Hennepin County has started condemnation proceedings on the remaining right of way which complicates postponing the project. If the condemnation proceedings could be stopped, the current appraisals and property research would all have to be re-done when the project did proceed.

- *Bridge Replacement over Regional Trail*

The bridge over the regional trail needs to be replaced very soon regardless of when road reconstruction would occur. If the road reconstruction would be postponed, Hennepin County would schedule the bridge replacement as soon as possible. The bridge would be designed for four lanes and require building some retaining walls to transition back to the current road width. Residents would be impacted by this construction and again when the road reconstruction occurs.

- *Future County Projects*

If the project was postponed, Hennepin County would also lose out on their share of the federal funds and likely not get them back when road reconstruction does occur. Additionally, there's a good likelihood that the county would quickly reallocate the funds designated for Shady Oak Road to another county project, and furthermore would likely not schedule this road section for quite sometime.

- *Resident Impacts*

A number of residents adjacent to this roadway have already made plans with respect to the roadway being reconstructed. Some have sold homes for a variety of reasons, some have purchased homes assuming they'll have great access to city parks, and others have made decisions pertaining to improving their property. Postponing this project may result in several residents being extremely disappointed.

Part 4: Long Term Funding

At the December 3 council meeting, staff presented a recommendation for financing this project. It included a combination of federal aid, local Street Improvement Fund and Storm Water Fund dollars, and, primarily, Municipal State Aid (MSA) funds as outlined below. The initial proposal suggested it would take four years of state aid construction allocations to finance the project. The council expressed concern about what the long term effects of funding this project would be and how that would affect future county road projects.

For an alternative funding option, staff contacted the city's financial consultant, Springstead Inc., regarding the city's ability to bond for road projects. State law provides two options for local governments to issue bonds without referendum to finance reconstruction of streets. The first alternative, MSA bonding, is specific to state aid street projects and grants the use of MSA allocations for the debt service with some specific conditions. The second option, street reconstruction bonding, requires a formal street reconstruction plan adopted by the council following a public hearing and has some limitations on the purposes for which the bond proceeds may be used.

According to an analysis by Springstead, the city's annual MSA allocation would support a bonding plan to finance the city's matching requirements under the county's current reconstruction calendar for both projects on Shady Oak Road, as well as the two additional projects on County Road 101. Payment of the debt service on bonds over 20 years for these four projects would obligate a majority of the city's projected MSA allocation during that time, although there would continue to be enough remaining MSA funding to provide the flexibility to finance the city's participation in other smaller state aid eligible projects that are likely to arise during the interim. Such projects might include the Bren Road interchange at 169 and Baker Road over State Highway 7.

The ability to bond for the Shady Oak Road project is a viable option, although the council does not have to make the decision to do so on December 17. A thorough discussion regarding bonding can occur during the development of the CIP this spring. Until that time, the council may finance the current project using existing city resources with an internal loan. The council should note that in order to maintain the city's option to bond, staff would request that the council adopt a resolution at the point in time when project expenses begin to be payable. This will ensure that, should the council decide to issue bonds, expenses already incurred can be paid from the bond proceeds.

Revised Estimated Costs and Project Funding

When council approved the layout in 2004, the estimated project cost from Hennepin County was \$8.6 million, excluding right of way acquisition. Hennepin County was also anticipating receiving a federal grant in the amount of \$5.4 million, which they have since obtained. The city's share of the project at that time was estimated to be approximately \$500,000 plus right of way acquisition, or \$2.75 million when including

the current right of way costs shown below. Utility burial costs were not included in these estimates.

The current estimated project costs are shown below. The costs are significantly higher than what the city was anticipating when the project layout was approved. As already noted, however, Hennepin County has agreed to reduce the city's share of the engineering design fees, and the lower cost is reflected in the updated table under construction costs. Additionally, the county has agreed to spread out the city's payments to them over a longer period of time, from two years to four years.

Project costs are allocated according to Hennepin County's cost participation policy. This policy has been in existence for many years and has been used to allocate costs on previous county road projects. Right of way acquisition, retaining wall construction, and storm sewer construction are typically the largest cost sharing items for the city.

Estimated Construction and Right of Way Costs		
Hennepin County*	Construction Costs	\$20,097,758
City of Minnetonka**	Construction Costs	\$5,078,632
Hennepin County	Right of Way Acquisition	\$2,250,000
City of Minnetonka	Right of Way Acquisition	\$2,250,000
Total Estimated Cost		\$29,676,390

* Includes costs related to engineering and surveying

** Includes costs related to engineering and surveying, with the lower design fees mentioned above

Although total project costs have risen significantly, staff proposed funding sources for the city share of this project have remained the same. The proposed allocations from the street improvement and storm water funds are consistent with the current Capital Improvement Plan (CIP). The proposed allocation from the state aid fund would take four years of state aid construction allocations to finance this amount. Therefore, staff recommends that the city cash flow the project using other city funds, with the understanding that the borrowed funds would be paid back with future state aid allocations. Staff also recommends that as a part of developing the next five-year CIP, options for roadway bonding be explored to determine if this would be a better method for funding the project, and other future county road projects.

The federal aid funding source listed below is the city's share of the \$5.4 million federal grant the county received for this project.

Estimated City Project Costs and Proposed Funding Sources		
Estimated Project Cost		\$7,328,632
Federal Aid	\$1,219,680	
State Aid Fund	\$5,798,952	
Street Improvement Fund	\$140,000	
Storm Water Fund	\$170,000	
Total Budget		\$7,328,632

Primary Issues

- **Should the plans be approved?**

Yes. The traffic simulation for this roadway clearly illustrated that a four lane roadway with turn lanes was needed to accommodate future traffic growth. This cross section was then placed within this corridor in such a fashion to minimize and balance impacts to adjacent properties. Tree loss, property impacts and aesthetic issues were a common concern amongst residents, and were therefore given a high priority and addressed as follows:

- (1) Hennepin County has agreed to pay up to \$290,009.02 to re-landscape the project corridor once the project is finished. These funds will also be used to landscape several of the wide medians near Shady Oak Beach. Staff feels this funding amount should be more than adequate to replace the lost trees and nicely landscape the corridor.
- (2) Retaining walls were installed in many locations to minimize property impacts, tree loss and acquisition. Wall design also included architectural features similar to the walls and bridges on I-494 to make them more aesthetically appealing.

- **Are the project costs appropriate for the work being proposed?**

Yes. Building major roads in Minnetonka is very costly due to the character of the Minnetonka landscape and the high property values. This is especially true for this segment of Shady Oak Road. This project basically involves building a \$10 -12

million road with \$10 million in retaining walls and another \$4.5 million for property acquisition.

- **Are the proposed city funding sources appropriate?**

Yes. The proposed funding sources are consistent with how the city has funded previous county road projects. However, because our proposed state aid expenditures are significantly higher than what the city had originally anticipated for this project, the city will initially finance the project by borrowing from other city funds. During development of the 2009 -13 CIP, the council may want to review bonding for a portion of the local share, as well as for other future county road projects.

- **Should the city proceed with this project?**

Yes. The county road reconstruction analysis clearly illustrates that this county road, the next segment of Shady Oak Road, and the two CR 101 projects are the four county road projects the city should reconstruct over the next 10 years. The city should proceed with this specific project for the following reasons:

- (1) The ADT for this section of Shady Oak Road is currently one of the highest in the city for a county road, 50% higher than CR 101. It also is a primary arterial serving areas in Minnetonka and Eden Prairie that are likely to redevelop and intensify in the near future.
- (2) Postponing the project would significantly increase Minnetonka's share of this project by the loss of federal aid, and for right of way components like temporary easements that would have to be re-acquired. Other factors suggesting that the city should proceed with this project include: the bridge over the regional trail would still have to be replaced, future funding of other county projects may be jeopardized, and residents have generally accepted that this project needs to be done and are planning for it to start early in 2008.

- **Are their project features that should be eliminated?**

No. There are very few project features that could be eliminated that would lower the city's share of this project. These features include; the westerly trail, and aesthetic treatments on the retaining walls. Staff believes that these two features should not be eliminated for the following reasons.

- (1) Eliminating the trail would only save some acquisition costs since Hennepin County is paying for the actual trail construction. Eliminating this feature would also be at the expense of losing the only walkway along the corridor, and eliminate the most sought after project component.

- (2) The retaining wall construction could be scaled back to remove the aesthetic features, and instead be revised to simply build white walls with chain link fences. Many of the walls are quite tall and are highly visible from residential areas and public areas like Shady Oak Beach and Shady Oak Lake. Staff feels that since the retaining walls are a very visible feature and that the traveling public and adjacent residents will have to live with the appearance for the next fifty plus years, the aesthetic features should not be removed so the corridor does not take on the “freeway look”.

Staff Recommendation

1) Final Plan Approval Request.

Adopt the attached resolution approving the CSAH 61 street improvements, County Project No. 8637, 0009, and 0010.

2) Cooperative Agreement with Hennepin County.

Adopt the attached resolution approving the cooperative agreement for the CSAH 61 street improvements, County Project No. 8637, 0009, and 0010, and amend the CIP to reflect higher project cost.

3) Agreement with Excel Energy.

Authorize the mayor and city manager to execute an agreement with Xcel Energy in the amount of \$1,500,000 to provide burial of overhead utility lines as part of the CSAH 61 Improvement Project, and amend CIP to reflect higher project cost.

4) Zoning Ordinance Issues.

Adopt the attached resolution which approves the requested floodplain alteration permits, conditional use permits, and shoreland setback variance for reconstruction of County State Aid Highway 61 from Bren Road to Excelsior Boulevard. This resolution is based on the following findings:

- a. The proposed floodplain fill and excavation is reasonable:
 - (1) The fill is required to accommodate the new roadway, which will be significant public benefit to both community residents and the traveling public.
 - (2) The proposed floodplain excavation would result in a net increase in floodplain storage along the roadway.

- (3) The proposed floodplain excavation would create stormwater treatment ponds resulting in increased protection of Shady Oak Lake and area wetlands.
- b. The requested shoreland setback variance is reasonable.
- (1) In relation to the total linear feet included in the overall roadway project, only a negligible 400 feet would be within the required 50-foot setback. This is a minor point intrusion into the required setback.
 - (2) The location of the existing road and surrounding land uses, including existing residential homes, present a practical difficulty. The proposed reconstruction design could not be accommodated without: (1) a setback variance; or (2) further impact to properties on the east side of the road.
 - (3) The item requiring a variance is a public roadway and, as such, has no zoning classification. The public improvement and its reconstruction provide a significant benefit to community residents and the traveling public. This is a unique circumstance.
 - (4) CSAH 61 is currently a public roadway set back just over 50 feet from the OHWL of Shady Oak Lake. The requested setback would have little visual impact on the lake and no negative impact on the essential character of the neighborhood.

Approval is subject to the following conditions:

- a. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- b. Prior to beginning work, install erosion control, tree protection and wetland protection fencing as required by natural resources staff. These items must be maintained throughout the course of construction.

5) Execution of Easements.

Authorize the mayor and city manager to execute easements affecting Lone Lake Park, the Shady Oak Road Cemetery, Shady Oak Beach and the city owned lot at the corner of Karen Lane and Shady Oak Road.

Submitted through:

John Gunyou, City Manager

Originated by:

Lee Gustafson, P.E., Director of Engineering

PROJECT INFORMATION FROM THE DECEMBER 3 COUNCIL MEETING REPORT

(1) Final Plan Approval Request.

The proposed roadway consists of a four-lane, divided section similar to the section that currently exists on the south and north ends. The roadway upgrading will require the bridge over the regional trail to be replaced and the bridge over the CP Rail Line to be widened. Right and left turn lanes will be provided at all intersections along with a bike trail on the west side. A sidewalk will also be provided on the east side from Sanibel Drive to Smetana Road. The existing traffic signals at the Bren Road, Smetana Road and K-Tel Drive intersections will be replaced.

The traffic analysis for this project demonstrated that a 4 lane section was needed similar to proposed design layout for the Shady Oak Road segment between Excelsior Boulevard and TH 7. There is currently a 4 lane section on the south end (Bren Road) and on the north end (Excelsior Boulevard). This project essentially completes the 4 lane section between these existing intersections.

Two large water quality ponds will be incorporated into this project to ensure drainage from the roadway and adjacent areas is treated prior to entering Shady Oak Lake. One pond will be located on a city owned lot next to Karen Lane, and the other will be located on the east side of Shady Oak Road, across from Shady Oak Beach. Several existing ponds will also be used for water quality treatment. The design for the northern drainage system requires the ditch along the north side of the regional trail to be cleaned out and re-graded to restore the ditch to its original design capacity, and to make certain water does not back up and pond in areas outside of drainage easements. Re-grading the ditch and constructing the water quality ponds unfortunately requires the removal of many trees. Although the city usually goes to extreme efforts to save trees, staff felt that the loss of trees for the ditch work and pond construction was an appropriate trade off when considering the work was primarily being done to help protect a valuable resource like Shady Oak Lake.

One other notable project component is the construction of a trail along the west side of Shady Oak Road. The proposed trail will be eight feet wide and run from Bren Road up to Excelsior Boulevard. The trail will also have a new connection to the regional trail on the west side of Shady Oak Road. The trail will essentially allow residents to access Shady Oak Beach and Lone Lake Park from virtually every direction, including residents traveling long distances via the regional trail. Although this project feature will be extremely valuable in providing great pedestrian access to two of the city's premier parks, constructing the trail will unfortunately require some additional tree removal. Similar to the tree loss

associated with the required water quality ponds, staff felt this was an acceptable trade-off to include the trail as a project component.

(2) Cooperative Agreement with Hennepin County.

One of the final steps in this improvement project is execution of a cooperative agreement between Hennepin County and the city of Minnetonka. The attached agreement is similar to other agreements previously executed with Hennepin County, and outlines project details such as funding and future maintenance responsibilities. Hennepin County is requesting council authorization for the mayor and city manager to execute the agreement.

The agreement also stipulates that Hennepin County will provide \$290,009.02 towards landscaping of the project corridor. This amount is based on one (1) percent of the county's construction costs, which is the maximum landscaping allowable for state aid reimbursement.

Estimated project costs and proposed city funding sources are outlined above.

(3) Agreement with Excel Energy.

Xcel Energy has prepared cost estimates totaling \$1,500,000 to bury the existing overhead utility lines. The cost to do this work is higher than what was anticipated due to the electrical network being comprised of essentially two systems instead of just one.

The work is proposed to be funded by the city's Electric Franchise Fee Fund and by Hennepin County. The county has agreed to pay \$521,000, the maximum allowable through its Roadside Enhancement Partnership Program. The remaining \$978,600 is proposed to be paid out of the city's Electric Franchise Fee Fund. The city's 2008 CIP has \$657,000 programmed for this burial work. Although city costs are higher than anticipated for this work, staff has determined that paying this additional amount will not significantly affect the Electric Franchise Fee Fund.

(4) Zoning Ordinance Issues.

The reconstruction project includes small amounts of fill and compensating excavation in several ponding areas near the roadway. This fill/excavation work is needed in order to construct new storm sewer outlets, construct a water quality pond, re-grade slopes near new roadways to ensure safety, and for the ditch cleaning previously mentioned. All effected areas are illustrated on the attached maps. Although the floodplain work is not considered significant, it does however require approval of the following:

- (1) *Floodplain Alteration Permit.* A floodplain alteration permit is required for any alteration of the floodplain that involves excavation or fill of an area greater than 1,000 square feet or a volume greater than 20 cubic yards.
- (2) *Conditional Use Permit.* A conditional use permit is required for any public ponding within the floodplain if that ponding involves excavation or fill of an area greater than 1,000 square feet or a volume greater than 20 cubic yards.
- (3) *Shoreland Setback Variance.* City code currently requires that roadways maintain a 50-foot setback from the ordinary high water level (OHWL) of public waters. As proposed, the reconstructed Shady Oak Road would be set back 46 feet from the OHWL of Shady Oak Lake.

(5) Execution of Easements.

As part of the improvements to Shady Oak Road, certain easements are needed at Lone Lake Park, the Shady Oak Cemetery that is now owned by the city, and Shady Oak Beach. Additionally, the driveway for the private home at 4708 Shady Oak Drive is being relocated across the northeastern portion of the lot at the corner of Karen Lane and Shady Oak Road that the city previously acquired for storm water retention pond purposes. It is necessary to grant these easements to facilitate the improvements. Essentially, this is a housekeeping matter related to the project.

**PRIMARY ISSUES RELATED TO THE PLANNING APPROVAL ITEMS
from December 3 council meeting**

- **Are the requested floodplain alteration and conditional use permits appropriate?**

Yes. The requested floodplain alteration and conditional use permits are appropriate for two reasons:

- (1) The proposed floodplain fill would be required to accommodate the new roadway, which will be a significant public benefit to community residents and the traveling public.
- (2) The proposed floodplain excavation would result in a net increase in floodplain storage along the roadway. This increase would not only mitigate for areas of fill, but would create stormwater treatment ponds resulting in increased protection of Shady Oak Lake and area wetlands.

- **Is the requested shoreland setback variance reasonable?**

Yes. The requested shoreland setback variance is reasonable. In relation to the total linear feet included in the overall roadway project, only a negligible 400 feet would be within the required 50-foot setback. The public benefit provided by the road reconstruction outweighs the minor point intrusion into the required setback.

Further, the proposal would meet the three tests against which all variances must be judged. These specific tests are outlined in the "Supporting Information Related to Zoning Ordinance Issues" section of this report.

SUPPORTING PROJECT INFORMATION

Public Involvement

An essential and very valuable component of the preliminary plan development was the public involvement process. This process began with the August 13, 2003 informational meeting and continued with the formation of the Citizens Advisory Committee (CAC). The CAC was formed early in the process and met six times after the first informational meeting. Staff has also met several times with the Shady Oak Lake residents to review and discuss the various options that were prepared for their area.

The last two informational meetings were held on May 18 and 27, 2004 and were well attended. The comments received were supportive of improving traffic flow along this corridor. Most residents did, however, express concern over the loss of vegetation and were told that a landscape plan for the reconstructed areas would be developed after the final plans have been completed. They have also been told that the city and county will try to make every effort to save existing trees and landscaping.

The first project newsletter was sent out on October 8, 2004. The letter included a project overview and a description of the design changes that occurred after the informational meetings in May. It also gave notice that council would be considering approving the layout on October 18, 2004. A copy of that newsletter is attached.

Council approved the layout on October 18, 2004. Minutes of that meeting are attached.

Recent Project Issues

A couple of Minnetonka residents have recently sent questions to the StarTribune about the potential tree loss associated with this project. Staff's response to these questions was presented in the following manner:

Road width. Some residents have argued that a three lane road should be built versus the four lane road that's being proposed. A three lane road may save a few trees in certain areas, but not as significant a number as some would think since the two road sections are essentially the same width if you don't include medians or add turn lanes on the four lane section. The reason this was pointed out is that this project requires a lot of poured retaining walls and if they're needed for a four lane section, they would also be needed for a three lane section. The City of Minnetonka and Hennepin County opted for the 4 lane section since the traffic analysis demonstrated that a 4 lane section was needed to handle future traffic growth. There is currently a 4 lane section on the south end (Bren Road) and on the north end (Excelsior Boulevard), so this project essentially completes the 4 lane section between these existing intersections. The issue of three lane vs. four lane was thoroughly discussed with the CAC and at the informational meetings. The CAC had the exact same concerns, so staff carefully reviewed this issue. The residents currently questioning this decision heard and

discussed this issue at the informational meetings, and at several neighborhood meetings. None of these residents raised these issues at the October 18, 2004 city council meeting.

Road alignment. The road was pushed as far to the east as possible in order to minimize impacts to the residents on the northeast corner of Shady Oak Lake - the curb line essentially remains the same. Pushing the road further to the east would have required a total acquisition of two large commercial sites. Several residents thought the city should consider this.

Reasons for tree removal. Most of the tree removal along the roadway corridor is related to constructing walls and adding trails/sidewalks. There is also tree removal related to constructing water quality ponds and the ditch cleaning some of which is further off the corridor. The following is a summary of the tree removal along the road.

- South end near Bren Road
 - Road width essentially not changing, we're generally matching existing width. Tree removal is related to safety, adding two right turn lanes at Bren Road, one at Sanibel Drive, and a trail along the west side.
- Lone Lake Park area
 - Tree removal is related to adding a right turn lane into the park, revising the park entrance to accommodate future park improvements, and adding a trail to the west side of Shady Oak Road.
- Smetana Road intersection area.
 - Tree removal is generally all related to constructing retaining walls at or near the intersection. Some tree removal is related to adding a trail along Shady Oak and a sidewalk on Smetana.
- Across from Shady Oak Beach
 - Tree removal is related to relocating utilities, and constructing a wall and sidewalk at the beach entrance.
- K-Tel Drive intersection area.
 - Tree removal is generally all related to constructing retaining walls. Road was shifted east away from residents.
 - Significant measures are being taken to protect the trees of the residents living along the lake.
- Karen Lane intersection area.
 - Trees are being removed to add a trail and sidewalk.

Tree replacement. The landscaping budget for the road project more than compensates for tree removal, consistent with our proposed tree ordinance. Of the total 427 trees that the county will be removing, Jo Collieran has determined that 98 are high priority deciduous trees totaling about 1653 inches. This equals 827, two inch trees at \$300 per tree installed, or \$248,100. They are also removing 17 high priority evergreens totaling about 543 feet. This equals 91, six foot trees at \$300 per tree installed, or \$27,300. The mitigation that would be required under our proposed tree ordinance would be

\$275,400, and \$290,000 is budgeted for landscaping, so the county also has an extra \$14,600 to mitigate for those significant trees that are outside of the allowable tree removal area – that equates to 48 more trees.

SUPPORTING INFORMATION RELATED TO ZONING ORDINANCE ISSUES

Surrounding Land Uses

CSAH 61 is surrounded by varied zoning districts and land uses including: low-density residential, medium-density residential, commercial and industrial.

History

August 2003. The first public informational meeting was held regarding the road improvement project.

August 2003. The CAC was formed; the group would meet six times over the course of the next several months to evaluate the project and review the final layout.

October 2004. The city council approved the layout of the CSAH 61 and authorized the acquisition of rights-of-way, permits, and easements.

November 2007. The city council will be asked to approve final plans and the required cooperative agreement for construction to begin.

March 2008. Proposed construction start date.

Grading

Floodplain fill and storage is illustrated on pages A7–A15 and proposed as follows:

BASIN ID	FILL (cy)	EXCAVATION (cy)	NET CHANGE (cy)
A	1,800		-1,800
B	5,934		-5,934
C		7,034	+7,034
D	221		-221
E	996		-996
F		8,500	+8,500
TOTAL			+6,583

Wetland Impact

The proposed roadway reconstruction has already been reviewed for compliance with the Wetland Conservation Act (WCA) and received all necessary wetland permits.

Landscaping

Though the roadway alignment has already been approved, staff has received several comments from area residents concerned about tree removal associated with the reconstruction project. Staff acknowledges that many trees will be removed. However, in roadway projects, there is a necessary balance that must be achieved between providing for public health safety and welfare and tree preservation. The city engineer notes:

- Several decorative retaining walls have been proposed along the roadway to minimize grading and preserve trees. Installation of these retaining walls is more costly than simple grading.
- New landscaping will be installed along the roadway following reconstruction.

Variance Standards

A variance may be granted from the literal provisions of the ordinance when strict enforcement of the ordinance would cause undue hardship. By definition, undue hardship exists when a property cannot be put to reasonable use if used under the conditions allowed by city code. (City Code 300.07.1) The city attorney has advised that this definition does not mean that that applicant must show that land cannot be put to any reasonable use without a variance. Rather, the applicant must show that there are practical difficulties in complying with the code and that the proposed use is reasonable.

The requested shoreland setback variance meet the three tests against which all variances must be judged.

1) *Are there practical difficulties that prevent a reasonable use from complying with ordinance requirements?*

Yes. The location of the existing road and surrounding land uses, including existing residential homes, present a practical difficulty. The proposed reconstruction design could not be accommodated without: (1) a setback variance; or (2) further impact to properties on the east side of the road.

2) *Are there circumstances that are unique to the property, not common to every similarly zoned property, and that are not self-created?*

Yes. The item requiring a variance is a public roadway and, as such, has no zoning classification. The public improvement and its reconstruction would provide a significant benefit to community residents and the traveling public. This is a unique circumstance.

3) *Would the variance alter the essential character of the neighborhood?*

No. CSAH 61 is currently a public roadway set back just over 50 feet from the OHWL of Shady Oak Lake. The requested setback would have little visual impact on the lake and no negative impact on the essential character of the neighborhood.

Neighborhood Comments

We surveyed the property owners within 400 feet of this site. Out of 267 properties, we received 16 replies as follows:

2 Strongly Support	2 Somewhat Support	1 Neutral	4 Somewhat Oppose	7 Strongly Oppose
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In favor:

Somewhat Support - No Address Given
Do we need more trees planted? Unnecessary expense. And please, no fancy brick walls!!

Somewhat Support - No Address Given
Don't plant too many trees. They probably won't live.

Opposed:

Somewhat Oppose - No Address Given
I am concerned about the loss of such a large number of trees. It has taken years for our trees to grow, and it hurts to think so many will be destroyed.

Somewhat Oppose - 5421 Sanibel Dr
As far as I am concerned, Shady Oak Road from Bren to Excelsior does not need to waste more tax dollars to be upgraded in any way. I travel that section of the road many times a day and feel this would be a waste.

Somewhat Oppose - 5501 Sanibel Dr
I hate to see the 427 trees removed. Driving on Shady Oak Road is very pleasant with the trees on each side of the street. Is there another plan to save more of the trees? (It takes years for a tree to grow the size you are planning to cut.) During the time of the road improvement I presume that Sanibel Drive will be used for the Shady Oak traffic. I am NOT looking forward to the extra traffic on my street. I hope the planning doesn't wreak the appearance of Beachside. It is a shame some of our lawns will be lost.

Somewhat Oppose - 11817 Shady Oak La

If you remove just the brim at wetland Basin F, a lot of your flooding problems up stream will be solved. The creek parallel to the HCRRA has never flooded. Some of our neighbors have lived there for 30 years. Remove the brim east of 11815 and a majority of problems will be solved with regard to the ditch and the HCRRA. It's very simple, but all the engineers are making this whole thing too complicated and won't listen to logical solution.

Strongly Oppose - 5271 Beachside Dr

Save the trees! We don't need more lanes for traffic. The bridge just needs to be fixed. Sure there is traffic, but there is traffic everywhere. Shady Oak is busy only during work hours in the morning and after work hours. Save our money.

Strongly Oppose - No Address Given

For all the good it will do to mark my opinion this whole thing is not doubt a done deal. This exercise is a complete waste of paper and postage. Why are there at least two new businesses (that I know of) that have been waiting for months for the City of Minnetonka to get off it's hind end and approve required paperwork, etc.? Our government at work. Sort of an oxymoron, isn't it?

Strongly Oppose - No Address Given

I am strongly opposed to this project and feel the money could be spent on other more immediate needs. With all the news I have been hearing about all the bridges in the state in need of repair or replacing, and the dangers that people could face if these bridges aren't dealt with. I don't feel that if the Shady Oak project is not completed that it would cause a danger to anyone. At this time I don't feel this project is warranted.

I am also very upset by the way I was informed of the project and the work that was going to be done in my backyard. My home is on Shady Oak Lane and the ditch alongside the HCRRA trail near Shady Oak Lake is going to be improved to address flooding issues. I was initially to be compensated for the loss of trees and the use of my back yard, and a figure was given to me. After a few discussions with Hennepin County, the compensation I was promised was taken back due to a perpetual easement that was found after the fact, and I wasn't entitled to any compensation. I feel that was handled very badly and I have no recourse concerning this matter. Now Hennepin County is going to come in and do whatever they need to do, removing trees that I don't want removed, and any trees I want replaced or damage that is done will have to be at my expense. I am also concerned about the ditch in my back yard that I am told will have more water flowing to the ditch than we have now. My concern is with flooding to my back yard and the damage that could be caused by this flooding. I feel the city or Hennepin County should be liable for any damages to my property if flooding should occur due to the ditch. As a taxpayer I feel these are valid concerns and should be addressed before the project is approved.

Strongly Oppose – 11811 Shady Oak La

1. We feel (along with many of our neighbors) that since the 494 completion and no more 494 detour traffic is on Shady Oak Road, that quite possibly this project is unnecessary. We have noticed a significant decrease in traffic since then. And, a major concern is to put this money where it is really needed; that is the reconstruction of the 35W Bridge. Especially since Minnesota can't come up with enough money to rebuild the 35W Bridge, it should be taken from projects that are not as important and not an emergency. Also, shifting that money to 35W would relieve some financial burden off the tax payers for the 35W project.
2. Concerning the drainage ditch along the HCRRA trail and the removal of a large amount of trees, many of us are very unhappy with that! We were promised (verbally) by the Minnetonka City engineers that we would not have any water problem with redoing the ditch, and the city would take responsibility if we ever do. We have never had a problem in the 30 years we lived here, and we want to keep it that way.

We want to be assured the city will honor their verbal statement, especially since there will be more water in the ditch coming from other areas. This is an important concern for those of us that border the ditch.

Strongly Oppose – 4908 Shady Oak Rd

Why not build long bridges, so the animals can go under the road instead of risking their lives going across the road? Why don't you go with two lanes of traffic coming into town and one lane going out? Why not go with one lane going out and coming into town and a third lane for turning? Just don't like people messing with the wetlands. Like that earthmower incident (into Shady Oak Lake); that was really bad.

Strongly Oppose - 4936 Shady Oak Rd

We have always opposed the over-reaching development of Shady Oak Road. We would like to see only a three-lane road, for turn lanes. As Shady Oak Road continues to Highway 7 it is only two lanes from Excelsior Boulevard. That would certainly reduce the impact on the lake, homes, and trees! This is the first time we have seen a number of the trees being affected, and 427 out of 600 is astounding and unacceptable. This is Shady Oak Road! County Road 101 has three lanes and no median. Why not there?

General comments:

None

Deadline for a city decision: February 2, 2008